

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

**§ 18700.1. Definitions: Source of Income, Commission Income and Incentive Income.**

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

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

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

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

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

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

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

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

(A) An insurance broker or agent:

(i) The insurance company providing the policy;

(ii) The person purchasing the policy; and

(iii) The brokerage firm, agency, company, or other business entity through which the broker or agent conducts business.

(B) A real estate broker:

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

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

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

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

(C) A real estate agent:

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

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

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

(D) A travel agent or salesperson:

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

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

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

(E) A stockbroker:

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

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

(F) A retail or wholesale salesperson:

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

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

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

(d) Sources of Incentive Compensation. "Incentive compensation" means income received by an official who is an employee, over and above salary, which is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official's employer that correlates to the conduct of the purchaser in direct response to the effort of the official. Incentive

compensation does not include: salary; commission income; bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum; and such executive incentive plans as may be based on company performance, provided that the formula for determining the amount of the executive's incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company. Incentive compensation also does not include payments for personal services that are not marketing or sales.

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

- (1) The official's employment responsibilities include directing sales or marketing activity toward the purchaser; and
- (2) There is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and
- (3) There is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.

COMMENT: For further discussion of incentive compensation, see *Peninsula Health Care District v. Fair Political Practices Commission*, Sacramento County Superior Court, Case No. 02CS01766, and *In re Hanko*, O-02-088 (August 9, 2002).

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

## **HISTORY**

1. Change without regulatory effect renumbering former section 18703.3 to section 18700.1, including amendment of section heading and section, filed 4-27-2015. Submitted to OAL for

filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 18). For prior history of section 18700.1, see Register 2000, No. 25.

2. Amendment of subsection (c)(2)(F)(i) filed 7-10-2015; operative 7-10-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 28).

3. Amendment of subsections (a)(1) and (b) filed 5-12-2021; operative 6-11-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 20).