

1 **§ 18700.1.[Renumbered from Regulation 18703.3] Definitions: Source of Income,**  
2 **Commission Income and Incentive Income.**

3 (a)(1) For purposes of disqualification under Sections 87100 and 87103, a public official  
4 has a financial interest in any person from whom he or she has received income, including  
5 commission income and incentive compensation, aggregating \$500 or more within 12 months  
6 prior to the time when the relevant governmental decision is made. A public official's income  
7 includes income that has been promised to the public official but not yet received by him or her,  
8 if he or she has a legally enforceable right to the promised income.

9 (2) In addition to having a financial interest in any business entity from which the official  
10 has received income of \$500 or more within 12 months before the relevant governmental  
11 decision is made, the official has a source-of-income financial interest in all of the following:

12 (A) Any individual owning a 50 percent or greater interest in that business entity.

13 (B) Any individual, regardless of the extent of the individual's ownership interest in that  
14 entity, who has the power to direct or cause the direction of the management and policies of the  
15 business entity.

16 (b) Former employers. Source of income, as used in Section 87103(c) and this section,  
17 does not include a former employer if: All income from the employer was received by or  
18 accrued to the public official before he or she became a public official; the income was received  
19 in the normal course of the previous employment; and there was no expectation by the public  
20 official at the time he or she assumed office of renewed employment with the former employer.

21 (c) Sources of Commission Income to Brokers, Agents and Salespersons.

22 (1) "Commission income" means gross payments received by a public official as a result  
23 of services rendered as a broker, agent, or other salesperson for a specific sale or similar  
24 transaction. Commission income is received when it is paid or credited.

25 (2) The sources of commission income in a specific sale or similar transaction include for  
26 each of the following:

27 (A) An insurance broker or agent:

28 (i) The insurance company providing the policy;

1 (ii) The person purchasing the policy; and  
2 (iii) The brokerage firm, agency, company, or other business entity through which the  
3 broker or agent conducts business.

4 (B) A real estate broker:

5 (i) The person the broker represents in the transaction;

6 (ii) If the broker receives a commission from a transaction conducted by an agent  
7 working under the broker's auspices, the person represented by the agent;

8 (iii) Any brokerage business entity through which the broker conducts business; and

9 (iv) Any person who receives a finder's or other referral fee for referring a party to the  
10 transaction to the broker, or who makes a referral pursuant to a contract with the broker.

11 (C) A real estate agent:

12 (i) The broker and brokerage business entity under whose auspices the agent works;

13 (ii) The person the agent represents in the transaction; and

14 (iii) Any person who receives a finder's or other referral fee for referring a party to the  
15 transaction to the broker, or who makes a referral pursuant to a contract with the broker.

16 (D) A travel agent or salesperson:

17 (i) The airline, hotel, tour operator or other person who provided travel services or  
18 accommodations in the transaction;

19 (ii) The person who purchases or has a contract for travel services or accommodations  
20 through the agent or salesperson; and

21 (iii) The person, travel agent, company, travel agency or other business entity for which  
22 the agent or salesperson is an agent.

23 (E) A stockbroker:

24 (i) The brokerage business entity through which the broker conducts business; and

25 (ii) The person who trades the stocks, bonds, securities or other investments through the  
26 stockbroker.

27 (F) A retail or wholesale salesperson:

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1 (i) The person, store or other business entity ~~which~~ that provides the salesperson with the  
2 product or service to sell and for which the salesperson acts as a representative in the transaction;  
3 and

4 (ii) The person who purchases the product or service.

5 (3) For purposes of determining whether disqualification is required under the provisions  
6 of Sections 87100 and 87103(c), the full gross value of any commission income for a specific  
7 sale or similar transaction shall be attributed to each source of income in that sale or transaction.

8 (d) Sources of Incentive Compensation. "Incentive compensation" means income  
9 received by an official who is an employee, over and above salary, which is either ongoing or  
10 cumulative, or both, as sales or purchases of goods or services accumulate. Incentive  
11 compensation is calculated by a predetermined formula set by the official's employer ~~which~~ that  
12 correlates to the conduct of the purchaser in direct response to the effort of the official. Incentive  
13 compensation does not include: salary; commission income; bonuses for activity not related to  
14 sales or marketing, the amount of which is based solely on merit or hours worked over and above  
15 a predetermined minimum; and such executive incentive plans as may be based on company  
16 performance, provided that the formula for determining the amount of the executive's incentive  
17 income does not include a correlation between that amount and increased profits derived from  
18 increased business with specific and identifiable clients or customers of the company. Incentive  
19 compensation also does not include payments for personal services ~~which~~ that are not marketing  
20 or sales.

21 The purchaser is a source of income to the official if all three of the following apply:

22 (1) The official's employment responsibilities include directing sales or marketing  
23 activity toward the purchaser; and

24 (2) There is direct personal contact between the official and the purchaser intended by the  
25 official to generate sales or business; and

26 (3) There is a direct relationship between the purchasing activity of the purchaser and the  
27 amount of the incentive compensation received by the official. Comment: For further discussion  
28 of incentive compensation, see Peninsula Health Care District v. Fair Political Practices

1 Commission, Sacramento County Superior Court, Case No. 02CS01766, and In re Hanko, O-02-  
2 088 (August 9, 2002).

3 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5,  
4 87102.6, 87102.8 and 87103, Government Code.

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