CONFLICT OF INTEREST

CALIFORNIA STATE UNIVERSITY,
FRESNO

Audit Report 14-16
April 22, 2014

Members, Committee on Audit

Lupe C. Garcia, Chair
Adam Day, Vice Chair
Rebecca D. Eisen   Steven M. Glazer
Hugo Morales

Staff

Vice Chancellor and Chief Audit Officer: Larry Mandel
Senior Director: Michelle Schlack
Senior Audit Manager: Wendee Shinsato
Internal Auditor: Erika Almaraz

BOARD OF TRUSTEES
THE CALIFORNIA STATE UNIVERSITY
CONTENTS

Executive Summary .............................................................................................................................. 1

Introduction ........................................................................................................................................ 2
  Background ..................................................................................................................................... 2
  Purpose .......................................................................................................................................... 4
  Scope and Methodology ................................................................................................................... 5

OBSERVATIONS, RECOMMENDATIONS, 
AND CAMPUS RESPONSES

Conflict-of-Interest Disclosures ........................................................................................................ 6
APPENDICES

APPENDIX A: Personnel Contacted
APPENDIX B: Campus Response
APPENDIX C: Chancellor’s Acceptance

ABBREVIATIONS

Act       Political Reform Act of 1974
CCR      California Code of Regulations
Code     California State University Conflict-of-Interest Code
COI      Conflict of Interest
CSU      California State University
EC       Education Code
FPPC     Fair Political Practices Commission
HR       Human Resources
ICSUAM   Integrated California State University Administrative Manual
OAAS     Office of Audit and Advisory Services
EXECUTIVE SUMMARY

As a result of a systemwide risk assessment conducted by the Office of Audit and Advisory Services (OAAS) during the last quarter of 2013, the Board of Trustees, at its January 2014 meeting, directed that Conflict of Interest (COI) be reviewed. The OAAS has never reviewed COI as a stand-alone audit.

We visited the California State University, Fresno campus from January 27, 2014, through February 28, 2014, and audited the procedures in effect at that time.

In our opinion, the fiscal, operational, and administrative controls for COI activities in effect as of February 28, 2014, taken as a whole, were sufficient to meet the objectives stated in the “Purpose” section of this report.

As a result of changing conditions and the degree of compliance with procedures, the effectiveness of controls changes over time. Specific limitations that may hinder the effectiveness of an otherwise adequate system of controls include, but are not limited to, resource constraints, faulty judgments, unintentional errors, circumvention by collusion, and management overrides. Establishing controls that would prevent all these limitations would not be cost-effective; moreover, an audit may not always detect these limitations.

The following summary provides management with an overview of conditions requiring attention. Areas of review not mentioned in this section were found to be satisfactory. Numbers in brackets [ ] refer to page numbers in the report.

CONFLICT-OF-INTEREST DISCLOSURES [6]

Statements of economic interest were not always filed in a timely manner.
INTRODUCTION

BACKGROUND

Conflict of interest occurs when professional duties and personal interests intersect, putting a person in a position to personally benefit from a decision made as part of his or her job duties. As public employees, California State University (CSU) employees are subject to various conflict-of-interest-related laws and regulations.

The primary California legislative document governing conflicts of interest is the Political Reform Act of 1974 (the Act), which prohibits public employees from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know, or have reason to know, they have a financial interest. This applies to all CSU employees. Primary responsibility is placed upon the individual employee to be familiar with the requirements of the Act. In addition, if CSU employees have a personal financial interest in a university decision, they are required to publicly announce the financial interest and disqualify themselves from involvement in the decision. CSU employees should also be sensitive to the appearance of conflict of interest when participating in university decisions, even when a true conflict does not exist.

The Act also requires the CSU to adopt a formal conflict-of-interest code (the Code) that identifies and designates certain employees who are most likely to be involved in university decision-making to file an annual statement of economic interests.

The Fair Political Practices Commission (FPPC) is the state agency responsible for reviewing and approving the Code. It is also the enforcement agency to which violations of the Act are reported. The FPPC last approved the CSU’s Code in 2006; in August 2007, the CSU forwarded an updated Code to the FPPC for review and approval. This Code is still under review, and the CSU systemwide Office of Human Resources and Office of General Counsel have been working with the FPPC to complete the review and approval process. Until the Code is approved, the CSU follows interim disclosure requirements codified in California Code of Regulations (CCR), Title 2, Division 6, §18734.

In addition to filing an annual statement of economic interests, employees designated by the Code must complete ethics training as required by Education Code (EC) §89500.7. An employee must complete this training within six months of becoming designated, and every two years thereafter.

CSU policies relating to the Code and designated employees include the following:

- Coded memorandum Human Resources (HR) 2013-02, Annual Filing Requirements, dated February 28, 2013, provides information on the annual disclosure statement filing requirements for designated employees. Coded memorandum HR 2010-01, Conflict of Interest Update – Designated Positions Pending FPPC Approval – Interim Disclosure, dated January 12, 2010, discusses the interim disclosure requirements for consultants and employees in newly designated positions that are pending FPPC approval.

Disclosures, dated November 15, 2010, clarifies that consultants and employees in newly designated positions pending FPPC approval are also required to complete ethics training.

- The Office of General Counsel Conflict of Interest Handbook, last updated in February 2013, provides critical information on key laws, regulations, and court decisions relating to CSU employees and conflicts of interest.

Although most gifts received by CSU employees in designated positions are subject to reporting requirements and limitations, some gifts that benefit employees may be considered gifts to the CSU when they are used for official CSU business. These are typically travel gifts, including accommodations and food associated with the travel. CCR, Title 2, Division 6, §18944.2 defines such gifts and provides procedural and reporting requirements. Coded memorandum HR 2008-19, Conflict of Interest – FPPC Revised Regulation Concerning Gifts to an Agency, dated November 17, 2008, provides guidance to campuses regarding these types of gifts.

Other examples of codes and/or statutes that govern conflict of interest in the CSU are discussed in the Office of General Counsel Conflict of Interest Handbook and include the following:

- Government Code §1090 et seq. prohibits state employees from having a financial interest in any contract they make in their official capacity. Integrated California State University Administrative Manual (ICSUAM) §5302.0, Formal Bidding for Personal Property, §5402.0, Formal Solicitation for Services, and §5502.0, Formal Solicitations for Information Technology Goods and Services, effective April 28, 2008, require all CSU employees involved in a formal solicitation process to complete conflict-of-interest and confidentiality statements, which are retained as part of the contract file.

- EC §89006 prohibits CSU employees from using confidential information available by virtue of their employment for private gain.
PURPOSE

Our overall audit objective was to ascertain the effectiveness of existing policies and procedures related to conflicts of interest and to determine the adequacy of controls that ensure compliance with relevant governmental regulations, Trustee policy, Office of the Chancellor directives, and campus procedures.

Within the overall audit objective, specific goals included determining whether:

- Administration of the conflict-of-interest program is well defined and includes clear lines of organizational authority and responsibility and documented delegations of authority.

- Policies and procedures related to the conflict-of-interest program are current, comprehensive, and effectively distributed.

- Designated employees and employees involved in the administration of the conflict-of-interest program are adequately trained and informed of their duties.

- Processes to identify designated positions on the campus are adequate to capture all positions involved in the making, or that participate in the making, of decisions that may foreseeably have a material effect on the financial interests of the CSU.

- Administration of conflicts of interest is adequate to ensure that employees do not have personal financial interests in CSU contracts.

- Conflict-of-interest disclosure statements are adequately tracked and monitored to ensure compliance with state and CSU requirements, and security and retention of disclosure forms is adequate.

- Review and management of disclosure statements is adequate to ensure compliance with state and CSU requirements.

- Job descriptions appropriately support disclosure requirements for designated positions.

- Controls over recruitment and hiring are adequate to ensure that potential candidates are notified of conflict-of-interest reporting requirements.

- Processes are adequate to ensure that gifts to agency are properly identified and reported according to state and CSU requirements.
SCOPE AND METHODOLOGY

The proposed scope of the audit as presented in Audit Agenda Item 4 of the January 28 and 29, 2014, meeting of the Committee on Audit stated that Conflict of Interest (COI) includes the activities of all CSU designated people who make, or participate in the making of, decisions that may foreseeably have a material effect on any financial interest of the CSU. Proposed audit scope could include, but was not limited to, review of the process for identification of designated positions; monitoring, tracking, and review of disclosures related to conflicts of interest, such as research disclosures; faculty and CSU designated officials reporting; employee/vendor relationships; ethics training; and patent and technology transfer.

Our study and evaluation were conducted in accordance with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors and included the audit tests we considered necessary in determining whether fiscal, operational, and administrative controls are in place and operative. This review emphasized, but was not limited to, compliance with federal and state regulations and guidance, Board of Trustee policies, and Office of the Chancellor and campus policies, letters, and directives. The audit focused on procedures in effect from January 1, 2012, through February 28, 2014.

We focused primarily on the internal administrative, compliance, and operational controls over COI activities. We did not focus on research disclosures in this audit, as these are routinely reviewed in sponsored programs and auxiliary audits. Specifically, we reviewed and tested:

- Administration of the COI program, including defined responsibilities, current policies and procedures, and adequate training.
- Processes to identify and review designated positions on campus.
- Tracking, monitoring, and review of conflict-of-interest disclosure statements.
- Solicitation and contracting processes.
- Identification and reporting of gifts to agency.
OBSERVATIONS, RECOMMENDATIONS, 
AND CAMPUS RESPONSES

CONFLICT-OF-INTEREST DISCLOSURES

Statements of economic interest were not always filed in a timely manner.

We found that:

- Four of 11 assuming office statements we reviewed were not submitted in a timely manner.
- Two of 11 leaving office statements we reviewed were not submitted in a timely manner.

Government Code §87302 states that each new designated employee shall file a statement within 30 days after assuming office. It further states that every designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing reportable investments, business positions, interests in real property, and income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.

The human resources manager and conflict-of-interest filing officer stated that disclosure statements were submitted late due to administrative errors and staffing constraints.

Untimely filing of conflict-of-interest disclosures increases the risk of liability for acts contrary to California State University and governmental policies.

Recommendation 1

We recommend that the campus obtain statements of economic interest for designated employees in a timely manner.

Campus Response

We concur. Effective June 1, 2014, the conflict-of-interest filing officer will implement procedures to ensure that statements of economic interest for designated employees are filed within 30 days after assuming office and leaving office statements are filed no later than 30 days after leaving office/position.
### APPENDIX A:
PERSONNEL CONTACTED

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joseph I. Castro</td>
<td>President</td>
</tr>
<tr>
<td>Michael Caldwell</td>
<td>Associate Vice President for Faculty Affairs</td>
</tr>
<tr>
<td>Lisa Chavez</td>
<td>Director of Business Operations, Athletics</td>
</tr>
<tr>
<td>Carolyn Coon</td>
<td>Vice President for Student Affairs and Dean of Students</td>
</tr>
<tr>
<td>Brian Cotham</td>
<td>Director of Procurement and Support Services</td>
</tr>
<tr>
<td>Esther Gonzalez</td>
<td>Project Analyst, Office of the Vice President for Administration</td>
</tr>
<tr>
<td>Pamela Lewis</td>
<td>Budget and Treasury Manager</td>
</tr>
<tr>
<td>Clinton Moffitt</td>
<td>Associate Vice President for Finance Services</td>
</tr>
<tr>
<td>Scott Moore</td>
<td>Dean for Continuing and Global Education</td>
</tr>
<tr>
<td>Robert Murphy</td>
<td>Human Resources Manager and Conflict of Interest Filing Officer</td>
</tr>
<tr>
<td>Janice Parten</td>
<td>Associate Vice President for Human Resources</td>
</tr>
<tr>
<td>Elizabeth Potter</td>
<td>Buyer, Procurement and Support Services</td>
</tr>
<tr>
<td>Kathleen Scott</td>
<td>Executive Assistant to the Vice President for Administration</td>
</tr>
<tr>
<td>Peter Smits</td>
<td>Vice President for University Advancement</td>
</tr>
<tr>
<td>Cynthia Teniente-Matson</td>
<td>Vice President for Administration and Chief Financial Officer</td>
</tr>
</tbody>
</table>
May 20, 2014

MEMORANDUM

To: Larry Mandel
Vice Chancellor and Chief Audit Officer, California State University

From: Cynthia Teniente-Matson
Vice President for Administration and Chief Financial Officer

Subject: Responses to the Conflict of Interest Incomplete Draft Audit Report (14-16)

The university has reviewed the incomplete draft report for the Conflict of Interest Audit 14-16. Attached is Fresno State’s response to the recommendation. Please let me know if you have any questions. Thank you.

Attachment

c: Dr. Joseph I. Castro
Mr. Janice Parten
Mr. Robert Murphy
Ms. Michelle Schlack
Ms. Wendee Shinsato
Ms. Erika Almaraz
CONFLICT OF INTEREST
CALIFORNIA STATE UNIVERSITY,
FRESNO
Audit Report 14-16

CONFLICT-OF-INTEREST DISCLOSURES

Recommendation 1

We recommend that the campus obtain statements of economic interest for designated employees in a timely manner.

Campus Response

We concur. Effective June 1, 2014, the conflict of interest filing officer will implement procedures to ensure that statements of economic interest for designated employees are filed within 30 days after assuming office and leaving office statements are filed no later than 30 days after leaving office/position.
June 11, 2014

MEMORANDUM

TO: Mr. Larry Mandel  
    Vice Chancellor and Chief Audit Officer

FROM: Timothy P. White  
      Chancellor

SUBJECT: Draft Final Report 14-16 on Conflict of Interest, 
         California State University, Fresno

In response to your memorandum of June 11, 2014, I accept the response as submitted with the draft final report on Conflict of Interest, California State University, Fresno.

TPW/amd