

D. QUICK REFERENCE GUIDE: CONFLICT OF INTEREST LAWS

In many instances, only a trustee is in a position to identify his or her potential conflicts of interest. Trustees with an investment background need to be particularly alert to conflicts of interest, because they may have business or financial relationships with persons or entities who may seek to do business with the Board.

All trustees are encouraged to review this quick reference guide and to seek clarification from Fiduciary Counsel, as necessary. Additionally, all trustees with an investment background are encouraged to share this quick reference guide with their employer's legal department, which can then help them identify potential conflicts of interest under California law.

PRIMARY CONFLICT OF INTEREST LAWS

Government Code section 7508.5. This provides for a two-year period after leaving your position as trustee before you may attempt seek business or represent others seeking to do business with the Board.

Government Code section 7513.8 et seq. This relates to "placement agents" for retirement fund investments.

Government Code section 7513.95. "A member or employee of the board shall not, directly or indirectly, by himself or herself, or as an agent, partner, or employee of a person or entity other than the board, sell or provide any investment product that would be considered an asset of the fund to any public retirement system in California."

Government Code section 1090 et seq. Section 1090 establishes the general prohibition against a public entity entering into contracts if any of the entity's Board members has a personal financial interest in that contract. The general prohibition prevents the Board from entering into the contract at all. The sections that follow section 1090 then set forth numerous exceptions to that general rule. Under some exceptions, the Board can enter into the contract, but only if the conflicted trustee discloses the interest, recuses himself or herself and plays no role in influencing the rest of the Board. Under other exceptions, the conflicted trustee may participate in the decision-making process if certain specified conditions are met (such as public disclosure of the interest).

Government Code section 81000 et seq. This is California's most comprehensive set of conflict of interest laws. It is referred to as the "Political Reform Act." It applies more broadly than Government Code section 1090 et seq., because its application is not limited to contracts. The rules under the Political Reform Act are similar to Government Code section 1090 et seq., but not identical. The "Conflict of Interest" provisions of the Political Reform Act are found in Government Code section 87100 et seq. Another important Chapter in the Political Reform Act

is the “Ethics in Government Act of 1990” (Gov’t Code section 89500 et seq.), which relates to receipt of honoraria, gifts, travel, etc.

California Code of Regulations, title 2, sections 18700 et seq. Regulations promulgated by the Fair Political Practices Commission that give more specific guidance for complying with conflict of interest provisions in the Political Reform Act.

California Code of Regulations, title 2, sections 18930 et seq. Regulations promulgated by the Fair Political Practices Commission that give more specific guidance for complying with Ethics in Government Act of 1990 provisions in the Political Reform Act (honoraria, gifts, travel, etc.).

Title 12 of the City of San Jose Municipal Code (12.02.010 et seq.). These are entitled “Ethics and Open Government Provisions” of the Municipal Code. Many of these provisions are similar to the state-wide laws referenced above, but in some instances they are more restrictive.

SEC Regulation 206(4)-5 (17 CFR 275.206(4)-5). Generally prohibits investment advisors from “provid[ing] investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser” and also prohibits them from making certain payments and political contributions.

PRACTICAL GUIDELINES

1. Whenever there is a concern about a potential conflict of interest, disclosure and recusal is the best policy.
2. Do not accept gifts from any person or entity that does business with the Board, or that you have reason to believe might do business with the Board, or might have a decision pending before the Board at some point.
3. The Fair Political Practices Commission has a website with materials regarding conflicts of interest at: <http://www.fppc.ca.gov/>. It also has a hotline that public officials can call for advice. That number is 1-866-275-3772.
4. The Attorney General has issued a publication that provides guidance regarding conflicts of interest as well. It can be found at <https://oag.ca.gov/conflict-interest>. The most relevant laws to for Federated Board Trustees are listed above, but the Attorney General guide outlines some other laws that could potentially apply as well. The guide is a bit out of date (2010), but most of its discussion is still valid.