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Date: September 26, 1994

Code: HR 94-20  
Supplement # 1

To: Presidents

From: June M. Cooper  
Vice Chancellor  
Human Resources and Operations

Subject: TITLE 5 AMENDMENT: CONFLICT OF INTEREST

HR 94-20 (July 29, 1994) notified campuses that the California State University Conflict of Interest Code had been amended to update designated positions and disclosure categories to conform to legal and organizational changes. Campuses were notified that filing was now required for any employee currently occupying a newly added position, or a position that had a change in disclosure category.

"Consultant" was a new category added to all campuses and the Chancellor's Office. Due to the broad scope of the "consultant" category, campuses have requested a clearer definition to determine whether or not specific consultants are required to file. Attached is a copy of Section 18700(a)(2) of Title 2 of the California Code of Regulations, which defines "consultant".

The Fair Political Practices Commission (FPPC) advises that, in accordance with Category 17 of CSU's Disclosure Categories, all "consultants" are required to disclose pursuant to the broadest disclosure category assigned to a designated position specific to a given campus unless the Chancellor or President, as appropriate, substantiates more narrow disclosure requirements.

(Over)

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**Distribution:**

With Attachment: Conflict of Interest Filing Officers

All Without Attachment:

Vice Presidents, Academic Affairs

Associate Vice Presidents/Deans, Faculty Affairs

Vice Presidents, Administration

Vice Presidents, Information Systems

Vice Presidents/Deans of Students

Business Managers

Personnel Officers

Payroll Supervisors

General Counsel

Chancellor's Office Staff

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Conflict of Interest Filing Officers who are uncertain of the filing requirement for any consultants at their campuses are encouraged to inquire in writing directly to the Fair Political Practices Commission with a description of the specific consultants' duties:

Mr. Wayne Imberi  
Technical Assistance Division  
Fair Political Practices Commission  
428 "J" Street Suite 800  
Post Office Box 807  
Sacramento, CA 95804-0807

Please contact Theresa Hines at (310) 985-2674 if you have any questions or need additional information.

JMC/dth  
Attachment

## Chapter 7. Conflicts of Interest

### Article 1. Conflicts of Interest; General Prohibition

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

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

(a) "Public official at any level of state or local government" means a member, officer, employee, or consultant of a state or local government agency. The term "public official" also includes individuals who perform the same or substantially the same duties as an individual holding an office or a position listed in Government Code Section 87200, including "other public officials who manage public investments" as that term is defined in 2 Cal. Code of Regs. Section 18720.

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

(A) It may make a final governmental decision;

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

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

(2) "Consultant" means an individual who, pursuant to a contract with state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule, or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
5. Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study, or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity performs the same as substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

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

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency;

(5) Determines not to act, within the meaning of subdivisions (b)(1), (b)(2), (b)(3), or (b)(4) above, unless such determination is made because his or her financial interest. When the determination not to act occurs because of the official's financial interest, the official's determination must be accompanied by disclosure of the financial interest, made part of the agency's official record or made in writing to the official's supervisor as provided in 2 Cal. Code of Regs. Section 18730(b)(10), to the ap-

pointing power, or to any other person specified in a Conflict of Interest Code adopted pursuant to Government Code Section 87300.

(c) A public official "participates in making a governmental decision" except as provided in subdivision (d) of this regulation, when, acting within the authority of his or her position, the official:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in subdivision (a)(2)(A) above;

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

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in subdivision (a)(2)(A) above; or

(B) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in subdivision (a)(2)(A) above.

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

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

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

(3) Actions by public officials relating to their compensation or the terms or conditions of their employment or contract. In the case of public officials who are "consultants," as defined above, this includes actions by consultants relating to the terms or conditions of the contract pursuant to which they provide services to the agency, so long as they are acting in their private capacity.

COMMENT: Nothing in this regulation should be read to authorize a public official to participate in making a contract in which the official has a financial interest if such participation is prohibited by any other law. Individuals who do not fall within the definition of "consultant" under this regulation may, nevertheless, be considered "public officials" under Government Code Section 1090. (See, *Thompson v. Call* (1985) 38 Cal.3d 633; *Schaefer v. Berinstein* (1956) 140 Cal.App.2d 278; 70 Ops. Cal. Atty. Gen. 271 (1987); and 46 Ops. Cal. Atty. Gen. 74 (1965).)

NOTE: Authority cited: Section 83112, Government Code, Reference: Sections 87100 and 82048, Government Code.

#### HISTORY

1. Repealer and new section filed 12-17-76, as an emergency; effective upon filing (Register 76, No. 51). For prior history, see Register 76, No. 40.
2. Certificate of Compliance filed 3-31-77 (Register 77, No. 14).
3. Amendment of section heading and repealer of subsections (e) and (f) filed 8-2-85; effective thirtieth day thereafter (Register 85, No. 33).
4. Amendment of section and NOTE filed 6-23-94; operative 6-23-94 (Register 94, No. 25).

#### § 18700.1. Using Official Position to Influence (87100).

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

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

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