



STATE OF CALIFORNIA  
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**To:** Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne

**From:** John W. Wallace, Assistant General Counsel  
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**Subject:** Conflict of Interest Regulation Reorganization  
Regulations 18700 et seq. through 18709

**Date:** February 6, 2015

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This item presents non-substantive amendments to the Political Reform Act's (the "Act") conflict of interest regulations to implement the reorganization plan previously approved by the Commission. The proposed regulations reduce the current conflict of interest analysis from an eight-step process to a four-step process as outlined in new Regulation 18700.

To date, the Commission has adopted new regulations for Step One (reasonable foreseeable) and Step Two (materiality). After the reorganization plan is adopted, staff will propose substantive revisions for Step Three (public generally) and Step Four (making, participating in the making, or using official position to influence a decision). After all four steps are complete, a comprehensive review will be done to fine-tune language and address any unresolved issues.

### **Conflict of Interest Project – Delayed Implementation of New Regulations**

In August 2012, the Commission adopted a new regulation as to what is "reasonably foreseeable" in determining if there is a material financial effect from a governmental decision. However, at staff's request, implementation of the new regulation was postponed pending adoption of corresponding amendments.

At the April 2013 Commission hearing, staff proposed a reorganization plan for the conflict of interest regulations, including reducing the conflicts analysis from an 8-step to a four-step process. Under the new process, to determine if a conflict of interest exists from the financial effects of a governmental decision, the official would follow this process:

Step 1: Is the financial effect "reasonably foreseeable?"

Step 2: Is it "material?"

Step 3: Is the effect on the official the same as on the "public generally?"

Step 4: When is the official "making, participating in the making, or using his or her position to influence" the governmental decision from which the financial effects result?

The Commission adopted the proposed structural changes, again withholding implementation of the new regulation pending further progress on amendments to the remaining regulations. With the recent completion of the materiality amendments, we have reached a stage at which the new process should be implemented.

This agenda item is limited to the reorganization of the regulations. No substantive amendments are being proposed at this point. After the reorganization is adopted, staff will continue the revisions to the conflict of interest analysis. The remainder of this memorandum simply provides a map for the conversion process. Below is an index of how the regulations will be renumbered and renamed:

### **Index of Regulations as Reorganized and Renamed**

18700	Basic Rule and Guide to Conflict of Interest Regulations
18700.1	Definitions: Source of Income, Commission Income and Incentive Income
18700.2	Parent, Subsidiary, or Otherwise Related Business Entity Defined
18701.	Determining Whether a Financial Effect is Reasonably Foreseeable
18701.1	Real Estate or Professional License
18702	Materiality Standards
18702.1	Materiality Standard: Financial Interest in Business Entities
18702.2	Materiality Standard: Financial Interest in Real Property
18702.3	Materiality Standard: Financial Interest in a Source of Income
18702.4	Materiality Standard: Financial Interest in Source of Gift
18702.5	Materiality Standard: Financial Interest in a Personal Financial Effect
18703 <sup>1</sup>	Public Generally
18704	Making, Participating in Making, or Using or Attempting to Use Official Position to Influence a Government Decision, Defined
18704.1	Determining When a Public Official is Making a Governmental Decision
18704.2	Determining When a Public Official is Participating in Making a Governmental Decision
18704.3	Determining When a Public Official is Using or Attempting to Use His/Her Official Position to Influence a Governmental Decision
18704.4	Exceptions
18704.5	Public Identification of a Conflict of Interest for Section 87200 Filers
18704.6	Consultant, Public Official Who Manages Public Investments: Definitions
18705	Legally Required Participation
18706	Segmentation

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<sup>1</sup> The renumber of Regulation 18703 and substantive revision to the Public Generally exception will be proposed at the March 2015 Commission Meeting. Existing Regulations 18705.1 – 18705.10 and 18703.2, 18703.3, 18703.4 and 18703.5 (or any remaining parts thereof) will be repealed at the March 2015.

## Summary of Reorganization and Minor Amendments

Regulation 18700: The new regulation serves as the overview for the conflict of interest provisions and provides the guide to the new process. There are a few minor edits, as indicated, and two that are significant enough to warrant mentioning.

First, in paragraph (c)(3), on page 2, staff proposes temporarily deleting the words “or any entity or organization acting as a government agency as determined under Regulation 18700.1.” At the time this language was drafted, we had intended to codify the so-called “Siegel test.” (*In re Siegel* (1977) 3 FPPC Ops. 62.) In that opinion, the Commission provided guidance as to when an entity or organization, such as a nonprofit, was acting in a public capacity so as to be considered a public agency and thereby subjecting its members to the Act’s conflict of interest provisions. At present, we have not completed this endeavor. Accordingly, the language is modified to reflect the fact that there is no regulation as yet defining this determination. We expect this to be done at the final stage of the project, after the completion of Steps Three and Four. In the meantime, portions of the source of income language moved from Regulation 18703.3 will now fill that spot (see below), and language defining a public agency will be given a sequential number when it is proposed.

The second change comes with the addition of “including commission income and incentive income as defined in Regulation 18700.1” in subparagraph (c)(6)(C) on page 3. The language now comprising Regulation 18700.1 has been copied in its current form from Regulation 18703.3 (c) and (d)(see below), and that fact is now reflected in subparagraph (c)(6)(C) with the new regulation reference.

Regulation 18700.1: This regulation is renumbered from Regulation 18703.3, which adds certain provisions to the Act’s definition of income. Minor edits were made. Paragraph (a)(2) was eliminated because it is already covered by the recent changes (July 17, 2014) made by the Commission, reflected by the elimination of Regulation 18703.1 and the creation of Regulation 18700.3 defining “parents subsidiaries, or otherwise related business entities.”

Regulation 18700.2: The language in this regulation (adopted as current Regulation 18700.3 at the July 2013 Commission meeting) moves up one spot and requires renumbering only.

Regulation 18701: Current Regulation 18701 provides the definition of “public official” under paragraph (a)(1). Those provisions have been moved to the new Regulation 18700. The remaining definitional provision of the current regulation, addressing “consultant” under paragraph (a)(2) and “public investments” under subdivision (b), have been copied and temporarily moved to a new numbered Regulation 18704.6 to be considered at the final stage of the project.

The new Regulation 18701 initiates the conflict of interest analysis with Step One--Will There be a *Reasonably Foreseeable* Financial Effect from the Governmental Decision on the Public Official’s Financial Interest? The language is copied directly from current Regulation 18706, approved by the Commission at the September 13, 2012 hearing. Minor edits have been made to conform to the current terminology. Step Six now becomes Step One.

Regulation 18701.1: Renumbered directly from Regulation 18706.1, this regulation is a trailer to the primary regulation addressing what is reasonably foreseeable. It provides a separate clarification specifically for business activities operated under professional licenses.

Regulation 18702 et seq.: All of the provisions of current Regulations 18702 through 18702.5 have been copied and moved to Regulations 18704 through 18704.5 without any substantive changes. These regulations address when a public official makes, participates in the making, or uses his or her official position to influence a decision. These regulations become Step Four in the analysis and will be the last set subject to revision under this project.

Moving into the spot left by this relocation are the recently revised regulations establishing the new materiality standards (former Regulations 18705, 18705.1, 18705.2, 18705.3, 18705.4, and 18705.5.) “Materiality” is now addressed in Regulations 18702, 18702.1, 18702.2, 18702.3, 18702.4, and 18702.5, as Step Two in the process.

Regulation 18703 et seq.: Current Regulations 18703 will ultimately house the revised public generally exception. The renumbering, substantive changes and necessary repeals will be at the March Commission meeting, when staff will propose new language that will create one all inclusive public generally regulation under Regulation 18703. As of this meeting the original provisions remain in place.

Regulations 18704 et seq.: There are currently no regulations remaining under this section, as they all have been repealed as part of the elimination of the Step Four “directly involved/indirectly involved” process. As explained above, this section will be replaced with the current Regulations 18702 through 18702.5 that have been renumbered under the new Regulation 18704 sequence. In addition, Regulation 18704.6 has been added with the language removed from current Regulation 18701, as explained above. Accordingly, “Making, Participating in the Making, or Using Your Official Position to Influence a Decision” now becomes Step Four in the process.

Regulations 18705 and 18706: Finally, the repositioning of the current language contained in these two regulations and Regulation 18707 creates some open spots. In order to keep the numbers sequential, that there no be a gap in the numbering of the “Chapter 7, Article 1 Conflicts of Interest; General Prohibition” regulations, we have moved language in the final two existing regulations, Regulation 18708 (Legally Required Participation) and Regulation 18709 (Segmentation), which now become Regulations 18705 and 18706, respectively.

## **Conclusion and Recommendation**

Staff submits the attached non-substantive regulatory amendments to inform the Commission of the implementation of the previously approved regulatory amendments and the reorganization of the Act’s conflict of interest regulations.

**Attachments:**

**Regulation 18700**

**Regulation 18700.1:** Renumbered from Regulation 18703.3

**Regulation 18700.2:** Renumbered from Regulation 18700.3

**Regulation 18701:**(a)(1) moved to Regulation 18700; (a)(2)(b) renumbered to Regulation 18704.6 new language moved in from Regulation 18706

**Regulation 18701.1** Renumbered from Regulation 18706.1

**Regulation 18702:** current language moved to 18704, new language moved from Regulation 18705

**Regulation 18702.1:** current language moved to 18704.1 new language moved from Regulation 18705.1

**Regulation 18702.2:** current language moved to 18704.2 new language moved from Regulation 18705.2

**Regulation 18702.3:** current language moved to 18704.3 new language moved from Regulation 18705.3

**Regulation 18702.4:** current language moved to 18704.4 new language moved from Regulation 18705.4

**Regulation 18702.5:** current language moved to 18704.5 new language moved from Regulation 18705.5

**Regulation 18703:** current language proposed to be repealed in March, 2015, new language proposed to be moved in from Regulation 18707 et seq.

**Regulation 18704:** Renumbered from Regulation 18702

**Regulation 18704.1:** Renumbered from Regulation 18702.1

**Regulation 18704.2:** Renumbered from Regulation 18702.2

**Regulation 18704.3:** Renumbered from Regulation 18702.3

**Regulation 18704.4:** Renumbered from Regulation 18702.4

**Regulation 18704.5:** Renumbered from Regulation 18702.5

**Regulation 18704.6:** Renumbered from Regulation 18702.6

**Regulation 18705:** Renumbered from Regulation 18708

**Regulation 18706:** Renumbered from Regulation 18709