

**TITLE 5 REGULATIONS: PROPOSED
REVISIONS TO THE CONFLICT OF
INTEREST CODE OF THE BOARD OF
GOVERNORS**

3.2

ACTION SCHEDULED (PUBLIC HEARING ITEM)

Presentation: Steven Bruckman
Executive Vice Chancellor of Operations and General Counsel

Issue

This item presents revisions to the Board of Governors' Conflict of Interest regulations.

Background

The Political Reform Act of 1974, as amended (Gov. Code, §§ 81000 et seq.), requires each state agency to adopt and promulgate a conflict of interest code. The Conflict of Interest Code of the Board of Governors of the California Community Colleges is set forth in California Code of Regulations, title 5, section 50500. This section incorporates, by reference, the standard conflict of interest code developed by the Fair Political Practices Commission (FPPC) and set forth in California Code of Regulations, title 2, section 18730. An Appendix to the Code also identifies designated employees who are required to make disclosures of possible conflicts of interests and the applicable disclosure categories.

Senate Bill 1738 (Stats. 1990, ch. 84) amended section 87306 of the Government Code to require each state agency to review its conflict of interest code biennially and to submit a report to the FPPC. The biennial report specifies whether the code must be amended or, in the alternative, that it accurately reflects the current organization of the agency and the job duties of the various positions listed in the code, and that it lists all positions within the agency that should be designated under the applicable laws. If changes have been identified, an amended code must be submitted within 90 days from the date the biennial report is filed with the FPPC.

A Biennial Report was filed with the FPPC on March 2, 2009. Consequently, a revised conflict of interest code for the agency must be filed for review with the FPPC by June 1, June 2009, as

the FPPC is this agency's "code reviewing body." After receiving comments from both the FPPC and the public, the Chancellor will determine if other changes should be made to the regulation package presented in this agenda item.

Analysis

Government Code section 87306 provides that state agencies must amend their conflict of interest codes to reflect changes made pursuant to the biennial review, including but not limited to the following:

1. The creation or new designation of positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest (including consultants) and relevant changes to the duties assigned to existing positions;
2. The reclassification, renaming, or deletion of previously-designated positions;
3. The addition, deletion, or modification of definitional or operational provisions of a code; or
4. Changes necessary to be made to the disclosure categories of the code to update the types of investments, business positions, interests in real property, and sources of income that are reportable.

The agency is also required to make nonsubstantive changes to the code. The regulations of the Fair Political Practices Commission, California Code of Regulations, title 2, section 18752, define nonsubstantive changes to a Conflict of Interest Code as those which involve:

1. The reclassification or renaming of previously designated positions, provided no designated positions are created and provided no existing disclosure responsibilities are modified;
2. The deletion of a position for which the classification has been abolished by the agency;
3. The addition, deletion or modification of definitional or operational provisions of a conflict of interest code in conformity to a statutory amendment, a regulation of the Fair Political Practices Commission, a decision of the California Supreme Court, or a final decision of a California Court of Appeal; or
4. The modification of any provision of a conflict of interest code, provided no disclosure or disqualification obligation of any designated employee is disturbed thereby.

The Board’s Conflict of Interest Code was last amended in 2007. Since that time changes have been made in the organizational structure of the System Office that involved adding or deleting positions. As a result, the appendix to section 50500 must be updated.

Changes have also been made in the organizational structure of the System Office that involve renaming divisions and moving position types already covered in our 2007 Code and its disclosure categories. These existing, previously-designated positions have been added, deleted or moved due to reorganization. For these types of positions, the disclosure requirements in the Appendix to the Code have not been modified. The specific changes to be made and the reasons therefore are as follows:

DIVISION & CHANGE	REASON FOR CHANGE
<u>Division: Executive</u>	
Add currently-exiting position, no change in disclosure: Specialist/Employment and Certification	reorganization
Moved from Governmental Relations to Executive	
<u>Division: Strategic Planning and Policy Coordination Division</u>	
Name change to: Communications Division	reorganization
<u>Division: Governmental Relations and External Affairs Division</u>	
Name change to: Governmental Relations Division	reorganization
<u>Division: Technology, Research and Information Systems</u>	
Add positions:	reorganization
Systems Software Specialist II (Technical)	
Systems Software Specialist III (Technical)	
Systems Software Specialist III (Supervisor)	
Remove:	reorganization
Specialist/Academic Planning and Development	
<u>Division: Economic and Workforce Development</u>	
Name change to: Economic Development and Workforce Preparation Division	reorganization
<u>Division: Internal Operations Division</u>	
Change title of previously designated position to reflect proper civil service title:	correction
From: Accounting Administrator I	
To: Accounting Administrator II	

The text of the revised conflict of interest code is set forth in the proposed regulation that follows. Because the FPPC, as the code reviewing agency, must also approve the Board’s Conflict of Interest Code and may deem it necessary to request changes, the Board is being asked

to endorse the regulations and delegate authority to the Chancellor to receive public comments and to incorporate technical changes requested by the FPPC, and finally adopt the regulations. The public comment period will remain open until April 7, 2009.

Recommended Action

That the Board of Governors adopt the following resolution:

1. After having heard public testimony, the Board of Governors of the California Community Colleges endorses the proposed amendments to the agency's Conflict of Interest Code.
2. Acting under the authority of section 70901(d) of the Education Code, the Board of Governors hereby delegates authority to the Chancellor of the California Community Colleges to adopt, on behalf of the Board, the attached regulation changes.
3. The Chancellor shall have the authority to consider public comments regarding these regulations. The Chancellor shall also have the authority to incorporate changes requested by the FPPC regarding these regulations and to make nonsubstantive, technical changes. The Chancellor shall adopt the regulations as approved by the Board in this resolution only if, in the Chancellor's opinion, no substantive changes are proposed by the FPPC or the public. If the FPPC or the Chancellor believes that substantive changes are necessary, the item will again be presented to the Board of Governors for further consideration.
4. Pursuant to section 208 of the Board of Governors' Procedures and Standing Orders, these regulations shall become effective 30 days after filing with the Secretary of State, after approval by the FPPC and adoption by the Chancellor unless, within that 30-day period, at least two-thirds of the community college district governing boards vote in open session to disapprove the regulation.

*Staff: Jonathan Lee, Staff Counsel
Francesca Reitano, Community College Program Assistant II*

APPENDIX

Proposed Revisions to the Title 5 Regulations of the Board of Governors of the California Community Colleges

Conflict of Interest Code

Section 50500 of subchapter 2 of chapter 1 of division 6 of title 5 of the California Code of Regulations is amended to read:

50500. 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, California Code of Regulations, title 2, 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 California Code of Regulations, title 2, 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 Board of Governors of the California Community Colleges.

Designated employees shall file their statements with the California Community Colleges, which will make the statements available for public inspection and reproduction. (Gov. Code, § 81008.) Upon receipt of the statements for the Board of Governors and the Chancellor, the agency shall make and retain a copy and forward the original to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the agency.

Appendix

<i>Designated Employees</i>	<i>Disclosure Categories</i>
Board of Governors	
Members	1, 4
Executive Office	
Chancellor	1, 4
Executive Vice Chancellor	1, 4
Director	1, 4
<u>Specialist/Employment and Certification</u>	<u>2, 4</u>
Strategic Planning and Policy Coordination <u>Communications</u> Division	
Vice Chancellor	1, 4

Legal Affairs Division

Vice Chancellor and General Counsel1, 4
 Staff Counsel, all levels1, 4
 Consultants*2

Governmental Relations and ~~External Affairs~~ Division

Vice Chancellor1, 4
 Director1, 4
 Administrator/Academic Planning and Development1
 Specialist/Academic Planning and Development2
 Specialist/Employment and Certification2, 4
 Consultants*2

Technology, Research, and Information Services Division

Vice Chancellor1, 4
 Administrator/Academic Planning and Development1
 Data Processing Manager II1
~~Specialist/Academic Planning and Development2~~
 Specialist/Information Systems and Analysis2
 Senior Information Systems Analyst (Specialist)3
 Staff Information Systems Analyst (Supervisor)3
 Staff Information Systems Analyst (Specialist)3
 Senior Programmer Analyst (Specialist).....3
 Staff Programmer Analyst (Specialist)3
Systems Software Specialist II (Technical)3
Systems Software Specialist III (Technical)3
Systems Software Specialist III (Supervisor).....3
 Consultants*2

College Finance and Facilities Planning Division

Vice Chancellor1, 4
 Director1, 4
 Administrator/Fiscal Planning and Administration1
 Administrator/Facilities Planning and Utilization1
 Specialist/Fiscal Planning and Administration2
 Specialist/Facilities Planning and Utilization2
 Consultants*1

Student Services and Special Programs Division

- Vice Chancellor1, 4
- Administrator/Student Services Planning and Development.....1
- Specialist/Student Services Planning and Development.....2
- Consultants*2

Economic Development and Workforce ~~Development~~ Preparation Division

- Vice Chancellor1, 4
- Administrator/Vocational Education1, 4
- Specialist/General Vocational Education.....2
- Consultants*2

Academic Affairs Division

- Vice Chancellor1, 4
- Administrator/Academic Planning and Development1, 4
- Specialist/Academic Planning and Development2
- Specialist/General Vocational Education.....2
- Consultants*2

Internal Operations Division

- Director1, 4
- Accounting Administrator II (Supervisor)3
- Associate Business Management Analyst.....3
- Business Services Officer I (Specialist).....3
- Business Services Assistant (Specialist).....3
- Staff Services Manager II (Supervisor).....3
- Staff Services Manager I.....3
- Consultants*2

*Note: With respect to consultants, the Chancellor, however, may determine in writing that a particular consultant, although a “designated person,” 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 category. Such determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Chancellor’s determination is a public record and shall be retained 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 the Conflict of Interest Code.

Disclosure Categories

1. Designated employees in Category 1 must report the following:

(a) All interests in real property in the State of California.

(b) Any investment or business position in a business entity, or any source of income (including gifts, loans, and travel payments), if the business entity or source of income is engaged in publishing, manufacturing, selling, or leasing:

(1) Instructional materials;

(2) Equipment; or

(3) Services, including training or consulting services; when such materials, equipment or services are of the type utilized by community college districts or the Board of Governors or Chancellor's Office.

(c) Any investment or business position in a business entity, or any source of income (including gifts, loans and travel payments), if the business entity or source of income is engaged in selling or leasing real estate which is utilized by community college districts or the Board of Governors or Chancellor's Office.

2. Designated employees in Category 2 must report the following:

(a) Any investment or business position in a business entity, or any source of income (including gifts, loans, and travel payments), if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(1) Instructional materials;

(2) Equipment; or

(3) Services, including training or consulting services; when such materials, equipment or services are of the type utilized by community college districts or the Board of Governors or Chancellor's Office.

3. Designated employees in Category 3 must report the following:

(a) Any investment or business position in a business entity, or any source of income (including gifts, loans, and travel payments), if the business entity or source of income is engaged in publishing, manufacturing, selling or leasing:

(1) Instructional materials;

(2) Equipment; or,

(3) Services, including training or consulting services; when such materials, equipment or services are of the type utilized by the Board of Governors or Chancellor's Office.

4. Designated employees in Category 4 must report the following:

(a) Any investment or business position in a business entity, or any source of income (including gifts, loans, and travel payments), if the business entity or source of income provides education, training, or experience to persons toward meeting minimum qualifications for employment in a community college district.

NOTE: Authority cited: Sections 87300 and 87307, Government Code. Reference: Sections 89503, 89505 and 87300, et seq., Government Code.