University of California

Conflict of Interest

for Designated Officials

Partially adapted from training prepared by The California Attorney General's Office and the Fair Political Practices Commission

Course Introduction

Welcome to the University of California's **Conflict of Interest for Designated Officials** briefing. We're glad to have your participation in this important training.

This course is not intended to make you into an expert on conflict of interest. Instead, the goals of this course are:

- To familiarize you with California conflict-of-interest laws and their application
- To help you identify potential conflict-of-interest situations for yourself and others
- To promote ethical conduct by reinforcing the need to be mindful of conflicts of interest
- To identify resources to help you

Course Overview

This course has seven sections:

1. Conflict of Interest Under the Political Reform Act
2. Gift Limitations
3. Honoraria Ban
4. Conflict of Interest Provisions of the Public Contract Code
5. Post-Employment Restrictions
6. Misuse of Public Funds
7. Additional Resources

This course should take approximately 60 minutes to complete. You do not need to complete this course in one sitting; you may exit the course and return at a later time to continue at the point where you left off.

When you finish the course, you will receive an email confirmation which you can keep for your own personal records. The University will automatically have a public record of who has taken this course. You do NOT need to send in your confirmation email.

Important Note

Conflict-of-interest law is complex, and each of the laws that we will examine in this course must be considered independently.

It is important to note that:

- It is possible that any given transaction involves more than one law.
- A term such as "financial interest" may have different meanings in the context of different laws.
- Conduct that is permissible under one law may violate another.

The Office of the General Counsel is available to assist you and your local Conflict of Interest Coordinator in analyzing conflict-of-interest questions.

Local Conflict of Interest Coordinators can also direct you to University policy that may impose additional restrictions.

Section One

Conflict of Interest Under the Political Reform Act

Definition of Terms

Before we explore conflicts of interest under the Political Reform Act, let's first define some important terms within the context of the Act.

Public official, official, UC official or **University official** refers to officers, employees, members or consultants who act on the University's behalf in administrating a program or contract.

Designated official refers to an officer or employee who is covered by the disclosure and disqualification provisions of the University of California's Conflict of Interest Code. Generally, persons holding these positions are so identified because they have the authority to make significant financial decisions on the University's behalf that could also affect their personal outside finances.

Member refers to a salaried or unsalaried member of a committee, board or commission with decision-making authority.

Consultant means an individual who, pursuant to a contract with the University, makes University decisions or serves in a staff capacity and, in that capacity, participates in making University decisions or performs the same or substantially the same duties for the University that would otherwise be performed by an individual holding a position specified in the University's Conflict of Interest Code.

Officer refers to a high-level official who exercises some portion of sovereign power.

Overview of the Political Reform Act

The **Political Reform Act (PRA)** is the single most important conflict-of-interest law in California. The Act's major provisions regulate political activities in campaign finance, lobbying registration and conflicts of interest. Every member, officer, employee, or consultant of a state or local government agency is a public official for purposes of the Act.

In terms of conflict of interest, the Act:

- Requires all public officials to refrain from participating in decisions in which they have a financial interest
- Requires designated officials to file financial disclosure statements
- Imposes limits on designated officials on the acceptance of gifts and honoraria
- Imposes post-employment restrictions

The **Fair Political Practices Commission (FPCC)** is an independent California regulatory agency that administers and enforces compliance with the Political Reform Act. It issues written advice to individuals concerning their duties under the Act and provides fact sheets and other materials which are listed in the resources section of this course.

The University of California Conflict of Interest Code

As required by the Political Reform Act, the University has adopted a Conflict of Interest Code. This Code designates employees who must periodically disclose certain personal financial holdings based on their position by filing a Statement of Economic Interests (Form 700). These filers are informally referred to as designated officials.

The Office of General Counsel administers the filing requirements of the Code. Local Conflict of Interest Coordinators are available to assist you with the filing and conflict-of-interest provisions of the Act.

What is a Conflict of Interest?

Under the Political Reform Act, you may not take any part in a governmental decision in which you have a disqualifying conflict of interest.

You have a conflict of interest with regard to a particular governmental decision if it is **reasonably foreseeable that the decision will have a material financial effect on one or more of your economic interests**.

Economic interests are particular kinds of financial stakes held by University officials, such as investments in real property or for-profit businesses, or individuals or organizations which have provided income or gifts to the official.

A conflict of interest is disqualifying if the financial effect on your economic interest is distinguishable from the financial effect of the decision on the public generally.

The most important proactive step you can take to avoid conflict-of-interest problems is learning to recognize the "economic interests" from which conflicts can arise. A conflict can only arise from the particular kinds of economic interests covered by the Act, which are subsequently explained.

How to Determine a Conflict of Interest

The regulations of the California Fair Political Practices Commission (FPPC) establish an eight-step process for determining whether a University official has a disqualifying conflict of interest under the Political Reform Act.

If you recognize that one or more of your economic interests is involved in a government decision, you should consult with your local Conflict of Interest Coordinator and think through the eight steps to decide if a conflict of interest actually exists.

If you violate the conflict-of-interest provisions, you may be subject to monetary fines or misdemeanor criminal penalties.

The Eight-Step Process

The eight-step process requires asking these questions:

1. Are you a "public official" within the meaning of the rules?
2. Are you making, participating in making, or influencing a governmental decision?
3. What are your economic interests? That is, what are the possible sources of a financial conflict of interest?
4. Are the sources of your economic interests directly or indirectly involved in the governmental decision?
5. Are the financial impacts on your economic interests material as defined by the regulations?
6. Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?
7. If you have a conflict of interest, does the "public generally" exception apply?
8. If you have a disqualifying conflict of interest, is your participation nevertheless legally required?

Now let's look at each of these steps in detail.

Step One: Public Official

Are you a "public official" within the meaning of the rules?

The Political Reform Act conflict-of-interest rules apply only to public officials as defined in the PRA.

Every member, officer, employee or consultant of a state or local government agency is a public official for purposes of the Act, including:

- All employees of the University of California
- Certain consultants who work on the University's behalf
- Certain non-University employees who are members of decision-making bodies

Note: If you have questions about whether a given individual is a public official covered by the Act, consult your local Conflict of Interest Coordinator.

Scenario: Part-Time Paul

Paul is a clerk working 50% time for the Admissions Office processing student applications. He does not consider himself to be an “official” let alone a “public official,” and he only works part-time for the University.

Do the Political Reform Act’s conflict-of-interest provisions apply to Paul?

o **Yes**
o **No**

The best answer is YES. The term “public official” includes all University employees, officers, members and consultants, as defined by the Act. The conflict-of-interest provisions of the Act apply to all employees regardless of status. Click the Next button to continue.

Step Two: Governmental Decision

Are you making, participating in making, or influencing a governmental decision?

Conflict-of-interest rules apply when University officials make, participate in making, or influence a governmental decision.

For example:

- You **make** a governmental decision by authorizing a purchase, voting as part of a committee action, or by making an appointment.
- You **participate** in making a governmental decision by giving advice or making recommendations to the decision-maker.
- You **influence** a governmental decision by communicating with the decision-maker.

Scenario: Cathy's Calculations

Cathy is a principal analyst in the Office of Research. Her supervisor has asked her to do a cost/benefit analysis of converting to a new system to track research proposals, grants and contracts. She gathers and analyzes data and gives a report to her supervisor, who then asks her to draft requirements for the system. The supervisor closely oversees the work and forwards the final report to the department head, who will make a decision about issuing a request for proposals. Cathy has no authority to make the decision, nor has she communicated directly with the department head.

Has Cathy participated in the making of a decision to issue a request for proposals?

o **Yes**
o **No**

The best answer is YES. Cathy has participated in the making of the decision. She used discretion and judgment with respect to what data to gather and how it should be analyzed. She participated in the decision even though the supervisor carefully reviewed and approved her analysis before he sent it to the department head, who makes the final decision. Click the Next button to continue.

Step Three: Economic Interest

What are your economic interests?
That is, what are the possible sources of a financial conflict of interest?

Recognizing the economic interests from which conflicts of interest may arise is the most important step in complying with the law. There are five kinds of such economic interests from which conflicts can arise:

- Economic interests in **business entities**
- Economic interests in **real property**
- Economic interests in **sources of income** to the University official
- Economic interests in **sources of gifts** to the University official
- Economic interest in one's income, expenses, assets or liabilities - **the "personal financial effects rule."**

Each of these types of economic interests will now be described.

Economic Interests in Business Entities

A University official has an economic interest in a for-profit business entity if either of the following is true:

- The University official has a **direct or indirect investment of $2,000 or more** in the business entity; or
- The University official is a **director**, **officer**, **partner**, **trustee**, **employee or holds any position of management** in the business entity.

A **direct investment** means a University official personally owns an investment.

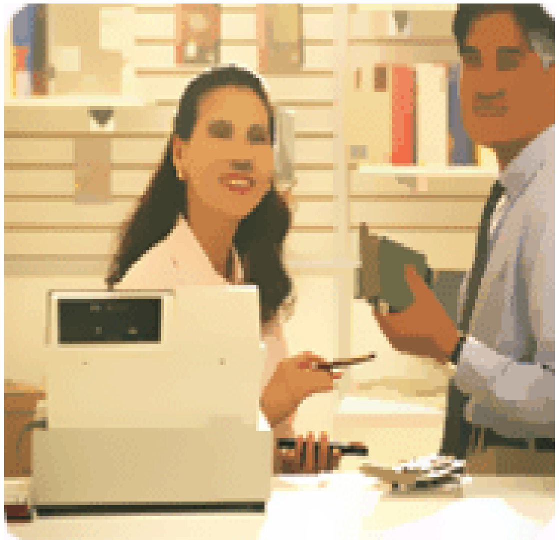
An **indirect investment** means the University official's spouse or registered domestic partner, the official's dependent children or anyone acting on the official's behalf has an investment.

In addition, a University official who owns **10% or more** of a business entity has an **indirect** investment in any investment owned by the business entity **in proportion to the official's ownership stake**.

Example: Julie owns 10% of Scientific Study Corporation which in turn owns 10% of ABC Chemical. The fair market value of the stock held by the corporation is $200,000. Accordingly, Julie’s **indirect** investment in ABC Chemical, which is the fair market value of the common stock held, is worth $20,000 (10% of $200,000).

Scenario: Hardworking Hamashi

Hamashi is a Buyer for the University. On the weekend, she works for Madison's Hardware. Her husband owns Microsoft stock valued at $2,000.



In which, if any, of the following business entities does Hamashi have an economic interest?

- **A. Only Madison's Hardware**
- **B. Only Microsoft**
- **C. Both Madison's Hardware and Microsoft**
- **D. None of the above**

The best answer is C. Hamashi has an economic interest in Madison's Hardware because it is her employer, and she has an economic interest in Microsoft because she has indirect investment via her husband. Investments held by her spouse are treated as though she owned them directly and therefore she has a **$2,000** investment interest in Microsoft. Click the Next button to continue.

Economic Interests in Real Property

A University official has an economic interest in real property if the official has an **equity or leasehold interest in real property valued at $2,000 or more**.

The University official's interest includes the official's **direct** as well as **indirect** interests.

A **direct interest** in real property means an official personally holds the interest.

An **indirect interest** means the University official's spouse or registered domestic partner, the official's dependent children or anyone acting on the official's behalf has an interest in real property.

In addition, a University official who owns **10% or more** of a business entity has an indirect interest in any real property held by the business entity **in proportion to the official's ownership stake**.

Example: Julie owns 10% of the Scientific Study Corporation which owns an office building downtown and a research park close to the campus. Julie has a 10% interest in the real property held by the company, namely, the office building and the research park.

Scenario: Rewarding Real Estate

Dr. Locke is a faculty member and his wife is an attorney. He and his wife own a single-family home. His wife leases office space for her law practice. He also owns two of the ten shares in a limited partnership which owns a downtown office building.

Which of the following describes Dr. Locke's economic interest(s)?

A. **The home he and his wife own**
B. **The office space his wife leases for her law practice**
C. **The downtown office building he co-owns**
D. **All of the above**

The best answer is D. Dr. Locke has an economic interest in his home because he and his spouse own it. He has an economic interest in the office space his wife leases because an economic interest in real property does not necessarily require ownership of the real property. Finally, he has an economic interest in the downtown office building because his two shares exceed 10 percent of the partnership. Even if the title to the building is in the name of the limited partnership, the investors in the limited partnership are considered to have an economic interest in the real property if their interest is 10% or greater. Click the Next button to continue.

Economic Interests in Sources of Income

A University official has an economic interest in **sources of income** to the official. A source of income to a University official is anyone, whether an individual, business entity or an organization, that provides or promises **$500 or more** in income to the official **within 12 months prior to the government decision in question**.

A person or entity that provides income to a University official, either directly or indirectly may be a source of income to the official. Indirect sources include a source of income to a University official's spouse or registered domestic partner. You have a 50% community property interest in your spouse's or registered domestic partner's income. Therefore, a person or entity that provides income to your spouse or registered domestic partner may be a source of income to you as well.

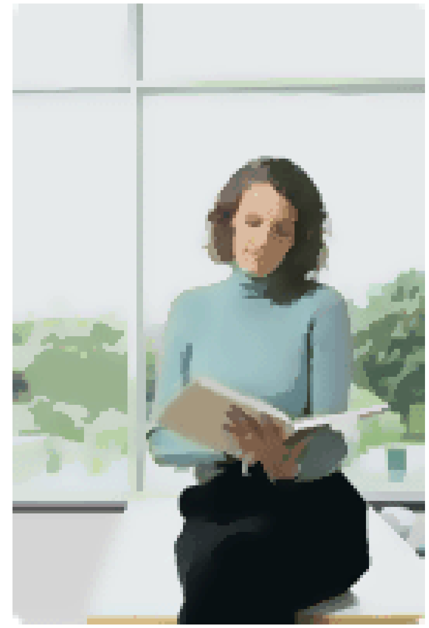
In addition, a University official who owns **10 percent** or more of a business entity is deemed to receive **"pass-through" income** from the business's clients in proportion to the official's ownership stake. Therefore, the business's clients may be sources of income to the University official, if the official's proportionate share of the payments is $500 or more.

Examples of income include:

- Salary
- Per diem or reimbursement for travel expenses
- Income from investments
- Commissions and incentive payments
- Rental income
- Income from any sale, such as the sale of a house or car
- Prizes or awards
- Payments received on loans made to others

Scenario: Irene's Income

Irene Hobbes is a Vice Chancellor. Her husband, Calvin, is employed by Chimerical Industries, earning $100,000 a year. She owns 5% of a heating oil business. Her share of the profits from the heating oil business was over $10,000 last year. This business supplies fuel to many local businesses and residences.



Which of the following describe Irene's source(s) of income?

- **A. Chimerical Industries**
- **B. The heating oil business**
- **C. The customers of the heating oil business who have purchased more than $10,000 worth of heating oil in the past twelve months**
- **D. Both Chimerical Industries and the heating oil business**

The best answer is D. Chimerical Industries is a source of income to Irene because she has a community property interest of $50,000 in Calvin's income from the company. The heating oil company is a source of income to her because she received more than $500 in income from the company last year. The customers of the heating oil business are not sources of income to Irene because she owns less than 10% of the business — the required threshold for indirect income from a business entity. Click the Next button to continue.

Economic Interests in Source of Gifts

A University official has an economic interest in anyone, whether an individual, business entity or organization, that provides gifts to the official totaling **$420 or more within 12 months prior to the governmental decision in question**.

We will discuss gifts in more depth in Section Two of this training.

Economic Interests in Personal Financial Effects

A University official has an economic interest in the amount of his or her own personal income, expenses, assets, or liabilities, as well as those of his or her immediate family. The interest is triggered when a government decision will either increase or decrease the personal income, expenses, assets or liabilities of the University official, or the immediate family. This is often called the **"personal financial effects" rule**.

Under what is commonly called the “government salary” exception, your salary from the University is exempt from the definition of income and is not an economic interest. This allows you to participate in decisions that affect the terms and conditions of employment within the University. However, under the “personal financial effects” rule you cannot participate in decisions to hire, fire, or promote a member of your immediate family or set a salary for you or a member of your immediate family that is different from salaries paid to other employees in the same job classification.

Scenario: Mindful Maria

Maria is a regent. Her husband works for UC as a faculty member. Maria is working on a committee to evaluate compensation for all tenured faculty, including Maria's husband.

Does Maria have an economic interest under the personal financial effects rule?

o**Yes**
o**No**

The best answer is No. Even though a pay raise will increase her husband's income, the government salary exception applies since the decision affects only his salary as a member of the faculty, and he is affected by the decision no differently than any similarly situated employee.

In contrast, if her husband was a member of the senior management group whose salary had to go before the Regents for approval, Maria would have an economic interest in her husband's salary and would have to excuse herself from participating in the decision. Click the Next button to continue.

Step Four: Involvement in Government Decision

Are the sources of your economic interests directly or indirectly involved in the governmental decision?

By referring to FPPC regulations, decide whether the sources of your economic interests are directly or indirectly involved in the governmental decision.

If the answer is yes, you'll need to follow steps five and six to determine if a conflict of interest exists.

Step Five: Materiality Standards

Are the financial impacts on your economic interests material as defined by the regulations?

“Material” in this instance means important or significant. The FPPC sets “materiality standards” – specific dollar thresholds – for evaluating whether a financial effect on an economic interest is considered material. Different materiality standards will apply depending upon the type of economic interest and whether the interest is directly or indirectly involved.

To actually analyze a real conflict-of-interest situation, you must have the materiality standards in your possession. These regulations are much too complex to discuss further in this conflict-of-interest briefing. For purposes of this briefing, it is sufficient that you understand the framework of the eight-step process.

For more information about the materiality standards, see:
http://www.fppc.ca.gov/index.html?ID=496 (sections 18705 – 18705.5)

Step Six: Likelihood of Materiality

Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

To determine whether a conflict of interest exists, you must make a calculated prediction:

Is it substantially likely that the governmental decision will have a material financial effect on your economic interests?

If the answer is yes, you have a conflict of interest, unless the “public generally” exception applies, which we’ll discuss in the next step.

Step Seven: The “Public Generally” Exception

If you have a conflict of interest, does the “public generally” exception apply?

The “public generally” exception occurs when **the decision impacts a significant portion of the population**. For example, a student Regent may participate in decisions about tuition increases because a decision would affect him or her in substantially the same manner as a significant segment of the general public.

If the public generally exception applies, you may take part in a governmental decision despite a conflict of interest. This exception exists because you are less likely to be biased by a financial impact on one of your economic interests when a significant segment of the population is likely to feel a substantially similar impact from the governmental decision.

However, the "public generally" exception must be considered with care; you may not just assume that it applies. There are specific rules with the FPPC’s regulations for identifying the significant segments of the population with which you may compare your economic interest, and specific rules for deciding whether the financial impacts are substantially similar.

For more information about the “public generally” exception, see:
http://www.fppc.ca.gov/index.html?ID=496 (sections 18707.7 -18707.10)

Step Eight: Legally Required Participation

If you have a disqualifying conflict of interest,
is your participation nevertheless legally required?

Despite a disqualifying conflict of interest, a public official may be legally required to take part in a governmental decision under very rare circumstances where the government agency would otherwise be paralyzed from acting. It is highly unlikely that this exception would apply to any University officials other than members of the Board of Regents.

Note: You are strongly encouraged to seek advice from the Office of the General Counsel before acting under this rule.

Section Two

Gift Limitations

What is a Gift?

In this section, you will learn limitations on receiving or accepting gifts.

- A gift is defined as any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value.
- Meals, lodging, or transportation may be considered gifts to an individual if you do not provide goods or services of equal or greater value.
- A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.

Receiving or Accepting Gifts

When does a University official “receive” or “accept” a gift?

Under the Political Reform Act, a University official “receives” or “accepts” a gift when the official has actual possession of the gift or takes any action exercising direction or control over the gift, including discarding it or giving it away.

You have not “received” a gift that has been returned (unused) to the donor, or for which you reimbursed the donor within 30 days of receipt, or that you donate (unused) to a non-profit 501(c)(3) organization or a governmental agency within 30 days without claiming a deduction for tax purposes.

The Gift Limit

If you are a designated official, you are prohibited from accepting more than $420 in gifts from a single source in a calendar year, if you are required to report that source on your Statement of Economic Interests (Form 700).

However, if you are not required to report the receipt of income or gifts from a source on your Statement of Economic Interests (Form 700), the gift limit is not applicable.

Designated officials should familiarize themselves with the "disclosure category" portion of the University's Conflict of Interest Code to determine what sources of income or gifts must be reported on their Statements of Economic Interests (Form 700).

For a list of disclosure categories, see: http://www.ucop.edu/ogc/coi/appendb.html.

To determine the value of a gift, a University official must use the **fair market value of the gift**. If the gift is unique, the University official should ask the donor for the actual value. If the value is unknown to the donor, the University official should make a reasonable approximation based on the value of similar products.

Exceptions to the Gift Limit

There are two types of exceptions to the gift limit:

Items exempt from both the gift limit and disclosure by designated officials. Under specified circumstances, these exceptions may include:

- gifts returned within 30 days
- gifts from close relatives
- unused tickets
- informational materials
- personalized plaques
- hospitality in a friend's home
- a single ticket to a fundraising event provided to the official by a nonprofit or political organization holding its own fundraiser

Items exempt from the limit but which are discloseable by designated officials on their Statement of Economic Interest. Examples include:

- wedding gifts
- prizes that result from a bona fide competition
- some gifts of travel outside of California

However, items exempt from the gift limit may trigger disqualification. If you have any questions regarding gift limit exceptions, please contact your local Conflict of Interest Coordinator.

Scenario: Heads Up Holmes

Holmes is a director of a University department. He receives two gifts from a friend's business which is interested in his department's activities. In October, he receives tickets to a San Francisco 49ers game valued at $200. In February of the next calendar year, he receives a framed photograph of Yosemite valued at $300. In June, he is considering a decision that would affect his friend's business.

Does Holmes have an economic interest in his friend's business?

o**Yes**
o**No**

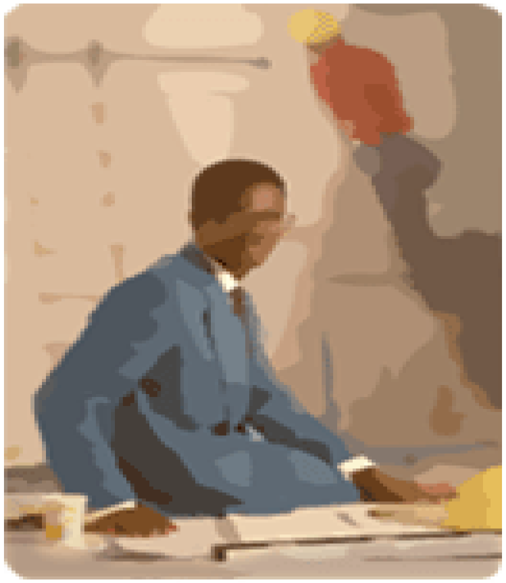
The best answer is Yes. Holmes has an economic interest in his friend's business because he has received a $500 value in gifts during the 12 months prior to the decision. It does not matter that the gifts were received during separate calendar years as Holmes received $500 in gifts during the 12 months prior to the decision. The question asks whether he has an “economic interest”, not whether he exceeded the gift limit. The gift limit was not exceeded because he did not receive gifts totaling more $420 in a *calendar* year. Click the Next button to continue.

Penalties for Violation of the Gift Limit

Any official who violates the gift limit is liable in a civil action brought by the FPPC for an amount of up to three times the amount of the unlawful gift. Violators are also subject to administrative sanctions, which include fines of up to $5,000 per violation.

Scenario: Acceptable Acceptance

David has just been hired to fill a new position that has not yet been designated in the University's Conflict of Interest Code. He will serve on a committee that will select an architect for a major construction project on his campus. An architectural firm has invited him to fly to New York to visit their offices and discuss their proposal. The firm will pay for the flight, accommodation and food, which will exceed the $420 limit.



Should he accept the gift?

o**Yes**
o**No**

The best answer is No. Technically, David is not prohibited by the Political Reform Act from accepting the gift because he is not a designated official. However, he would not be able to serve on the selection committee or participate in any way in the selection of an architect because he would have a disqualifying financial interest in one of the firms that has a bid on a project. He would not be able to perform his University duties.

He should also be mindful of the University's policy that employees avoid the appearance of favoritism in all of their dealings on behalf of the University. Click the Next button to continue.

Section Three

Honoraria Ban

What are Honoraria?

“Under the Political Reform Act, honoraria are payments made to a University official, from other than the official's public employer, for making speeches, publishing articles, or attending public or private conferences, conventions, meetings, social events, meals or similar gatherings.

The honoraria ban prohibits a University official from accepting any honoraria from a source which is required to be reported on the official's Statement of Economic Interests (Form 700).

Exceptions to the Ban

There are three major exceptions to this broad prohibition on honoraria:

- Special rules for travel exempt certain travel from the ban.
- The earned income exception concerns income received for speaking or writing as a part of one's private employment or in connection with an individual’s practice of a profession such as teaching, practicing law or medicine.
- Under certain circumstances, an honorarium may be returned, donated or the source reimbursed.

Special Rules for Travel

When a University official makes a speech, participates in a seminar or serves on a panel, the following items are exempt from the honoraria ban:

- Transportation to and from an event within California
- Food and beverages at the event
- "Necessary" lodging and accommodations in connection with the event

Note: If the travel is outside of California, different rules apply which are too complex for this training.

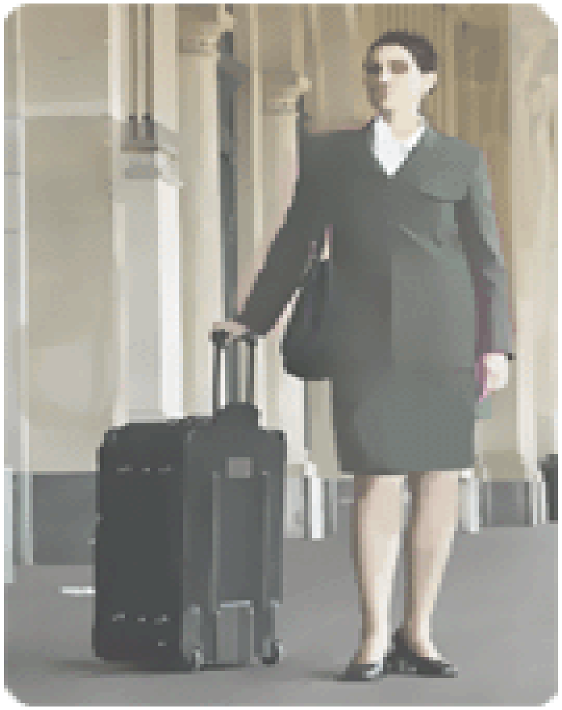
There are additional exceptions for travel paid by:

- Nonprofit organizations pursuant to section 501(c)(3) of the Internal Revenue Code
- Foreign governments

For more information, see: Travel Guide for California Officials and Candidates.

Scenario: Legal Linda

Linda, a UCD designated official who lives in Sacramento, has been asked to give a speech in San Diego to a professional organization. She receives the following from a sponsoring vendor who does business with the campus: roundtrip airfare ($250), lodging the night before her 9:00 a.m. speech ($180), and coffee and Danish ($15) at the speech.



Has she violated the gift limit?

A. **Since the value exceeds $420, she has violated the gift limit.**
B. **Violation depends on her disclosure obligations**
C. **She has not violated the gift limit because these items are exempt from the definition of a gift when making a speech.**
D. **She has not violated the gift limit, because the hotel and meals are exempt, and the air fare does not cost $420.**

The best answer is C. Linda has not violated the gift limit as the airline flight, food and lodging are exempt under the special rules of travel concerning intrastate travel in connection with making a speech. Click the Next button to continue.

The Earned Income Exception

A payment received in return for rendering personal services customarily provided in connection with the practice of a bona fide business, trade, or profession is considered "earned income" and is not prohibited under the honoraria ban.

The FPPC has established complex criteria that must be followed to demonstrate that an official is practicing a bona fide business, trade or profession.

A faculty member may receive compensation for a talk directly related to his or her teaching or research responsibilities. However, a designated official cannot receive payment for a speech related to his or her non-academic appointments.

Example: Emma is a provost and a tenured professor in the Chemistry Department. Because of the exception for earned income from a bona fide profession, she may accept payments for giving lectures in connection with the teaching of chemistry. However, in her capacity as a provost she cannot accept a payment for speeches related to her non-academic responsibilities. For example, she could not be paid for a speech concerning the role of research universities in today's economy.

Returned or Donated Honoraria

An honorarium may be either returned to the donor or delivered to The Regents within 30 days of receipt.

A payment may be made to a bona fide charitable, educational, civil, religious or similar tax-exempt, nonprofit organization in lieu of an honorarium provided the payment is sent directly to the nonprofit organization without being first received by the University official. The University official may not be identified in connection with the payment or otherwise benefit from the payment.

Penalties for Violation of the Honoraria Ban

Any person who makes or receives a prohibited honorarium is liable in a civil action brought by the FPPC for an amount of up to **three times the amount of the unlawful honorarium**.

Violators are also subject to administrative sanctions, which include fines of up to **$5,000 per violation**.

Section Four

Conflict of Interest Provisions of the Public Contract Code

California Public Contract Code Provisions

University employees must also comply with the California Public Contract Code. The Code addresses several provisions related to University contracts, including:

- A ban on independent contracting with current University employees
- A general ban on indirect compensation of current University employees
- Restrictions for those who have left University service (covered in section 5 of this training)
- A ban on awarding additional contracts to consultants

Important note: Each of these provisions is subject to exceptions under certain circumstances.

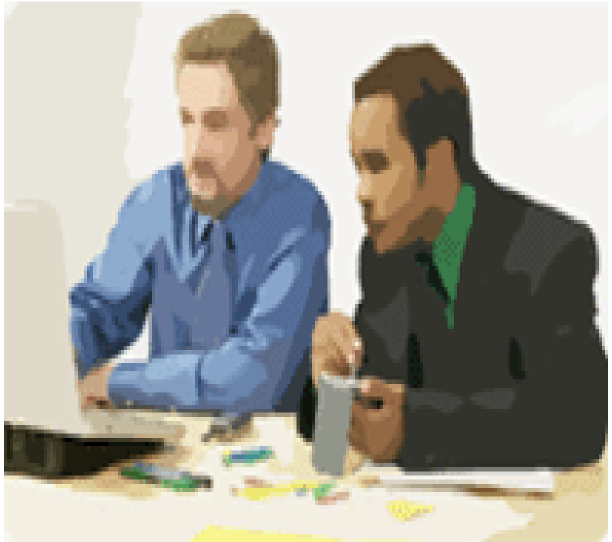
Ban on Independent Contracting

The Public Contract Code prohibits any University officer or employee from contracting on his or her own behalf as an independent contractor to provide goods or services to the University.

This prohibition does not apply to officers or employees who have teaching or research responsibilities (academic appointees or other employees where even a portion of their primary employment responsibilities involves academic research or teaching).

Scenario: Independent Ian

Ian works part-time at UC Davis where he recently designed and implemented a system for tracking research contracts. UCLA would like to hire Ian for three months to provide advice on how to implement a similar system.



Can UCLA hire him as a consultant?

o**Yes**
o**No**

The best answer is No. Ian cannot be hired as an independent contractor through a contract. Since Ian works part-time for UC Davis, he could be hired on an as an employee, not as a consultant, by UCLA. Click the Next button to continue.

General Ban on Indirect Compensation

In addition to the ban on independent contracting, the Code contains a general ban on engaging in employment or activity funded by the University that compensates current employees indirectly.

Reduced to its essentials, the general ban provides that:

- No University officer or employee
- shall engage in any employment, activity or enterprise
- from which the officer or employee receives compensation, or in which he or she has a financial interest and
- which is sponsored or funded, in whole or in part, by any University department through a University contract
- unless the employment, activity or enterprise is within the course and scope of the officer's or employee's regular University employment.

An exception is provided for University officers or employees with teaching or research responsibilities (academic appointees or other employees where even a portion of their primary employment responsibilities involves academic research or teaching).

Scenario: Banned Barney?

Nina is the wife of Barney, a University staff employee, and she owns an accounting firm. Barney does not participate in Nina's business, nor will he participate in the University's decision to enter into a contract for accounting services.

Will Barney be in violation of the Public Contract Code if Nina's firm contracts with the University to provide services?

- o**Yes**
- o**No**

The best answer is No. Barney will not be in violation of the Code. Because Barney does not participate in Nina's business, he does not "engage" in any outside employment, activity, or enterprise and therefore Nina's company can provide services to the University.

In contrast, suppose Barney worked half-time for the University as a budget analyst and half-time for his wife's company as an accountant. If the University hired the company to provide accounting services and Barney provided services to his wife's company related to the contract with the University, he would be in violation of the Code. Click the Next button to continue.

Ban on Consultants' Additional Contracts

The Public Contract Code prohibits any outside consultant from bidding on or being awarded a contract for services, goods or supplies or any related action that is required, suggested or otherwise deemed appropriate in the end product of their original consulting contract.

For example, if the University hired a consultant to provide recommendations about upgrading the campus voicemail system, that consultant would be banned from bidding on or being awarded a contract to implement the new system.

This ban does not apply to certain contracts involving architecture, landscape architecture, engineering, environmental services, land surveying or construction project management firms, nor does it apply to certain consulting services when the contract is with a University medical center, so long as the legislature is advised of the medical center contract.

Scenario: Two for One

A consulting company reviews the organization structure of a division. It recommends changes and goes on to recommend a similar review of a different division so that two divisions might work together more efficiently. The University would like to hire the consulting firm to help implement the organization changes in the first division because the company is familiar with the work that needs to be done. The University would also like to hire the consulting firm to do the review of the second division because it has already gained some knowledge about how the two divisions might better work together.

Can the new work proceed?

o**Yes**
o**No**

The best answer is No. The follow-on contracts are prohibited. A consultant may not be hired to make recommendations, and then be awarded a contract to perform recommended services.

In contrast, the work could proceed if the original contract included follow-on work within its scope; for example, if the scope included a second phase to implement the organization changes. Similarly, the review of the second division could take place if the work had been included within the scope of the original contract. Click the Next button to continue.

Section Five

Post-Employment Restrictions

Restrictions When Leaving Office

If you do not stay in state government service for the remainder of your career, you need to know there are restrictions imposed on you once you begin to contemplate your departure from University service.

Various restrictions apply:

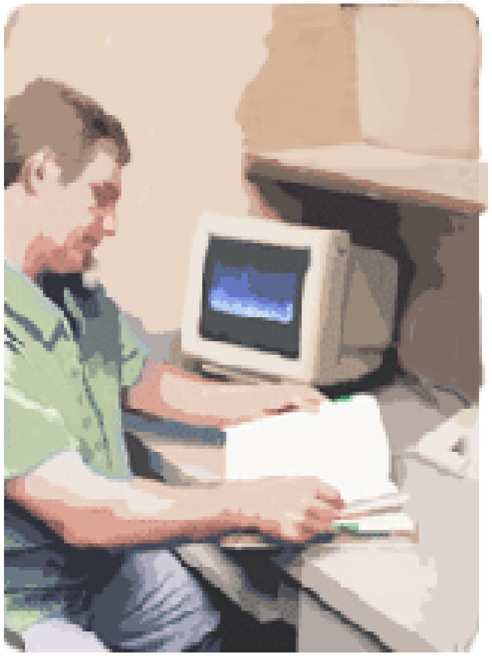
- During the time you are seeking future employment
- For a one- or two-year period after your departure from state service
- For the duration of particular proceedings or contracts

Restrictions While Seeking Employment

Prior to leaving University employment, the Political Reform Act prohibits public officials from making, participating in the making or using their official position to influence the making of government decisions directly relating to any persons with whom they are negotiating or otherwise involved in connection with prospective employment.

Scenario: Leaving Louis

Louis would like to work part time in his profession as a construction manager after he retires from the University. He has mentioned this to his contact at Baker and Baker, a local construction company that he works with frequently at the University. Management at Baker and Baker are not sure exactly where Louis will fit in, but they assure him he will have a job when he is ready. Since he is not quite ready to retire, he informs Baker and Baker that he cannot start working for six months.



Can Louis participate in decisions directly relating to Baker and Baker?

o**Yes**
o**No**

The best answer is No. Louis has accepted the job offer. He cannot participate in any decisions directly relating to Baker and Baker as this would be a conflict of interest. Click the Next button to continue.

One-Year Ban

The Political Reform Act prohibits specified officials from communicating with their former agency to influence certain decisions. 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 agency, if the appearance or communication is for the purpose of influencing any of the following:

- The making of general rules (such as regulations or legislation)
- 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.

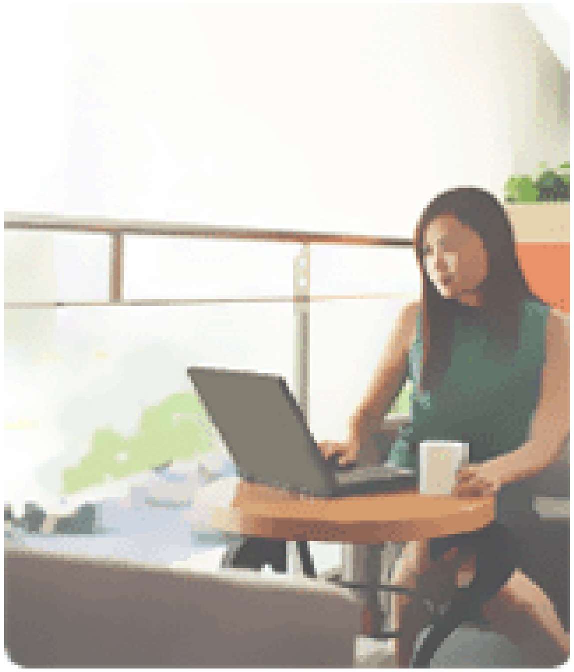
Designated officials are subject to this ban.

Scenario: Ming's Monitoring

Ming was a Business Contract Administrator at UCLA and her position was designated in the University's Conflict of Interest Code. She then left University service to become the head of a small data systems company that provides services to UCB. The contract is very important to the company and Ming will monitor its performance. The contract will expire in four years.

May she contact the University in connection with the performance of the terms of the contract?

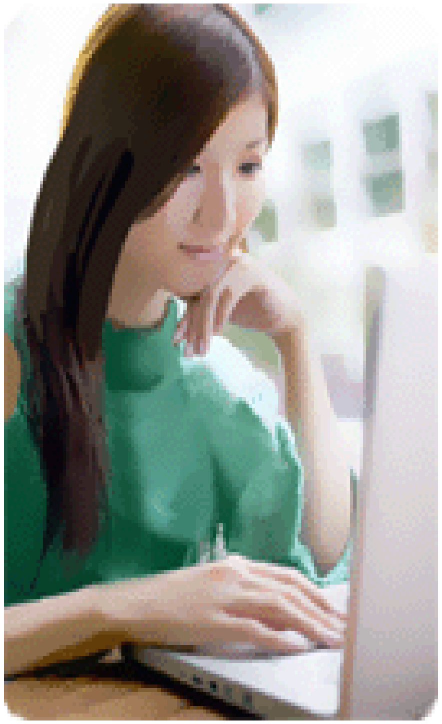
o**Yes**
o**No**



The best answer is Yes. Ming may monitor the performance of the contract because her activity does not involve the issuance, amendment, awarding or revocation of a contract. Click the Next button to continue.

Scenario: No Exceptions

In monitoring the contract, Ming realizes that certain aspects should be amended when it comes up for renewal. While that process will not formally begin for two years, she would like to contact UCB staff now to determine if amendments are appropriate.



May Ming contact the University in connection with future amendments within one year of leaving UCLA?

o **Yes**
o **No**

The best answer is No. The one-year ban is an absolute prohibition for one year with respect to amendments to a contract. Please note that these types of transactions may also raise issues under the California Public Contract Code. Click the Next button to continue.

Permanent Ban for Specified Proceedings or Contracts

The prohibition contained in the Political Reform Act provides that:

- No former public official
- Shall for compensation 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
- If previously the official personally and substantially participated in the proceeding in his or her official capacity.

If the elements of the prohibition are found to be present, a former state administrative official is forever banned from acting as an agent or attorney in a covered proceeding or from assisting another to so act.

Scenario: Judicious Jacqueline

Jacqueline was an attorney in the University's Office of the General Counsel. She left her position to become a partner in a law firm. The next month, her firm asks her to represent a University employee who is being terminated from the University for serious policy violations. Jacqueline would be representing the employee during the employee's grievance hearing in front of an administrative hearing body. Jacqueline had no involvement with the case when she worked at the University.

May she represent this client?

o**Yes**

o**No**

The best answer is Yes. The one-year ban applies to rule making and specified administrative actions such as the making of a contract. It does not restrict Jacqueline's ability to represent clients in enforcement actions and other quasi-judicial proceedings at her former agency. University personnel grievance processes are considered to be "quasi-judicial." The permanent ban on "switching sides" will not restrict her under these facts because she did not work on the case while at the University. Click the Next button to continue.

Prohibitions Regarding Former Employees

The Public Contract Code prohibits former University employees from contracting with the University in two ways:

- No retired, dismissed, separated or formerly employed University employee may enter into a contract with the University if he or she participated in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process for the contract while employed in any capacity by the University for two years from the date the person left the University.

- No former University officer or employee may enter into a contract with his or her former department, for 12 months after leaving the University, if the employee held a policy-making position with the department in the same general subject matter as the proposed contract.

Note: The provisions do not prohibit the rehire or reappointment of University employees after retirement, consistent with University administrative policies.

Scenario: Ready to Retire

A Vice Chancellor is about to retire. The University wants him to stay and help with the transition as his replacement takes over. For various reasons, the Vice Chancellor does not want to continue his employee status and discusses with the University the possibility of entering into a contract after he retires.

Can the Vice Chancellor be hired through a contract?

o**Yes**
o**No**

The best answer is No. The Vice Chancellor may be rehired as an employee, but he may not be hired through a contract. A retired or separated University employee cannot enter into a contract which he participated in making while he was employed by the University.

In contrast, if the Vice Chancellor did not engage in any negotiations or preparations surrounding the contract while he was still a University employee, he is eligible to be brought back either as an employee or as a contractor performing work similar to an employee. Click the Next button to continue.

Section Seven

Misuse of Public Funds

Misuse of Public Funds

Public funds must be used for **authorized public purposes**. Misuse of public funds occurs when public funds are used for personal purposes or for partisan political purposes.

The term "public funds" is not limited to money, but includes **anything of value belonging to a public agency** such as equipment, supplies, compensated staff time and use of telephones, computers and fax machines.

Violations of the laws prohibiting misuse of public funds may subject the violator to criminal and civil sanctions. These penalties may include fines, imprisonment for up to four years, and a ban on holding office.

Misuse for Personal Purposes

A misuse of public funds occurs when the personal benefit conferred by use of public funds is not merely incidental. The following cases demonstrate a misuse of funds for personal purposes:

- In *People v. Harby*, a city official used a city car, entrusted to him for use in connection with official business, to take a pleasure trip from Los Angeles to Great Falls, Montana and back.

- In *People v. Dillon*, a city commissioner used official government discounts to purchase items for himself and others. This was a misuse of public funds, even though those receiving the discount paid for the items with personal funds.

- In *People v. Battin*, a county supervisor used his county compensated staff to work on his political campaign for Lieutenant Governor.

- In *People v. Sperl*, a county marshal furnished a deputy marshal and county vehicle to transport a political candidate, his staff and family.

The prohibition against using public funds for personal purposes does not mean that *no* personal benefit may result from an expenditure of public funds. For example, while the payment of a public employee's salary confers a personal benefit on the employee, it is an appropriate use of public funds because it is procuring the services of the employee for public purposes.

Scenario: Carl's Car

Carl, a University Transportation employee, would like to bring his own car into the campus garage on a weekend to change the oil. He would purchase the oil himself so he really would only be using a few tools and the garage for a brief time during off-hours. Carl needs to maintain his car carefully because he uses it to commute to and from work.

May Carl use the campus garage to change the oil in his car?

- **A. Yes**
- **B. Yes, but only if his supervisor authorizes it**
- **C. No**

The best answer is No. Carl may not use the garage on the weekends because this constitutes a misuse of public funds for his private purposes, and his supervisor should not authorize him to do so. University buildings, laboratories and facilities are "public funds" that may not be used for personal use, regardless of whether it is during working or non-working hours. Click the Next button to continue.

Misuse for Election Campaigns or Ballot Measures

Another type of misuse of public funds is to use public funds to advocate a partisan position in an election campaign.

In *Stanson v. Mott*, a private citizen sued the Director of the California Department of Parks and Recreation, challenging the Director's expenditure of Department funds to support passage of a bond act appearing on a statewide ballot. The California Supreme Court unanimously found that the Director had acted unlawfully, concluding that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign."

The Court further wrote:

> A fundamental precept of this nation's democratic electoral process is that the government may not 'take sides' in election contests or bestow an unfair advantage on one of several competing factions. A principal danger feared by our country's founders lay in the possibility that the holders of governmental authority would use official power improperly to perpetuate themselves, or their allies, in office...; the selective use of public funds in election campaigns, of course, raises the specter of just such an improper distortion of the democratic electoral process.

In a similar situation, Sacramento County paid a $10,000 fine to the FPPC in connection with a utility bill insert explaining the effect on the County of several ballot measures. The Commission ruled that the insert advocated a position on the ballot measures and was not a neutral and fair presentation of the facts.

Endorsements and Informational Materials

The prohibition on misuse of public funds for partisan purposes in election campaigns does not mean government agencies such as the University can *never* advocate a position or endorse a measure. In Stanson v. Mott, the California Supreme Court found that "it would be contrary to the public interest to bar knowledgeable public agencies from disclosing relevant information to the public, so long as such disclosure is full and impartial and does not amount to improper campaign activity."

Examples of acceptable activities include:

- A government agency may endorse a measure which is related to its expertise so long as it does not expend funds to promote its passage.
- A government agency may draft legislation or a ballot measure related to its expertise, but may not promote the passage of the measure in an election campaign.
- The University can disseminate information relating to its activities, and it may spend funds to provide the public with a fair presentation of relevant information which considers all important points and provides equal treatment to both sides of the issue.

Scenario: Exhausted Evelyn

Evelyn's boss is running for a vacant city council position. She has just completed a long day and she wishes to make a few telephone calls before she leaves her campus office to invite potential contributors to a campaign fundraising dinner.

Since the people she will be calling frequently have dealings with the campus on a variety of issues, may she charge these calls to the University?

- **Yes**
- **No**

The best answer is No. Evelyn may not charge these calls because they are for personal political purposes rather than for a public purpose. Click the Next button to continue.

Section Seven

Additional Resources

Conflict of Interest Resources

When conflict-of-interest situations arise, you should always consult with your local Conflict of Interest Coordinator. You may also want to review the UC Conflict of Interest Code as well as informational materials provided by the Fair Political Practices Commission.

UC Conflict of Interest Coordinators

University of California Office of the General Counsel

UC Conflict of Interest Code

Conflict of Interest Policy and Compendium of Specialized University Policies Guidelines, and Regulations (180k PDF)

Fair Political Practices Commission

Political Reform Act of 1974 (513k PDF)

Regulations of the Fair Political Practices Commission

Materiality Standards **(sections 18705 – 18705.5)**

"Public Generally" Exception **(sections 18707.7 -18707.10)**

Can I Vote? A Basic Overview of Public Officials' Obligations under the Political Reform Act's Conflict-of-Interest Rules (265k PDF)

Limitations and Restrictions on Gifts, Honoraria, Travel and Loans (56k PDF)

Travel Guide for California Officials and Candidates

Leaving Your State Job? Post-Employment Restrictions May Affect You

Disclosure Categories

Congratulations

You've completed the **Conflict of Interest for Designated Officials** briefing. We hope you now have a clearer understanding of the conflict-of-interest laws and their application in order to be aware of potential conflict-of-interest situations. Although no single course can adequately address all potential dilemmas you might face, we hope that the information provided in this briefing will better equip you to make the right decisions and to act in a responsible, legal and ethical manner.

To record your completion of this course, click the Next button above, then click OK in the pop-up window.

If you do not complete this step, you will not receive credit for completing this course.
You will receive an email confirmation immediately after completing the course.