

# *CONFLICT OF INTEREST HANDBOOK*



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# **Conflict of Interest**

## **Handbook**

### **I. Introduction**

The purpose for conflict of interest laws is to prohibit public employees from personally benefitting at the expense of the public interest. There is quite a wide variety of different conflict statutes, the bulk of which are addressed in this Handbook.

While the Political Reform Act of 1974 (Gov't Code § 81000 *et seq.*) is often regarded as the principal conflict of interest law, and is the authority for the CSU Conflict of Interest code, there are a number of other conflict restrictions with which CSU employees should be familiar. All flow from the basic premise that it is a violation of the public trust for public employees to benefit personally from their public positions.

### **II. Political Reform Act of 1974**

The Political Reform Act of 1974 contains a general prohibition against conflicts of interest in public decision making, as well as a provision for the adoption of a CSU conflict of interest code. It prevails over any other conflict of interest law to the contrary. Gov't Code § 81013. The restrictions of this Act apply to all CSU employees, without regard to whether they are required to file an annual conflict of interest form.

#### **A. The General Prohibition**

##### **1. What It Is**

“No public employee at any level of state or local government shall make, participate in making or in any way attempt to use his [or her] official position to influence a governmental [CSU] decision in which [s/he] knows or has reason to know [s/he] has a financial interest.” Gov't Code § 87100. Any person who willfully violates the general prohibition is guilty of a misdemeanor. Gov't Code § 91000. This prohibition applies to *all* CSU employees.

##### **2. Conflicting Personal Financial Interests**

###### **a. Personal Finances**

A personal financial interest extends beyond the public employee's own finances or investments. A public employee has a personal financial interest in a university decision if it is reasonably foreseeable that the decision will have a material financial effect on the employee, a member of his or her immediate family, in any one of the five economic interests. Gov't Code § 87103.

b. **Five Economic Interests**

- (1) Any business entity in which the employee has a direct or indirect investment worth \$2,000 or more, including ownership of stock by the employee or the employee's spouse or dependent child.
- (2) Any real property in which the employee has a direct or indirect interest worth \$2,000 or more. The employee's home is not included in this calculation but any other investment property would be.
- (3) Any source of income that provides \$500 or more in value promised to, or received by, the employee within 12 months prior to the time when the decision is made.
- (4) Any business entity in which the employee is a director, officer, partner, trustee, employee, or holds any position of management.
- (5) Any donor of, a gift or gifts totaling \$420 or more, received, or promised to the employee within 12 months prior to the decision being made. Meals, travel costs, or anything else of value are included in the \$420. (This amount is tied to a consumer price index and is occasionally adjusted.)

3. **When Disqualification is Required**

If it is foreseeable the employee will be involved or influence a university decision that will affect any of these five kinds of economic interests, the employee has a conflict of interest. The Fair Political Practices Commission, the agency assigned to administer and interpret the Political Reform Act, has provided an analysis to determine when an employee has a conflict of interest that would require the employee to be disqualified from being part of the decision-making process. See: <http://www.fppc.ca.gov/index.php?id=37>. For assistance with this analysis with respect to a particular decision, please contact University Counsel or the FPPC helpline (866-ASK-FPPC).

Where a conflict of interest exists, the employee must publicly announce the financial interest creating the conflict, *and* must also disqualify himself or herself from involvement in the decision.

Even where the specific criteria is not met and a true conflict of interest does not exist, CSU employees should be sensitive to the *appearance of conflict*, and should carefully consider whether to participate in a decision-making process whenever they have any financial interest at stake.

The disqualification rule applies to all CSU employees—regardless of whether they file a Form 700.

## B. CSU Conflict of Interest Code

The Political Reform Act requires CSU to adopt a formal conflict of interest code. The CSU's code requires certain employees, who are most likely to be involved in university decision making where potential conflicts may be present, to file an annual disclosure form. The purpose of this form is to inform the employee and the public of potential conflicts of interest and situations where disqualification is mandated.

### 1. Form 700

#### a. Annual Filing Requirement

Every employee in a position designated by the code must complete an annual statement of economic interests called a [Form 700](#). [A list of designated positions](#) is published by the CSU every year, and is occasionally amended to reflect changes in position names and decision-making authority.

CSU assigns a [disclosure category or categories](#) to each designated employee position, depending on the level of the position and the likelihood that the person holding it can influence financial decisions or purchases on behalf of CSU. The disclosure categories identify the kinds of personal economic interests which the employee must disclose. Each employee in a position designated by the code will receive a Form 700 every year and a cover letter that identifies his/her specific disclosure categories.

The Form 700 is filed with the campus filing officer on April 1 and is a public document. In addition to the annual filing, the Form 700 is also required to be filed when the employee first comes in to a designated position, and when the employee leaves a designated position. There is a \$10 per day late fine for each day after April 1 that the Form 700 is not on file, extending up to a maximum fine of \$100.

#### b. Public Disclosure

All Form 700s are kept for seven years and are open to public inspection. If requested, Form 700s must be provided as soon as possible, but no later than two business days after the request is made. The reproduction charge is limited to ten cents a page.

### 2. Training

Employees in positions designated by the code are required to participate in conflict of interest [ethics training](#) every two years.

3. **Restrictions Regarding Honoraria, Gifts and Travel**

The CSU Conflict Code also prohibits the receipt of any honoraria and gifts over \$420. (Gov't Code §§ 89500 *et seq.*, 2 CCR § 18730). A detailed discussion of these limitations can be viewed at:

<http://www.fppc.ca.gov/factsheets/LocalGiftFactSheet2012.pdf>

a. **Honoraria Prohibition: Speeches, Publications, Conferences, etc.**

With limited exception, an employee in a position designated by the code cannot accept payment for a speech, publishing an article, serving as an emcee or simply participating in a conference, meeting, event or other gathering, from a source that s/he has or will be required to disclose on his/her Form 700.

The *exceptions* to the honoraria prohibition are:

(1) Payment for transportation, food, and necessary lodging for giving a speech, participating in a seminar, or serving on a panel within California.

(2) Payments made as part of separate, non-CSU employment.

(3) Under certain circumstances, the return, donation or reimbursement of an honorarium. *See* 2 CCR § 18930 *et seq.*

Honorarium payments can always be made to the CSU without raising a conflict issue if (1) the donation is made directly to CSU; (2) the employee does not make the donation a condition of his/her speech, article, or attendance; (3) the employee does not claim a deduction for the donation; and (4) the employee is not identified in connection with the donation. Of course, speeches can be given at any event for free.

b. **Prohibition on Gifts**

A CSU employee may not accept gifts worth more than \$420 in a calendar year from a source that s/he has been or will be required to disclose on his/her Form 700. The reported value of a gift is the fair market value on the date it was received. Frequently the donor is the only source that can provide information as to fair market value and must be consulted. (The \$420 amount will also be adjusted in future years for changes in the cost of living.)

Gifts given to an employee's immediate family member are presumed gifts to the employee, unless the family member has an independent and established relationship with the donor, and the donor does not regularly seek to do business with CSU.

Gifts given to the CSU or a CSU auxiliary do not violate this prohibition.

If the value of a gift or gifts exceeds \$50, it must be reported on the employee's Form 700. It makes no difference that the employee transfers the gift to another employee. An employee may, within 30 days of receipt of a gift, return that gift to the donor, reimburse the donor for the cost, or donate the gift without taking a tax deduction to a public entity, or to a charitable organization that is unconnected to the employee or the employee's immediate family, to avoid violation of the prohibition on gifts. Gifts donated to an organization in which the employee or an immediate family member holds a position will be treated as a gift to the employee despite the donation. 2 CCR § 18940, *et seq.*

c. **Travel Payments**

Payment of travel costs for CSU employees by another party constitutes a gift. The employee must disclose the cost of gifted travel worth \$50 or more on his/her Form 700, and cannot receive within twelve months travel gifts worth more than \$420. Before accepting any travel gift, employees should carefully consider whether doing so will result in disqualification from participating in an important decision involving the donor.

Air transportation is valued as follows:

- Commercial Aircraft: the value is the actual cost of the ticket.
- Private Aircraft: the value is determined by taking the fair market value of the normal charter fare or rental charge for a comparable plane, divided by the number of passengers who shared the flight.

The actual cost of any other benefit provided to the employee on the flight including food, beverages, or entertainment is treated as a separate gift unless the benefit is included as part of the fare.

Travel is not regarded as a gift to the employee and is not limited by the \$420 gift restriction in the following circumstances:

- (1) Where a CSU employee gives a speech, participates in a panel or provides a similar service *within* California.
- (2) Where a CSU employee gives a speech, participates in a panel or provides a similar service *outside* of California but within the United States, that is reasonably related to a legislative or governmental purpose or an issue of public policy. Out of state travel *must* be reported on the Form 700.

d. **Gifts to CSU—Not The Individual**

There are limited circumstances where gifts that afford a personal benefit to a CSU employee can be considered a gift to the CSU, and therefore need not be reported on the employee's Form 700. Mostly, these are travel gifts, including accommodations and food associated with the travel.

To qualify as a gift to the CSU, the following strict statutory requirements must be met:

- The travel payment must be pre-approved in writing by the campus representative appointed to handle such gifts;
- The designated campus representative must receive and control the gift and make the determination of which CSU employees will travel. The donor may not designate by name, title, class or otherwise who will travel or otherwise use the gift;
- The travel must be for official CSU business; **AND**
- CSU must report the payment to the FPPC on a [Form 801](#), and post it on the CSU website within 30 days of receipt or use.

Failure to comply with any of these requirements will result in the gift being classified as personal to the individual who travelled, and reportable on his/her Form 700.

Travel payments are limited to the amount of CSU's own reimbursement rates. If the cost of travel exceeds this rate, the difference is considered a gift to the employee and, if over \$50 is reportable on the employee's Form 700. For additional guidance on CSU travel gifts see [HR-2008-19](#) or <http://www.fppc.ca.gov/factsheets/LocalGiftFactSheet2012.pdf>.

e. **Tickets and Passes to Events**

There are circumstances where receiving a ticket or pass does not result in a gift to the employee and need not be reported on the employee's Form 700.

A ticket or pass is **not** a gift to the employee where:

1. The ticket or pass is provided by a source for which the employee performs a ceremonial role or function on behalf of CSU; or
2. The CSU gives the employee a ticket or pass provided by a third party, and (a) the recipient is not identified by the third party; (b) the CSU determines who will use the ticket; and (c) the distribution of the ticket complies with CSU policy; or
3. When CSU receives the ticket (a) pursuant to a contract for use of its property, (b) because CSU controls the event, or (c) CSU purchases the tickets at fair market value and the distribution complies with CSU policy.

CSU must report these tickets or passes to the FPPC on a [Form 802](#), and post it on the CSU website within 30 days after the distribution. Failure to comply with this requirement will result in the ticket or pass being classified as personal to the individual and reportable on his/her Form 700.

f. **Tickets to Nonprofit and Political Fundraising Events**

A CSU employee may accept for his/her personal use a ticket or other admission privilege to a fundraising event for a nonprofit or political organization as follows:

- 501(c)(3) Organization Fundraiser: the 501(c)(3) organization may provide two tickets per event and the tickets are deemed to have no value so long as the cumulative value of the nondeductible portion of the ticket(s) does not exceed the gift limit.
- Political Fundraiser: the committee or candidate may provide two tickets to the event and the tickets are deemed to have no value.
- Other Nonprofit Fundraiser: the value is the face value of the ticket less the amount donated to the organization. If no face value is listed, the gift is the pro rata share of the cost of the food and beverage, plus the cost of any items given to the attendees.

#### 4. **Enforcement**

Violations of the Conflict of Interest Code are punishable by disciplinary action (Gov't Code § 91003.5), civil action (§ 91004 *et seq.*), and criminal prosecution (§ 91000).

### III. **Contract Conflicts**

#### A. **Government Code Section 1090 et seq.**

Government Code section 1090 is an early California statute that strictly prohibits CSU employees from having a personal financial interest in *any* CSU contract. Section 1090 *voids* any contract where the CSU employee has any personal financial interest in the contract, including being an officer, employee, agent, attorney, broker, supplier, landlord, or tenant of the contracting party:

“However diverse and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, [section 1090 is violated].” People v. Daysher 2 Cal.2d 141, 146 (1934); People v. Honig, 48 Cal. App. 4th 289, 315 (1996).

In Thompson v. Call, 38 Cal.3d 633 (1985), the California Supreme Court stated that the purpose of this statute is to make certain that “every public officer [is] guided solely by the public interest.” The statute therefore targets the *appearance* of conflict in addition to actual conflicts of interest:

“It follows from the goals of eliminating temptation, avoiding the appearance of impropriety, and assuring the [public] of the [public] officer’s undivided and uncompromised allegiance that the violation of section 1090 cannot turn on the question of whether actual fraud or dishonesty was involved. Nor is an actual loss to the . . . public agency necessary for a section 1090 violation.” (Id. at 648)

The “making of a contract” under this statute can include preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and solicitation of bids, in addition to the actual formation of a contract. Millbrae Ass’n for Residential Survival v. City of Millbrae, 262 Cal. App. 2d 222, 237 (1968); 77 Ops.Cal.Atty.Gen. 112 (1994).

The reach of this statute is very broad and the consequences draconian. It is not enough for a CSU employee to disqualify himself or herself from the decision-making process. See Thompson, 38 Cal, 3d 633; Stigall v. City of Taft, 58 Cal. 2d 565, 569 (1962). *The contract is still void* and the employee is subject to disciplinary, civil and criminal consequences.

**B. Restrictions On CSU Employees Contracting with the CSU:**

Recent California statutes set out the following conflict of interest prohibitions on CSU employees contracting with the CSU:

1. A CSU employee may not engage in any activity for compensation which is sponsored or funded by the CSU through or by a CSU contract. (This restriction does not apply to employees with teaching or research responsibilities or those acting within the course and scope of their CSU employment.) Pub. Cont. Code §10831.
2. A CSU employee may not "contract on his or her own individual behalf as an independent contractor with any [CSU] department to provide services or goods." (This restriction also does not apply to employees with teaching or research responsibilities.) Pub. Cont. Code §10831.
3. For two years following retirement or separation from CSU employment, no former CSU employee "may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any [CSU] department." Pub. Cont. Code §10832(a).
4. For 12 months following retirement or separation from the CSU, no former CSU employee may contract with the CSU if he or she was employed by the CSU "in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement ... or separation." Excepted from this restriction are contracts for expert witness services and contracts to continue attorney services. This prohibition relates to CSU contracts and not a resumption of CSU employment (*e.g.*, a retired annuitant does not come under this restriction), nor does it address contracts with auxiliary organizations. Pub. Cont. Code §10832(b).

For more information about these restrictions, See [HR 2003-21](#).

**IV. Miscellaneous "Conflicts"**

Additional rules forbid other forms of private gain from public service.

**A. Use of Nonpublic Information for Personal Gain**

Education Code Section 89006 provides that it is unlawful to utilize nonpublic information received by reason of CSU or CSU auxiliary employment, or a CSU or CSU auxiliary contract, for personal gain not contemplated by the terms of the employment or contract. This restriction applies to all officers, employees, and contractors of CSU, and CSU auxiliaries. Violation of this prohibition is punishable as a misdemeanor. Penal Code §19.4.

**B. Gift of Public Funds**

California Constitution, Article 16, Section 6 prohibits making gifts of any public funds. The state must receive commensurate value whenever its resources are used, including time, equipment, materials, supplies and facilities.

Gov't Code Section 8314 additionally prohibits the use of state resources for nonstate purposes, except uses that are “incidental and minimal” (e.g. de minimis personal telephone or photo copy use, see campus policy). There are civil penalties for violation of this section.

**C. Salary as Compensation in Full**

California Constitution Article 4, section 17 prohibits the payment of bonuses or other forms of extra compensation to a public employee after service has been rendered. A similar restriction for state appointed officers exists in Government Code Section 18000 which states: “[t]he salary fixed by law ... is compensation in full for that office and for all services rendered in any official capacity or employment whatsoever ....” Neither section prohibits the identification of incentive awards prior to performing a government service.

**D. Consulting Into Another Contract**

A consulting services contractor may not bid on a contract for services, goods, or supplies “that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.” (Pub. Cont. Code § 10830)

This prohibition does not apply to architectural, landscape architectural, engineering, environmental, land surveying, or consultation project management firms. (Gov't Code § 4525)

**E. Legislator May Not Also be a CSU Employee  
Federal Officer May Not Also be a CSU Officer**

California Constitution Article 4, Section 13 forbids California legislators from holding any other State office or employment. Article 7, Section 7 forbids paid federal officers from simultaneously being paid State officers, except for limited military service.

**F. Incompatibility of Public Offices**

California courts have determined that a public officer may not accept a second public office with duties that potentially overlap and/or significantly clash with the duties of the first office. The two positions are incompatible, will result in the automatic vacation of the first office. Chapman v. Rapsey, 16 Cal. 2d 636, 641-644 (1940); People v. Santa Clara, 49 Cal. App. 4th 1471, 1481, 1490 (1996); 87 Ops.Cal.Atty.Gen. 153 (2004); 78 Ops.Cal.Atty.Gen. 316 (1995).

**G. Federal Lobbying and Ethics**

CSU and CSU employees are subject to a detailed set of restrictions under the Lobbying Disclosure Act for gifts and travel provided to members of Congress or their staff. These restrictions are set forth in the ethics rules of the House and Senate. As a general rule, CSU may not provide any gifts, including food or travel, to members of Congress and their staff, unless a specific exception applies (e.g., items of nominal value, such as t-shirts, baseball caps, greeting cards, and commemorative plaques or trophies). A summary of the full restrictions is found in [Guidance on Provision of Gifts to Members of Congress and Congressional Staff by the CSU and its Employees](#). The Office of Federal Relations has posted additional guidance and resources on its [website](#).

Knowing violation of these rules can result in civil or criminal penalties.

The Lobbying Disclosure Act also requires CSU to file a quarterly “lobbying activities” report and a semi-annual report of certain contributions.

**H. Restrictions Concerning Student Loan Programs**

CSU has adopted a number of internal safeguards for the administration of student loan programs to avoid the perception of any conflict of interest and promote public confidence. They include restrictions on lenders, procedures for the development of lender lists, and disclosure requirements to prospective student borrowers. Campuses, the financial aid office and university personnel may not accept payments or other benefits from student loan providers. See [AA-2007-12](#).

**I. Restrictions Concerning Study Abroad Programs**

CSU has adopted internal principles to guide its relationships with outside study abroad programs. See [EO-1022](#) and [AA-2007-25](#). CSU employees are proscribed from receiving personal benefits from program providers (e.g., the payment of conference, training or registration fees, transportation or lodging costs, advertising or payment for a site visit).

V. **Conclusion**

Even where conflicts of interest are not defined in specific statutes, they have been condemned by the courts as violative of the public trust:

A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated ... to discharge their responsibilities with integrity and fidelity... [T]hey may not exploit or prostitute their official position for their private benefits. When public officials are influenced in the performance of their public duties by base and improper considerations of personal advantage, they violate their oath of office and vitiate the trust reposed in them, and the public is injured by being deprived of their loyal and honest services. Terry v. Bender, 143 Cal.App.2d 198, 206 (1956).

CSU employees need to be vigilant about conflicts of interest and guided by the overarching principle that they may not derive personal benefit in any way from their employment.

University Counsel are available to respond to specific questions.