

APPENDIX

The instructions located on the back of each schedule describe the types of interests that must be reported. The purpose of this Appendix is to explain other terms used in this form that are not defined in the instructions to the schedules or elsewhere.

Assuming Office Date: Your assuming office date is the date you were sworn in, employed, or otherwise authorized to serve in the position.

Blind Trust: See Trusts, Appendix-6.

Business Entity: Any organization or enterprise operated for profit, including a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association. This would include a business for which you take business deductions for tax purposes, such as a small business operated in your home.

Code Filer: An individual who has been designated in a state or local agency's conflict of interest code to file statements of economic interests.

Commission Income: "Commission income" means gross payments received as a broker, agent, or salesperson, including insurance brokers or agents, real estate brokers or agents, travel agents or salespersons, stockbrokers, and retail or wholesale salespersons, among others.

You may be required to disclose the names of sources of commission income if your pro rata share of the gross income was \$10,000 or more from a single source during the reporting period. If your spouse received commission income, you would disclose your community property share (50%) of that income, i.e., the names of sources of \$20,000 in gross commission income received by your spouse.

Report commission income as follows:

- If the income was received through a business entity in which you or your spouse had a 10% or greater ownership interest (or you were an independent contractor or agent), use Schedule A-2.
- If the income was received through a business entity in which you or your spouse had no ownership interest or less than a 10% ownership interest, use Schedule C.

The "source" of commission income generally includes all parties to a transaction, and each is attributed the full value of the commission.

For example, you are a partner in Smith and Jones Insurance Company and have a 50% ownership interest in the company. You sold two Businessmen's Insurance Company policies to XYZ Company during the reporting period. You received commission income of \$5,000 from the first transaction and \$6,000 from the second. On Schedule A-2, report your partnership interest in and income received from Smith and Jones Insurance Company in Parts 1 and 2. In Part 3, list both Businessmen's Insurance Company and XYZ Company as sources of \$10,000 or more in commission income.

Note: If your pro rata share of commission income from a single source is \$250 or more, you may be required to disqualify yourself from decisions affecting that source of income, even though you are not required to report it.

Conflict of Interest: A public official or employee has a conflict of interest under the Act when all of the following occur:

- The official makes, participates in making, or uses his or her official position to influence a governmental decision;
- It is reasonably foreseeable that the decision will affect the official's economic interest;
- The effect of the decision on the official's economic interest will be material; and
- The effect of the decision on the official's economic interest will be different than its effect on the public generally.

Conflict of Interest Code: The Act requires every state and local government agency to adopt a conflict of interest code. The code may be contained in a regulation, policy statement, or a city or county ordinance.

An agency's conflict of interest code must designate all officials and employees of, and consultants to, the agency who make or participate in making governmental decisions which could cause conflicts

of interest. These individuals are required by the code to file statements of economic interests and to disqualify themselves when conflicts of interest occur.

The disclosure required under a conflict of interest code for a particular designated official or employee should include only the kinds of personal economic interests he or she could significantly affect through the exercise of his or her official duties. For example, an employee whose duties are limited to reviewing contracts for supplies, equipment, materials, or services provided to the agency should be required to report only those interests he or she holds which are likely to be affected by the agency's contracts for supplies, equipment, materials, or services.

Consultant: An individual who contracts with or whose employer contracts with state or local government agencies and who makes or participates in making governmental decisions. Consultants may be required to file Form 700. The obligation to file Form 700 is always imposed on the individual who is providing services to the agency, not on the business or firm which employs the individual. (Obtain the consultant fact sheet from the FPPC for more information.)

Designated Employee: An official or employee of a state or local government agency whose position has been designated in the agency's conflict of interest code to file statements of economic interests. Individuals who contract with government agencies (consultants) may also be designated in a conflict of interest code.

Disclosure Category: The section of an agency's conflict of interest code that specifies the types of personal economic interests officials and employees of the agency must disclose on their statements of economic interests. Disclosure categories are usually contained in an appendix or attachment to the conflict of interest code. Contact your agency to get a copy of your disclosure category.

Diversified Mutual Fund: Diversified portfolios of stocks, bonds, or money market instruments that are managed by investment companies whose business is pooling the money of many individuals and investing it to seek a common investment goal. Mutual funds are managed by trained professionals who buy and sell securities. A typical mutual fund

will own between 75 to 100 separate securities at any given time so they also provide instant diversification. *Only diversified mutual funds registered with the Securities and Exchange Commission are exempt from disclosure.*

Elected State Officer: Elected state officers include the Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, State Controller, Secretary of State, State Treasurer, Superintendent of Public Instruction, member of the State Legislature, and member of the State Board of Equalization.

Enforcement: The FPPC investigates suspected violations of the Act. Other law enforcement agencies (the Attorney General or district attorney) may also initiate investigations under certain circumstances. If violations are found, the Commission may initiate administrative enforcement proceedings which could result in the imposition of monetary penalties of up to \$2,000 per violation.

Instead of administrative prosecution, a civil action may be brought for negligent or intentional violations by the appropriate civil prosecutor (the Commission, Attorney General, or district attorney), or a private party residing within the jurisdiction. In civil actions, the measure of damages is up to the amount or value not properly reported.

Persons who violate the conflict of interest disclosure provisions of the Act can also be subject to discipline by their agency, including dismissal.

Finally, a knowing or willful violation of any provision of the Act is a misdemeanor. Persons convicted of a misdemeanor may be disqualified for four years from the date of the conviction from serving as a lobbyist or running for elective office, in addition to other penalties which may be imposed. The Act also provides for numerous civil penalties, including monetary penalties and damages, and injunctive relief from the courts.

Expanded Statement: Some officials or employees may have multiple filing obligations (e.g., a city councilperson who also holds a designated position with a county agency, board, or commission). Such officials or employees may complete one "expanded" statement covering the disclosure requirements for all positions and file a complete, originally signed copy with each agency.

Fair Market Value: When reporting the value of an investment, interest in real property, or gift, you must disclose the fair market value, i.e., what the item would sell for on the open market. This is particularly important when valuing gifts, because the fair market value of a gift may be different from the amount it cost the donor to provide the gift. For example, the wholesale cost of a bouquet of flowers may be \$10, but the fair market value may be \$25 or more. In addition, there are special rules for valuing free tickets and passes. Call the FPPC for assistance.

Gift and Honoraria Prohibitions:

Gifts:

State and local officials who are listed in Gov. Code section 87200, (except judges, see below), candidates for those elective offices (including judicial candidates), and officials and employees of state and local government agencies who are designated in a conflict of interest code are prohibited from accepting a gift or gifts aggregating more than \$300 in a calendar year from a single source.

In addition, elected state officers, candidates for elective state offices, and officials and employees of state agencies are subject to a \$10 per calendar month limit on gifts from lobbyists and lobbying firms registered with the Secretary of State.

Honoraria:

State and local officials who are listed in Gov. Code section 87200, (except judges, see below), candidates for those elective offices (including judicial candidates), and employees of state and local government agencies who are designated in a conflict of interest code are prohibited from accepting honoraria for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

Exceptions:

- Some gifts are not reportable or subject to the gift and honoraria prohibitions, and other gifts may not be subject to the prohibitions but are reportable. For detailed information, see the FPPC Fact Sheet on Gifts, Honoraria, Travel, and Loans (1/2000). The fact sheet can be obtained from your filing officer or the Fair Political Practices Commission at (916) 322-5660.

- The \$300 gift limit and honorarium prohibition do not apply to a part-time member of the governing board of a public institution of higher education, unless the member is also an elected official.
- If you are designated in a state or local government agency's conflict of interest code, the \$300 gift limit and honorarium prohibition are applicable only to sources you would be required to report on your statement of economic interests. However, this exception is not applicable if you also hold a position listed in Gov. Code section 87200 (see Instructions-2).
- For state agency officials and employees, the \$10 lobbyist/lobbying firm gift limit is applicable only to lobbyists and lobbying firms registered to lobby your agency. This exception is not applicable if you are an elected state officer or a member or employee of the State Legislature.

Judges:

Section 170.9 of the Code of Civil Procedure imposes gift limits on judges and prohibits judges from accepting any honorarium. Section 170.9 is enforced by the Commission on Judicial Performance. The FPPC has no authority to interpret or enforce the Code of Civil Procedure.

Income Reporting: Reporting income under the Act is different than reporting income for tax purposes. The Act requires gross income (the amount received before deducting losses, expenses, or taxes) to be reported.

Pro Rata Share: The instructions for reporting certain types of income (e.g., business entity income and rental income) refer to your pro rata share of the income received. Your pro rata share is normally based on your ownership interest in the entity or property. For example, if you are a sole proprietor, you must disclose 100% of the gross income received by your business entity on Schedule A-2. If you own 25% of a piece of rental property, you must report 25% of the gross rental income received.

When you are required to report sources of income to a business entity, sources of rental income, or sources of commission income, you are only required to disclose individual sources of income of \$10,000 or more. However, you may be required to **disqualify** yourself from decisions affecting sources of \$250 or more in income, even though you are not required to report it.

Jurisdiction: A public official or employee required to file statements of economic interests must disclose interests which are located in or doing business in his or her "jurisdiction." (See Instructions-5, to determine what your jurisdiction is.)

A business entity is located in or doing business in your jurisdiction if it, a parent or subsidiary, or a related business entity:

- Manufactures, distributes, sells, or purchases products or services on a regular basis in the jurisdiction;
- Has an interest in real property in the jurisdiction; or
- Has an office or sales outlet in the jurisdiction.

A business entity is also considered to be "doing business" in your jurisdiction if it, a parent or subsidiary, or a related business entity:

- Plans to do any of the above; or
- Has done any of the above within the last two years.

The same criteria are used to determine whether an individual, organization, or other entity is located in or doing business in your jurisdiction.

Exception:

- Gifts are reportable regardless of the location of the donor. For example, a state agency official with full disclosure must report gifts from sources located outside of California. (Designated employees should consult their disclosure category to determine if the donor of a gift is the type that must be disclosed.)

For reporting interests in real property, if your jurisdiction is the state, you must disclose real property located anywhere within the state of California.

For local agencies, an interest in real property is located in your jurisdiction if any part of the property is located in, or within two miles of, the region, city, county, district, or other geographical area in which the agency has jurisdiction, or if the property is located within two miles of any land owned or used by the agency.

Leasehold Interest: The term "interest in real property" includes leasehold interests. An interest in a lease on real property is reportable if the value of

the leasehold interest is \$1,000 or more. The value of the interest is the total amount of rent owed by you during the reporting period, or on a candidate, assuming office, or initial statement, during the prior 12 months.

You are not required to disclose a leasehold interest with a value of less than \$1,000 or a month-to-month tenancy.

Loans: Beginning January 1, 1998, state and local elected and appointed officials and employees are prohibited from receiving any personal loan aggregating more than \$250 from an official, employee, or consultant of their governmental agencies or any governmental agency over which the official or the official's agency has direction or control. In addition, loans of more than \$250 from any person who has a contract with the official's agency or an agency under the official's control are prohibited unless the loan is from a commercial lending institution or part of a retail installment or credit card transaction made in the regular course of business on terms available to members of the public.

State and local elected officials are also prohibited from receiving any personal loan of \$500 or more unless the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, the date, amount, and term of the loan, the date or dates when payments are due, the amount of the payments, and the interest rate on the loan.

Campaign loans and loans from family members are not subject to the \$250 and \$500 loan prohibitions.

A personal loan made to a public official that is not being repaid or is being repaid below certain amounts will become a gift to the official under certain circumstances. Contact the FPPC at (916) 322-5660 for further information.

Privileged Information: You are not required to disclose on Schedule A-2, Part 3 the name of a person who paid fees or made payments to a business entity if disclosure of the name would violate a legally recognized privilege under California law. For example, a name is protected by attorney-client privilege when facts concerning an attorney's representation of an anonymous client are publicly known and those facts, when coupled with

disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability.

A patient's name is protected by physician-patient privilege when disclosure of the patient's name would also reveal the nature of the treatment received by the patient because, for example, the physician is recognized as a specialist. FPPC Regulation 18740 sets out specific procedures that must be followed in order to withhold the name of a source of income.

Public Officials Who Manage Public

Investments: Individuals who invest public funds in revenue-producing programs must file Form 700. This includes individuals who direct or approve investment transactions, formulate or approve investment policies, and establish guidelines for asset allocations. FPPC Regulation 18701 defines "public officials who manage public investments" to include the following:

- Members of boards and commissions, including pension and retirement boards or commissions, and committees thereof, who exercise responsibility for the management of public investments;
- High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers; and
- Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions described above.

Retirement Accounts (e.g., deferred compensation and individual retirement accounts (IRAs)): Assets held in retirement accounts must be disclosed if the assets are reportable items, such as common stock (investments) or real estate (interests in real property). The most common reportable and non-reportable investments are listed on the instructions for Schedules A-1 and A-2. The most common reportable and non-reportable interests in real property are listed on the instructions for Schedule B.

If your retirement account holds reportable assets, only disclose the assets held in the account, not the account itself.

Schedule A-1: Report any business entity in which the value of your investment interest was \$1,000 or more during the reporting period. (Use Schedule A-2 if you have a 10% or greater ownership interest in the business entity.)

Schedule B: Report any piece of real property in which the value of your interest was \$1,000 or more during the reporting period.

Examples:

- Alice McSherry deposits \$500 per month into her employer's deferred compensation program. She has chosen to purchase shares in two diversified mutual funds registered with the Securities and Exchange Commission. Because her funds are invested solely in non-reportable mutual funds (see Schedule A instructions), Alice has no disclosure requirements with regard to the deferred compensation program.
- Bob Allison has \$6,000 in an individual retirement account with an investment firm. He has chosen to purchase common stock in several companies doing business in his jurisdiction. One of his stock holdings, Gala Computers, reached a value of \$2,500 during the reporting period. The value of his investment in each of the other companies was less than \$1,000. Bob must report Gala Computers as an investment on Schedule A-1 because the value of his stock in that company was \$1,000 or more.
- Adriane Fisher has \$2,000 in a retirement fund that invests in real property located in her jurisdiction. The value of her interest in each piece of real property held in the fund was less than \$1,000 during the reporting period. Although her retirement fund holds reportable assets, she has no disclosure requirement because she did not have a \$1,000 or greater interest in any single piece of real property. If, in the future, the value of her interest in a single piece of real property reaches or exceeds \$1,000, she will be required to disclose the real property on Schedule B for that reporting period.

Trusts: Investments and interests in real property held by a trust (including a living trust) are reported on Schedule A-2 if you, your spouse, or your dependent children had a 10% or greater interest in the trust and your pro rata share of a single investment or interest in real property was \$1,000 or more.

You have an interest in a trust if you are a trustor and:

- Can revoke or terminate the trust;
- Have retained or reserved any rights to the income or principal of the trust or retained any reversionary or remainder interest; or
- Have retained any power of appointment, including the power to change the trustee, or the beneficiaries.

Or you are a beneficiary and:

- Presently receive income; or
- Have an irrevocable future right to receive income or principal. (See FPPC Regulation 18234 for more information.)

Blind Trusts:

A blind trust is a trust managed by a disinterested trustee who has complete discretion to purchase and sell assets held by the trust. If you have a direct, indirect, or beneficial interest in a blind trust, you may not be required to disclose your pro rata share of the trust's assets or income. However, the trust must meet certain standards which are set out in FPPC Regulation 18235, and you must disclose reportable assets originally transferred into the blind trust and income from those original assets until they have been disposed of by the trustee.

Trustees:

If you are only a trustee, you do not have a reportable interest in the trust. However, you may be required to report the income you received from the trust for performing trustee services.

Wedding Gifts: Wedding gifts must be disclosed if they were received from a reportable source during the period covered by the statement. Gifts valued at \$50 or more are reportable; however, a wedding gift is considered a gift to both spouses equally. Therefore, you would count one-half of the value of a wedding gift to determine if it is reportable and need only report individual gifts with a total value of \$100 or more unless a particular gift can only be used by you or is intended only for your use.

For example, you receive a placesetting of china valued at \$150 from a reportable source (e.g., not a family member) as a wedding gift. Because the value to you is \$50 or more, you must report the gift on Schedule E but may state its value as \$75.

Wedding gifts are not subject to the \$300 gift limit, but they are subject to the \$10 lobbyist/lobbying firm gift limit for state officials.