

CalHFA Supplemental Ethics Pamphlet 2015/2016 Edition

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CalHFA Supplemental Ethics Pamphlet 2015/2016 Edition

| Table of Contents | Page |
|---|---------|
| I. Introduction | 3 – 4 |
| II. Agency Policy: Conflicts-of-Interest and Ethics | 5 |
| III. General Concepts | 6 – 10 |
| IV. Agency-Specific Laws and Statutes | 11 – 37 |
| • Health & Safety Code § 50904 | |
| • Health & Safety Code § 50905 | |
| • CalHFA Regulation § 10001 – Conflict-of-Interest Code | |
| • FPPC Regulation § 18730 – Provisions of Conflict of Interest Codes | |
| V. Prohibition Against A Public Official's Financial Interest In A Contract | 38 – 41 |
| (Government Code § 1090) | |
| VI. Revolving Door and Other Post-Employment Issues | 42 – 45 |
| • One-Year Ban on Influencing Your Former State Agency | |
| • Permanent Ban on “Switching Sides” in Cases or Proceedings | |
| • Influencing Prospective Employment | |
| VII. Agency Statement of Incompatible Activities | 46 – 48 |
| • Conflicts of Interest and Incompatible Activities Policy | |
| • Government Code § 19990 | |
| VIII. Examples of Conflicts | 49 – 50 |
| • Agency Personnel Conflict | |
| • Appearance of Impropriety | |
| • Financial Conflict-of-Interest | |
| • Financial Conflict-of-Interest & Appearance of Impropriety | |
| • Financial Conflict-of-Interest & Future Employment | |
| • Revolving Door Prohibition | |
| • Financial Conflict-of-Interest & Financial Interest in Contracts | |
| • Incompatible Activity | |
| IX. Where to Get Help | 51 |

[Ethics Training Completion Acknowledgment & Agreement](#)

I.

INTRODUCTION¹

California law requires certain state officials and employees to receive training on the various ethics laws to which they may be subject. Effective 01/01/2003, the law was expanded to include all Statement of Economic Interest (Form 700) filers. This pamphlet is designed to be a quick reference to pertinent Agency-related laws, and to provide an overview of some of the conflict of interest laws which have general applicability to all state agencies. A more extensive discussion concerning these general conflict of interest laws can be found in the below-listed “Conflicts of Interest Guide” published by the Office of the Attorney General.

Conflicts of Interest Guide

Published by: Office of the Attorney General, State of California, Department of Justice

- Click link for [Conflicts of Interest Guide](#)

The Conflicts of Interest Guide summarizes eight different conflict of interest laws in California and discusses the laws themselves and the ways in which they have been interpreted by the courts and by published opinions of the Attorney General.

Conflict of interest laws are grounded on the notion that government officials owe paramount loyalty to the public, and that personal or private financial considerations on the part of government officials should not be allowed to enter the decision making process.

The purpose of the Conflicts of Interest Guide is to assist government officials in complying with California’s conflict of interest laws and to assist the public and the news media in understanding these laws so that conflict of interest situations can be monitored and avoided.

CalHFA believes that a strong commitment to legal compliance and ethics is one of the underpinnings of its business success. CalHFA expects that, in order to comply with the law and instill public confidence in what we do, you will familiarize yourself with the economic disclosure law, conflict of interest rules, disqualification standards, and reporting requirements, and will timely disclose the required personal financial interests and outside income, will disqualify yourself as appropriate, and will exercise uncompromised loyalty and undivided allegiance to the best interests of the Agency.

WHO MUST COMPLETE ETHICS TRAINING AND WHEN

California law requires state officials to complete an ethics training course within six months of their hiring, and every two years thereafter (or more frequently as may be required by CalHFA). To help state officials meet this requirement, the Attorney General’s Office and the Fair Political Practices Commission have developed an interactive online ethics training course for state officials, “Ethics Orientation for State Officials,” which is available on the Attorney General’s website.

¹ Please note that this pamphlet focuses on Agency-related information. For instance, since CalHFA does not employ any elected officials, information relating to their specific obligations is not included. Accordingly, if you hold “dual offices,” you may have an additional and/or different set of rules which may govern.

CalHFA requires its “designated employees” in its Conflict-of-Interest Code (*i.e.*, Form 700 filers: Board Members, consultants, and staff) to complete “Ethics Orientation for State Officials” ***and*** to read the “CalHFA Supplemental Ethics Pamphlet” (this document). You must then self-certify by completing/submitting the online [Ethics Training Completion Acknowledgment & Agreement](#). When you click to submit, your name and certification date will be electronically forwarded to the Records Compliance Management Unit, CalHFA Legal Division. Ethics certifications will be maintained by the Agency for a period of at least five years following completion of the training.

Please note: CalHFA may update its Conflict-of-Interest Code at any time, and the “designated employees” (Form 700 filers) may change in the future. CalHFA may extend its ethicstraining requirements to non-filers.

SOURCES FOR TRAINING MATERIAL

Ethics Orientation for State Officials

Published by: Office of the Attorney General, State of California, Department of Justice.

- Click link for [Ethics Training Course For State Officials](#)

CalHFA Supplemental Ethics Pamphlet

Published by: Legal Division, California Housing Finance Agency

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II.

AGENCY POLICY: CONFLICTS-OF-INTEREST AND ETHICS

- ❖ You must perform your job in an impartial manner, free from any bias caused by your own financial interests.
- ❖ You must disqualify yourself from making, participating in, or influencing governmental decisions that may have a foreseeable, material financial effect, distinguishable from the effect on the public in general, on your (or your immediate family members') financial interests.
- ❖ Your assets and income, which may be materially affected by your official actions, must be disclosed to your supervisor and to the CalHFA Legal Division.

If you file Form 700 –

- You must disclose certain personal financial holdings and outside income by filing a “Statement of Economic Interests” (Form 700). You must sign your Form 700 under penalty of perjury. Your Form 700 is a public record.
 - You may not receive honoraria.
 - You must limit the receipt of and/or disclose specified gifts and loans on your Form 700.
 - The disclosure of a financial interest on Form 700 does not cure any conflict of interest that is created by that financial interest.
 - If you have a disqualifying conflict of interest, then you must not participate in any governmental decisions that involve that interest.
- ❖ You must preserve the highest standards of integrity and behave ethically.

Ethical behavior means –

- Honesty, impartiality, integrity, fairness, trust, and respect.
 - Identify and avoid actual and perceived conflicts of interest.
 - Do not allow improper use of your position for personal gain.
 - Do not foster the suspicion of any conflict between official duties and private interests.
 - Do not give the impression of being influenced by gifts.
 - Do not show favor or disfavor to any person or organization.
- Maintaining ethical standards is your responsibility.

III.

GENERAL CONCEPTS

“A public officer is impliedly bound to exercise the powers conferred on him (or her) with disinterested skill, zeal, and diligence and primarily for the benefit of the public.” Accordingly, the following represents the general concepts behind all conflict of interest laws:

- One cannot serve two masters;
- Self-dealing is strictly prohibited (*i.e.*, taking advantage of one’s public position resulting in advantage to one’s personal position);
- Sometimes, just the appearance of impropriety is prohibited (*i.e.*, action taken at direction of employee which benefits CalHFA but affects employee’s personal interests insubstantially may still be inappropriate).

All public officials and employees need to be mindful that even though their actions may not technically fall within the prohibition of any particular statute, common law interpretation of self-dealing may be applied, and may result in severe consequences.

The chart on the following pages can be referred to as a guide when considering whether a particular situation may give rise to ethical considerations.

Financial Conflict-of-Interest

Political Reform Act

- [Government Code Sections 81000-91014](#)

Fair Political Practices Commission (FPPC)
Provisions of Conflict of Interest Codes

- [FPPC Regulation Section 18730](#)

Possible Sanctions

Administrative Fines

- [Government Code Sections 83100-83124](#)

Civil Penalties up to the greater of \$10,000
or three times the amount of economic benefit

- [Government Code Sections 91000-91014](#)

Criminal Prosecution

* * *

Financial Interest in Contracts

- [Government Code Sections 1090-1099](#)
- [Health & Safety Code Section 50904](#)

Possible Sanctions

Void Contract

Return of Economic Gain

- [Government Code Section 1092](#)

Fine of up to \$1,000

Imprisonment in the State Prison

Permanent disqualification from office in this state

- [Government Code Section 1097](#)
- [Health & Safety Code Section 50904](#)

Criminal Prosecution

* * *

Does a state official (including employee) participate in or make a government decision, or use his/her position to influence a government decision?

“Make a government decision” means:

- Votes on a matter
- Appoints a person to a board or commission
- Obligates/commits agency
- Enters into contractual agreements

“Participate in a government decision” means:

- Negotiates on behalf of agency
- Advises or makes recommendations to decision-maker by conducting research or preparing reports, analyses or opinions

AND does the state official (or employee) or a member of his or her immediate family have a financial interest that could be significantly affected by the decision?

“Financial interest” means:

- Investments of \$2,000 or more
- Real property worth \$2,000 or more
- Income aggregating \$500 or more
- Gifts aggregating \$460 or more
- Director, officer, or employee of any business entity

[If yes, the official may have a conflict-of-interest and be required to disqualify himself/herself from participation in that decision]

* * *

Does a member of a board have a direct or indirect financial interest in a contract or matter being considered by the board or by any agency under the board’s jurisdiction?

(Note: No dollar threshold)

[If yes, the board member is required to disclose that interest as a matter of public record and to abstain from voting or influencing the vote]

Has any other state employee participated in the making of a contract in which he/she had a direct or indirect financial interest?

[If yes, the employee must not participate in any process or negotiation of the contract]

* * *

| | |
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| <p>Limitations on State Contracts</p> <ul style="list-style-type: none"> • Public Contract Code Sections 10410-10412 <p><u>Possible Sanctions</u></p> <p>Void Contract</p> <ul style="list-style-type: none"> • Public Contract Code Section 10420 <p>Civil Penalties of state’s attorney fees and costs and two times the amount of economic benefit</p> <ul style="list-style-type: none"> • Public Contract Code Section 10421 • Public Contract Code Section 10424 <p>Criminal Prosecution</p> <ul style="list-style-type: none"> • Public Contract Code Section 10422 • Public Contract Code Section 10423 <p style="text-align: center;">* * *</p> | <p>Is a state official (other than a part-time board member) involved in an activity, employment or enterprise, some portion of which is funded by a state contract?</p> <p>[Absolute prohibition]</p> <p>Is a state official, while employed by the state, contracting with a state agency to provide goods or services?</p> <p>[Absolute prohibition]</p> <p>Is a former state official entering into a state contract in which he/she participated in any part of the decision-making process while a state employee?</p> <p>[Two-year prohibition]</p> <p>Is a former state official, who held a policy-making position with the Agency, entering into a contract in the same general subject area with his/her former agency?</p> <p>[One-year prohibition]</p> <p style="text-align: center;">* * *</p> |
| <p>Appearance of Impropriety</p> <p>Common Law</p> <p style="text-align: center;">* * *</p> | <p>Court-made law, based on avoiding actual impropriety or the appearance of impropriety in the conduct of government affairs, may require government officials to disqualify themselves from participating in decisions in which there is an appearance of a financial conflict-of-interests</p> <p style="text-align: center;">* * *</p> |
| <p>Public Reporting of Financial Interests</p> <p>Political Reform Act</p> <ul style="list-style-type: none"> • Government Code Sections 81000-91014 <p>California Housing Finance Agency (CalHFA) Conflict-of-Interest Code (25 CCR, Div. 2, §10001)</p> <ul style="list-style-type: none"> • CalHFA Regulation Section 10001 <p style="text-align: center;">* * *</p> | <p>Is the official a state or local officer or employee who participates in the making of government decisions?</p> <p>[If yes, the official may be required to file a public report disclosing investments, real property, income and gifts, in accordance with the Agency’s Conflict-of-interest Code]</p> <p style="text-align: center;">* * *</p> |

| | |
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| <p><u>Incompatible Activity</u></p> <ul style="list-style-type: none"> • Government Code Section 19990 • CalHFA Statement of Incompatible Activities <p><u>Possible Sanctions</u></p> <p>Disciplinary Action Dismissal</p> <p style="text-align: center;">* * *</p> | <p>Is a state official or employee using his/her government position or using government information or property in an improper manner?</p> <p>[Absolute prohibition]</p> <p>Is the state official or employee using, without authorization, confidential information acquired by virtue of his/her employment?</p> <p>[Absolute prohibition]</p> <p>Is the state official or employee receiving, directly or indirectly, any favor, gift, <i>etc.</i>, from anyone seeking to do business with the Agency and can it be reasonably inferred that the gift was intended to influence or reward the employee?</p> <p>[Absolute prohibition]</p> <p style="text-align: center;">* * *</p> |
| <p><u>Incompatible Offices</u></p> <p>Common Law</p> <p><u>Possible Sanctions</u></p> <p>Automatic forfeiture of first assumed office</p> <p style="text-align: center;">* * *</p> | <p>Does a state official hold two public offices simultaneously? (For purposes of this common law doctrine, an employment is not considered to be an office)</p> <p>AND is there a potential conflict or overlap in the functions or responsibilities of the two offices? (Note: Potential, not actual, conflict is sufficient)</p> <p style="text-align: center;">* * *</p> |
| <p><u>Revolving Door Prohibition</u></p> <ul style="list-style-type: none"> • Government Code Sections 87400-87410 • Government Code Section 87450 <p><u>Possible Sanctions</u></p> <p>Lifetime ban from acting as agent or acting in future proceedings</p> <p>One-year ban from communicating with government agency</p> <p style="text-align: center;">* * *</p> | <p>Is a former state administrative official being compensated to act as agent or attorney for any person other than the State of California before any court or state administrative agency in a judicial or quasi judicial proceeding?</p> <p>AND did the state official, while in office, participate personally and substantially in the proceeding (including making a recommendation)?</p> <p>[Absolute prohibition]</p> <p>Is a former state official being compensated to communicate with a state agency within one year of his/her leaving state service?</p> <p>[Absolute prohibition]</p> <p style="text-align: center;">* * *</p> |

| | |
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| <p><u>Future Employment</u></p> <ul style="list-style-type: none"> • Government Code Section 87407 <p><u>Possible Sanctions</u></p> <p>Official disallowed from further participation, or from assisting or counseling any participant, in the government decision-making</p> <p style="text-align: center;">* * *</p> <p><u>Agency Personnel Conflict</u></p> <ul style="list-style-type: none"> • Health & Safety Code Section 50905 <p><u>Possible Sanctions</u></p> <p>Commitment by the Agency to provide financing may be voidable</p> <p>Disqualification of the board member, officer or employee from office</p> <p style="text-align: center;">* * *</p> | <p>Is a state official making, participating in the making, or using his/her official position to influence the making of a government decision directly relating to any person with whom the official is negotiating future employment?</p> <p>[Absolute prohibition]</p> <p style="text-align: center;">* * *</p> <p>Does a state officer or employee hold any paid official relation to, or have any financial interest in, any housing sponsor or housing development assisted by the Agency?</p> <p>[Absolute prohibition]</p> <p>Has any board member, state officer or employee sold real property to a housing sponsor for housing to be financed by the Agency?</p> <p>[Absolute prohibition]</p> <p style="text-align: center;">* * *</p> |
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IV.

AGENCY-SPECIFIC LAWS AND STATUTES

The following represent specific conflict-of-interest laws related to Agency personnel.

[Health & Safety Code Section 50904](#)

§ 50904. Representation of varied interest groups; conflict-of-interest; financial interest; disclosure; violations; misdemeanor.

The representation of varied interest groups on the board shall be deemed essential to obtain information for the development of policy and decisions of the board. Notwithstanding [Section 1090 of the Government Code](#), it shall not be a conflict of interest for an official of any local public entity or a resident of any affordable housing, or a director, officer, stockholder, or employee of any savings and loan institution, investment banking firm, brokerage firm, commercial bank or trust company, architectural firm, insurance company, labor union, or any other person, association, or corporation to serve as a member of the board. If any board member has a financial interest in any matter before the board for a decision, that interest shall be disclosed as a matter of official public record. The board member shall not attempt to influence, participate in deliberations concerning, or vote as to that matter.

Violation of this section constitutes grounds for disqualification from office as a board member. Violation of the disclosure requirements of this section constitutes a misdemeanor under [Section 91000 of the Government Code](#).

[Health & Safety Code Section 50905](#)

§ 50905. Employment or financial interest; housing sponsor or development; violations; voidable actions; validity of bonds or insurance issued; owner-occupied single-family programs.

(a) An officer or employee of the agency shall not be employed by, hold any paid official relation to, or have any financial interest in, any housing sponsor or any affordable housing financed or assisted under this part, provided that this prohibition shall not apply to a member of the board of directors who is not an employee of the agency. Real property to which a member of the board or employee of the agency holds legal title or in which the person has any financial interest shall not be purchased by the agency or sold by the member of the board or employee of the agency to a housing sponsor for affordable housing to be financed under this part.

Any violation of this section shall be a conflict of interest that shall be grounds for disqualification of the member from the board or employee of the agency from his or her employment with the board or agency.

(b) Except as provided by subdivision (c), the following actions shall be voidable in the discretion of the agency:

(1) Any purchase by the agency of real property in which a member of the board or employee of the agency has legal title or a financial interest.

(2) Any commitment by the agency to provide financial assistance to a housing sponsor in which a member of the board or employee of the agency is employed, holds any official relation, or has any financial interest.

(3) Any commitment by the agency to provide financial assistance to a housing sponsor to which real property has been or is transferred for affordable housing to be financed under this part, if a member of the board or employee of the agency has or has had legal title or any financial interest in the real property.

(c) Any commitment by the agency to provide financial assistance under the circumstances specified in paragraph (2) or (3) of subdivision (b) shall not be voidable following release of the funds.

(d) Notwithstanding any other provision of this section and [Section 50904](#), any conflict of interest by a member of the board or employee of the agency shall not affect the validity of any bonds or insurance issued pursuant to this division.

(e) Notwithstanding any other provision of this section, an agency employee or board member may, if not acting as an investor and if otherwise eligible, participate in owner-occupied single-family financing and insurance programs operated by the agency.

CALIFORNIA CODE OF REGULATIONS

TITLE 25. Housing And Community Development

Division 2. California Housing Finance Agency

Chapter 1. General

Article 1. Conflict-of-Interest Code

§10001. General Provisions.

§10001. General Provisions.

The Political Reform Act, [Government Code sections 81000, et seq.](#), requires state and local government agencies to adopt and promulgate Conflict-of-Interest Codes. The Fair Political Practices Commission has adopted a regulation, [2 California Code of Regulations section 18730](#), which contains the terms of a standard Conflict-of-Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of [2 California Code of Regulations section 18730](#) and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict-of-Interest Code of the California Housing Finance Agency (the Agency).

Designated employees shall file statements of economic interests with the Agency, which will make the statements available for public inspection and reproduction. ([Govt. Code Section 81008](#)). Upon receipt of the statements of Board Members and the Executive Director, the Agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the Agency.

Note: Authority cited: Sections [87300](#) and [87304](#), Government Code. Reference: Sections [87300, et seq.](#), Government Code.

**Conflict-of-Interest Code of the
California Housing Finance Agency**

Appendices

*Appendix A
Designated
Employees*

*Assigned
Disclosure
Category*

*Persons holding the following positions
and/or the following classifications are
“designated employees”:*

Board of Directors

Board Member (All members of the Board other than the State Treasurer) 1, 2

Executive

Executive Director 1, 2
 Chief Deputy Director 1, 2
 Director of Legislation 1, 2
 Information Security Officer 2

Administration

Director of Administration 1, 2
 Staff Services Manager (all classes and all levels) 1, 2

Information Technology

Chief Information Officer 2
 Systems Software Specialist III (Supervisory) 2
 Senior Programmer Analyst (Supervisor) 4
 Staff Information Systems Analyst (Specialist) (Technical Support & Procurement
 Administration) 4

Marketing

Director of Marketing 1, 2

Legal

General Counsel 1, 2
 Assistant Chief Counsel 1, 2
 Staff Counsel (all classes and all levels) 1, 2

Financing

Director of Financing 1, 2
 Risk Manager 1, 2
 Housing Finance Chief (all classes) 1, 2
 Accounting Administrator III 1, 2
 Financing Officer 1, 2
 Financing Specialist 1, 2

| | |
|--|------|
| <i>Fiscal Services</i> | |
| Comptroller | 1, 2 |
| Deputy Comptroller | 1, 2 |
| Accounting Administrator III | 1, 2 |
| Accounting Administrator II | 3 |
| Housing Finance Officer (all classes) | 1, 2 |
| <i>Homeownership</i> | |
| Director of Homeownership | 1, 2 |
| Deputy Director | 1, 2 |
| Housing Finance Chief (all classes) | 1, 2 |
| Housing Finance Officer (all classes) | 1, 2 |
| <i>Multifamily</i> | |
| Director of Multifamily Programs | 1, 2 |
| Deputy Program Director | 1, 2 |
| Housing Finance Chief (all classes) | 1, 2 |
| Supervising Design Officer | 1, 2 |
| Senior Design Officer | 1, 2 |
| Senior Housing Construction Inspector | 1, 2 |
| Housing Finance Officer (all classes) | 1, 2 |
| Chief, Special Lending Programs (CEA II) | 1, 2 |
| <i>Asset Management</i> | |
| Deputy Director of Asset Management | 1, 2 |
| Housing Finance Chief (all classes) | 1, 2 |
| Housing Finance Officer (all classes) | 1, 2 |
| <i>Mortgage Insurance Services</i> | |
| Director of Mortgage Insurance | 1, 2 |
| Deputy Director | 1, 2 |
| Housing Finance Chief (all classes) | 1, 2 |
| Housing Finance Officer (all classes) | 1, 2 |
| Housing Finance Specialist (all classes) | 1, 2 |
| <i>Consultants</i> | |
| Consultant | 1, 2 |

With respect to Consultants, the General Counsel of the Agency may determine in writing that a particular consultant, although a “designated employee,” is hired to perform a range of duties that is limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. A copy of the written determination is a public record and shall be retained and made available for public inspection in the same manner and location as this Conflict-of-Interest Code. Nothing herein excuses any such consultant from any other provision of this Conflict-of- Interest Code.

Appendix B

Disclosure Categories

Category 1 – Interests in Real Property

Designated employees in Category 1 must report:
All interests in real property in the State of California.

Category 2 – Full Disclosure (excluding interests in real property)

Designated employees in Category 2 must report:
All investments, business positions and sources of income, including gifts, loans and travel payments, from sources that:

(A) Are any person or entity which is defined by part I, chapter 2, of the Zenovich-Moscone-Chacon Housing and Home Finance Act (chapter 2 commences at section 50050 of the California Health and Safety Code) to be any of the following:

- (1) “housing sponsor”
- (2) “limited-dividend housing sponsor”
- (3) “qualified mortgage lender”; or,

(B) Are any person or entity that contracts or otherwise does business with the Agency, or is soliciting a contract or other business from the Agency, and which is any of the following:

- (1) financial services company
- (2) bank, including commercial bank, mortgage bank, thrift, credit union, or similar lender
- (3) investment bank
- (4) real estate services company
- (5) brokerage company
- (6) insurance company
- (7) title company
- (8) escrow company
- (9) building or construction contractor or subcontractor
- (10) sources that are the type that, within the previous two years, have contracted with the Agency to provide leased facilities, supplies, materials, machinery, equipment, or services, including training and consulting services, to the Agency, or have otherwise done business with the Agency

(11) sources that manufacture, distribute, supply, or install computer hardware or software of the type utilized by the Agency, as well as entities providing computer consultant services to the Agency

(12) law firm that represents persons or entities described in Category 2A in matters directly related to their status as described in Category 2A.

(13) law firm that represents persons or entities described in Category 2B in matters directly related to their status as described in Category 2B.

Category 3 – General Procurement

Designated employees in Category 3 must report:

All investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that are of the type that, within the previous two years, have contracted with the Agency to provide leased facilities, supplies, materials, machinery, equipment, or services, including training and consulting services, to the Agency, or have otherwise done business with the Agency.

Category 4 – Information Technology

Designated employees in Category 4 must report:

All investments and business positions in business entities, and income, including gifts, loans, and travel payments, from sources that manufacture, distribute, supply, or install computer hardware or software of the type utilized by the Agency, as well as entities providing computer consultant services to the Agency.

This is the last page of the conflict-of-interest code for the **California Housing and Finance Agency**.



CERTIFICATION OF FPPC APPROVAL

Pursuant to Government Code Section 87303, the conflict-of-interest code for the **California Housing Finance Agency** was approved on ~~February~~ ^{March 3} 2010.

Roman G. Porter

Roman G. Porter
Executive Director
Fair Political Practices Commission

Pursuant to Government Code Section 11346.2:

Secretary of State Filing Date:

Effective:

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 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 Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 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, 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 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 (Regulations 18110, 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 economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in 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 economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.¹

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 economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic 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 economic interests set forth in a designated employee's disclosure categories

are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements 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 30 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 30 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 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(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 and income received during the 12 months prior to 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, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(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, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(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 property³ is required to be reported,⁴ 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 equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

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

1. The name and address of each source of income aggregating \$500 or more in value, or \$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 \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;

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 and the term of the loan.

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

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

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 \$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. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$460.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$460 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected

officer has been elected or over which that elected officer's agency has direction and control.

This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed \$500 at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

a. The date the loan was made.

b. The date the last payment of \$100 or more was made on the loan.

c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action.

Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and 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 \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

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

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$460 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

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.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. 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 Section 83114 and Regulations 18329 and 18329.5 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.

(12) Section 12. 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, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

¹ 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 Section 81004.

² See Section 81010 and Regulation 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.

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

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 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.

⁵ 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.

⁶ 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.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, 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).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).

7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).
9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).

16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).
18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).
19. Editorial correction of subsection (a) (Register 98, No. 47).
20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).
21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).
22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).
23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third

Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate

District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

32. Amendment of section heading and subsections (a)-(b)(1), (b)(3)-(4), (b)(5)(C), (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) and amendment of footnote 1 filed 1-8-2013; operative

2-7-2013. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 2).

33. Amendment of subsections (b)(8.1)-(b)(8.1)(A), (b)(8.2)(E)3. and (b)(9)(E) filed 12-15-2014; operative 1-1-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations.

Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2014, No. 51).

V.

PROHIBITION AGAINST A PUBLIC OFFICIAL'S FINANCIAL INTEREST IN A CONTRACT

Government Code Section 1090 applies to CalHFA staff, consultants, and Board Members. This law prohibits you from having any involvement in a contract in which you may have a financial interest. It imposes a very strict rule, and imposes harsh consequences for violations. Violations are enforced civilly by the Agency who enters into the contract, and criminally by the Attorney General and local district attorneys.

Under this law, you are prohibited from being financially interested in any contract made by you in your official capacity, or by any body or board of which you are a member. While a contract must be finalized before a violation occurs, the term "making a contract" has been construed to include negotiations, preliminary discussions, reasoning, planning, as well as decisions to extend, modify, or renegotiate.

You cannot simply disclose the interest or potential conflict, and then abstain from participation in the contract or transaction. The mere presence of your financial interest effectively disqualifies CalHFA, or the body or Board of which you are a member.

Penalties for violation of **Government Code Section 1090** are very harsh. A contract made in violation of this law is void and cannot be enforced. A knowing violation is a felony, which is a serious crime that can result in imprisonment in the State prison. In addition, an individual who is found to have willfully violated this law is barred from holding any public office in California. Finally, a violation may subject you to civil and administrative actions.

[Government Code Section 1090.](#)

§ 1090. Conflicts of interest contracts, sales and purchases

(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

CLIPS FROM OPINIONS OF THE ATTORNEY GENERAL

(Opinion No. 06-101)

Prohibited “financial interests” extend to expectations of economic benefit.

A financial interest within the meaning of [Government Code] section 1090 may be direct or indirect and includes the contingent possibility of monetary or proprietary benefits.

The fact that the officer’s interest might be small or indirect is immaterial so long as it is such as deprives the [district] in his overriding fidelity to it and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good.

It has long been held that the financial interest of one spouse will be attributed to both spouses for purposes of [Government Code] section 1090.

(Opinion 04-502)

The prohibited act is the making of a contract in which the official has a financial interest.

Put in ordinary, but nonetheless precise terms, an official has a financial interest in a contract if he might profit from it.

Forbidden financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of financial losses, as well as the prospect of pecuniary gain.

(Opinion No. 96-1103)

The critical test for determining whether [Government Code] section 1090 has been violated is whether an officer or employee has participated in the making of a contract in his or her official capacity.

*[Government Code section 1090] not only strikes at situations that do not involve actual fraud and dishonesty but also at those in which such is absent but in which the **possibility** exists nonetheless for **personal** influence of an interested [officer] to be brought to bear, either directly or indirectly, on an official decision.*

An official (or public employee) may be convicted of violation [of Government Code section 1090] no matter whether he actually participated personally in the execution of the questioned contract, if it is established that he had the opportunity to, and did, influence execution directly or indirectly to promote his personal interests.

[Government Code] Section 1090’s prohibition applies regardless of whether the contract is found to be fair and equitable or the official abstains from all participation in the decision to contract.

CLIPS FROM ETHICS TRAINING BY THE ATTORNEY GENERAL

General Rule

An official participates in the making of a contract if the official is involved with its preparation at any stage in the process. The contract-making process begins at the time the idea for the contract is conceived and continues through the actual execution of the contract. That means that planning, determining the scope of the contract, drafting plans and specifications, setting contract terms, evaluating applicants, and negotiating are all included.

Members of bodies with contracting power are conclusively presumed to participate in the making of all contracts under the body's jurisdiction. If a member of a multi-member body with contracting power has a financial interest in a contract, [Government Code] section 1090 generally provides that the contract cannot be made even if the member has disqualified himself or herself from actually participating in the contract.

Financial Interest Broadly Defined

[Government Code] section 1090 does not define when an official is financially interested in a contract. However, the courts have applied the prohibition to include a broad range of interests.

The courts have continually reiterated that no matter how twisted and winding the trail may be, if the connection between the financial interest of the official and the contract can be made, a violation of section 1090 will be found.

Under [Government Code] section 1090, financial interests are often defined in terms of relationships. For example, if you have an employment relationship with the person or entity that seeks to contract with your agency, you are deemed to have a financial interest in the contract. Other examples are listed below.

- *Attorney, agent or broker of a contracting party.*
- *Supplier of services or goods to a contracting party.*
- *Landlord or tenant of a contracting party.*
- *Officer or employee of a nonprofit corporation that is a contracting party.*

The official's interest also includes the community property and separate property interests of the official's spouse.

Harsh Penalties and Remedies

Any contract made in violation of [Government Code] section 1090 is void and cannot be enforced. An official who commits a violation of [Government Code] section 1090 is subject to criminal, civil and administrative sanctions.

A person convicted of violating [Government Code] section 1090 is also forever disqualified from holding any office in this state.

AGENCY POLICY: CONTRACTUAL CONFLICTS OF INTEREST

You must not participate in the making, either directly or indirectly, or seek to influence the execution of, a contract in which you (or your immediate family members) have a personal financial interest.

VI.

REVOLVING DOOR AND OTHER POST-EMPLOYMENT ISSUES

Are you leaving your state job? Post-employment restrictions may affect you.

- One-year ban on influencing your former state agency.
- Permanent ban on “switching sides” in cases or proceedings.
- Influencing prospective employment.

ONE-YEAR BAN ON INFLUENCING YOUR FORMER STATE AGENCY

Specified officials are, for one year after leaving state service, prohibited from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods.

Who is covered?

These individuals are subject to the one-year ban:

- State agency employees, officers, and consultants who make or participate in making governmental decisions, including employees designated in the conflict-of-interest code of any state agency and employees that should be listed in an agency's conflict-of-interest code.
- Individuals who manage state public investments.
- Members of state boards and commissions.
- Members of the Legislature and other elected state officers.

When does it apply?

The one-year ban applies when an individual has permanently left state service or is on leave of absence. The one-year ban extends for 12 months after leaving state service or employment:

- Permanent Separation from State Service: The one year period commences when an employee has permanently left state service and is no longer receiving compensation, including compensation for unused vacation time.
- Leave of Absence: The one-year period will also commence upon a temporary separation if the employee works for any person other than the State of California during the term of the separation.

What is prohibited?

An individual subject to the one-year ban may not, for compensation, represent any other person by appearing before or making a communication to his or her former state agency, if the appearance or communication is for the purpose of influencing any of the following:

- Administrative action, including any action relating to any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding.
- Legislative action, including any action on a bill, resolution, amendment, report, nomination, or other matter by the Legislature or by either house or any committee thereof, or by a member or employee of the Legislature acting in his or her official capacity.
- Any action involving the issuance, amendment, awarding or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.

PERMANENT BAN ON “SWITCHING SIDES” IN CASES OR PROCEEDINGS

A former state official, who participated in a judicial, quasi-judicial or other “proceeding” while employed by a state agency, is permanently prohibited from representing or advising, for compensation, another person regarding that same proceeding.

Who is covered?

The permanent ban applies to every board member, officer, employee or consultant of a state agency who, as part of his or her official responsibilities, engages in any judicial, quasi-judicial or other “proceeding” in other than a purely clerical, secretarial or ministerial capacity.

When does it apply?

The permanent ban applies when an official has “participated in a proceeding.”

- An official has “participated in a proceeding” if he or she has taken part in it personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information.
- Generally, “participating in a proceeding” means making, participating in making, or influencing a governmental decision.
- Clerical and ministerial acts do not count as participation because they are not considered governmental decisions or matters pending before an agency.

What is prohibited?

The permanent ban bars an official from acting as agent or attorney for, or otherwise representing, any other person, other than the State of California, by making any formal or

informal appearance in or by making any oral or written communication with the intent to influence the outcome of the same proceeding in which the official participated while working for the State. It also prohibits the official from aiding, advising, counseling, consulting or assisting in representing any other person, other than the State of California, with the intent to influence the outcome of the same proceeding in which the official participated.

INFLUENCING PROSPECTIVE EMPLOYMENT

State and local officials are prohibited from making, participating in making, or influencing governmental decisions directly relating to a prospective employer while they are negotiating employment or after they have reached an employment arrangement.

Who is covered?

Any individual who is a "public official" including every member, officer, employee or consultant of a state or local government agency.

When does it apply?

This law expands disqualification obligations to situations where the prospective employer is not yet an economic interest of the official (normally a source of income or of promised income). If the official is negotiating or has an arrangement concerning prospective employment, the official may have disqualification obligations concerning that prospective employer, although that employer is not yet a source of income to the official.

Submitting a résumé or an application to a prospective employer will not alone trigger this law. However, the following contacts with a prospective employer can trigger application of the statute:

- An interview with an employer or his or her agent.
- Discussing an offer of employment with an employer or his or her agent.
- Accepting an offer of employment.

What is prohibited?

If I am "negotiating" or "have an arrangement" with a prospective employer, from which governmental decisions do I need to recuse myself?

You may not make, participate in making, or influence, decisions that directly relate to a prospective employer. A decision directly relates to a prospective employer if:

- The employer, either directly or by an agent, has initiated a proceeding in which a decision will be made by filing an application, claim, appeal, or similar request.
- The employer, either directly or by an agent, is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person

is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

- The employer will be financially affected by the decision, as defined in the Commission's conflict-of-interest regulations. (Regs. [18704](#), [18705](#), [18706](#), [18707](#)). You should consult those regulations to determine the dollar threshold of financial effect on your prospective employer that will trigger your disqualification from a decision.

What if I don't know what the financial effect of the decision on my potential employer will be?

You should try to obtain that information from your prospective employer. You must make a good faith determination of the potential financial effect of the decision on your prospective employer.

Do any exceptions apply?

The prohibition on making a decision directly related to your prospective employer does not apply if:

- Your prospective employer is a state, local, or federal governmental agency.
- You are legally required to make or participate in the making of the governmental decision.
- The governmental decision will affect the prospective employer in substantially the same manner as it will affect a significant segment of the public generally.

ADDITIONAL INFORMATION

For additional information and examples, please consult the publication [Leaving Your State Job: Revolving Door and Other Post-Employment Issues for State Officials](#) available at the Fair Political Practices Commission website (www.fppc.ca.gov) by clicking the "Publications" link on the homepage.

VII.

AGENCY STATEMENT OF INCOMPATIBLE ACTIVITIES

CONFLICTS OF INTEREST AND INCOMPATIBLE ACTIVITIES POLICY

Policy Statement

Public officials should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. CalHFA employees are subject to the provisions of [Government Code Section 19990](#), prohibiting state employees from engaging “in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.” This policy governs conflicts of interest and incompatible activities in state employment. This policy is a public record.

General Information

Employees are expected to devote normal working hours exclusively to the performance of their assigned job duties. Employees should not engage in non-work related activities on state time. Employees are prohibited from using state equipment, travel, or time for personal advantage or for endeavors not related to state business. The following procedures are effective immediately.

Procedures

A. Conflicts of Interest and Incompatible Activities

It shall be considered a conflict of interest and/or an incompatible activity for any CalHFA officer or employee to use any of the following for the officer's or employee's private gain or advantage:

- Prestige or influence of his/her office or employment with CalHFA.
- Time, facilities, equipment or supplies of CalHFA.
- Confidential information acquired by virtue of employment with CalHFA or providing confidential information to persons to whom issuance of this information has not been authorized.

It shall also be considered a conflict of interest and/or an incompatible activity for any CalHFA officer or employee to have employment with or enterprise which:

- Involves receiving or accepting money or any other consideration from anyone other than CalHFA for the performance of his/her duties as a CalHFA officer or employee.

- Involves the performance of an act in other than his/her capacity as a CalHFA officer or employee knowing that the act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by such officer or employee.
- Involves receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by CalHFA under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.
- Involves such time demands as to preclude the employee from devoting his/her full time, attention and efforts to his/her CalHFA office or employment during his/her hours of duty as a CalHFA officer or employee.

B. Incompatible Activities Involving the Use of Computer Equipment

The Agency desires to maintain a professional work environment for the benefit of all staff. This extends to the appropriate use of computer technology and equipment. The following are examples of incompatible or inappropriate activities involving the use of computer equipment at work:

- The use of personally owned computers and/or monitoring devices at a CalHFA worksite during business hours for personal business, entertainment, or recreation.
- Playing computer games or using Agency equipment for any form of personal entertainment. This includes games and other forms of entertainment available via the Internet or any other source.

Applicability

This policy applies to employees performing CalHFA duties and non-employees providing supplemental personnel services to the Agency, including temporary employees, retired annuitants, student assistants, and onsite consultants. The term "employees" as used in this policy refers to such persons. This policy applies to such persons working in any location, including offsite and at home.

Contacts

Employees with questions or in need of assistance regarding this policy may contact the Office of General Counsel, (916) 326-8470, legal@calhfa.ca.gov.

Acknowledgment

By signing this document, I acknowledge that I have read it, and I accept responsibility for adhering to its provisions. I understand that any infractions of the policy by me may result in disciplinary action including, but not limited to, termination of employment.

[Government Code Section 19990](#)

§ 19990. Conflicting employment, activities or enterprises; rules; conflict of section with memorandum of understanding

A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.

Each appointing power shall determine, subject to approval of the department, those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:

- (a) Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.
- (b) Using state time, facilities, equipment, or supplies for private gain or advantage.
- (c) Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.
- (d) Receiving or accepting money or any other consideration from anyone other than the state for the performance of his or her duties as a state officer or employee.
- (e) Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.
- (f) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.
- (g) Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.

The department shall adopt rules governing the application of this section. The rules shall include provision for notice to employees prior to the determination of proscribed activities and for appeal by employees from such a determination and from its application to an employee. Until the department adopts rules governing the application of this section, as amended in the 1985-86 Regular Session of the Legislature, existing procedures shall remain in full force and effect.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

VIII.

EXAMPLES OF CONFLICTS

Agency Personnel Conflicts

- Senior manager is a limited partner in a real estate investment firm which sells property to borrower seeking loan from Agency. [Agency is prohibited from providing the financing.]
- Financing specialist serves as Board member of a nonprofit corporation, which is general partner of a borrowing entity which owns a project financed by the Agency.

Appearance of Impropriety

- Board member's brother-in-law is a paid consultant to a housing sponsor seeking a loan from the Agency. [Presumably, Board member has no financial interest and, therefore, is not technically subject to [H&S § 50905](#). However, to avoid the common law appearance of impropriety, the Board member may wish to consider abstaining.]

Financial Conflict of Interest

- Board member's wife is paid consultant to a housing sponsor seeking a loan from the Agency. [Board member must disclose this fact and not participate in influencing the vote.]
- Agency inspector does weekend handyman/repair work amounting to more than **\$500** at projects he inspects for the agency.
- Loan officer does appraisal work on the side for developer seeking loan from the Agency, which results in income of more than **\$500**. This loan is being processed by loan officer even though she is not involved in appraising the property to be financed by the Agency.

Financial Conflict of Interest & Appearance of Impropriety

- Asset manager receives periodic gifts cumulatively worth more than **\$460** from multifamily borrower who is often late and sloppy in providing audits, but the asset manager gives borrower more breaks than given to other borrowers.

Financial Conflict of Interest & Future Employment

- Loan officer recommends and packages loan with expectations of leaving the Agency and being employed by borrower.

Revolving Door Prohibition

- Same loan officer leaves State employment and seven months later represents borrower in seeking new Agency loan.
- Board member participates in setting up a homeownership program. Two years after leaving the agency, the Board member is employed by lending institution which participates in that program, and communicates to Agency staff ideas of changes to program, now seeing it from the other side.

Financial Conflict of Interest & Financial Interest in Contracts

- Agency attorney owns property near a site proposed to be rezoned to low-income multifamily, which will result in a marked drop in the attorney's property value. The multifamily project will be financed by the Agency and legal advice will be provided by the same attorney.

Incompatible Activity

- Homeownership associate has spouse involved in mortgage lending, and provides names and addresses of Agency borrowers who are paying higher interest rate on their loans so that spouse can solicit new business.

IX.

WHERE TO GET HELP

In performing your official duties, some conflicts may be readily apparent. Oftentimes, however, the line on ethics may be blurred, in which case you may require some assistance in determining your options.

Assistance by Telephone (informal advice)

If you have a question, you may call the CalHFA Legal Division (916) 326-8470; or you may call the Fair Political Practices Commission (FPPC) advice line, Sacramento local (916) 322-5660, or toll-free (866) ASK-FPPC (866-275-3772). Press 2 to speak with a political reform consultant in the Technical Assistance Division.

Effective November 2011, FPPC telephone advice is available Monday through Thursday from 9:00am to 11:30am.

Assistance by Email (informal advice)

You may email your question to advice@fppc.ca.gov. You should note that emails are public documents and may be provided to others under the [Public Records Act](#). Email advice is best suited for straightforward, simple questions.

All Email:

- Identify yourself and position.
- List the agency that is related to your question.
- Write your question with as much specificity as possible.

Advice by Mail (formal advice)

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

FAX: (916) 322-0886

You may request formal written advice from the FPPC by mail. Your request must be in writing, provide specified information as stated in [FPPC Regulation Section 18329](#) (Formal Written Advice and Informal Assistance), and contain sufficient information on which the FPPC can do a complete legal analysis. If the request meets these criteria, the FPPC will provide the formal written advice within 21 working days. To view FPPC Regulations, click the link for [FPPC Regulations](#) from the FPPC home page www.fppc.ca.gov.

In order to acquire immunity from action by the FPPC, you must receive FPPC written advice. In order to acquire complete immunity from the FPPC and the Attorney General, you must seek a formal published hearing and opinion, which takes 2 to 6 months.