



Board Training-- Conflicts of Interest

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Objective of Training

- Provide a basic overview of the legal requirements
- Hopefully impart enough knowledge to know when to ask questions
- Happy to take questions as we work through the slides

FPPC FORM 700

- Nearly all state and local public officials must file a Statement of Economic Interest
 - Board members are “Article 2” filers
 - Broadest disclosure categories
- The Purpose is to publicly disclose financial interests that could pose a legal conflict of interest
 - Investments (stocks, partnerships, memberships in LLC, sole proprietorships)
 - Income
 - Gifts
 - Real Property

FPPC Form 700

- Form 700 required upon assuming office, annually thereafter and upon leaving office
- Important to take completion of Form seriously
 - CalPERS high profile agency
 - FPPC enforcement possible
- CalPERS staff available to assist
 - Legal Office
 - Enterprise Compliance

HONORARIA BAN

- Public Officials prohibited from receiving compensation for “speech given, article published or attendance at any . . . conference, convention, meeting . . . or like gathering”
 - Speech includes all forms of oral presentations including panel or seminar
 - Article does not include books, plays or screenplays
- Ban imposed as a result of abuses in late 1980’s
- Exceptions:
 - Earned income from bona fide business or profession, e.g., teaching
 - Travel payments for giving a speech or participating in a panel or seminar
 - Charitable donations—subject to restrictions

GIFT RULES

- State law prohibits gifts from any single source in excess of \$590, such as:
 - Restaurant meals/beverages
 - Free airfare or other travel payments (not otherwise exempt)
 - Free admission to sporting events, theater and live entertainment
 - Rebate or discount not made in the regular course of business
- CalPERS rule:
 - Bans gifts in excess of \$50 from entities doing or seeking to do business with CalPERS
 - Includes consultants, brokers and intermediaries of such entities.

GIFT RULES

- Exceptions to gift limits:
 - Home hospitality
 - Invitation only events
 - Wedding gifts
 - Nonprofit/political fundraiser events
 - Travel Payments—Reportable, but not subject to limit

CONFLICTS OF INTEREST UNDER THE PRA

- General rule: Public officials shall not make, participate in making or attempt to influence a governmental decision in which the official has a financial interest, involving:
 - Investments
 - Income
 - Gifts
 - Real property
- Officials must abstain and not participate in decisions where they have a conflict of interest

Conflicts of Interest Under the PRA

- Effect on the financial interest must be reasonably foreseeable and have a material financial effect on the official's financial interest
 - Most financial effects of governmental decisions are reasonably foreseeable
 - Effect is “presumed” to be foreseeable if financial interest is a named party or the subject of the decision
 - Other situations require there be an “absent extraordinary circumstances” to avoid being foreseeable
 - Material effect involving investment interest, income and gifts:
 - Effect presumed material if the official's financial interest is the named party or subject of the decision
 - Otherwise analyze effect on the gross revenues or increase/decrease in value/assets of the financial interest

Conflicts of Interest Under the PRA

- Example of potential conflict:
 - Assume you own stock in a bank/vendor and the bank/vendor seeks to do business with CalPERS
 - If the decision to retain the bank/vendor should come before the Board, or you individually attempt to influence the staff outcome of the decision, then a conflict is presumed
 - If you participate or attempt to influence the law is violated
- Assume your spouse works for an investment firm
- If the Board decides to increase investments with the type of firm employing your spouse, even though that firm is not named or the subject of the decision, a potential conflict may arise based on an analysis of the financial impact on the firm's income and assets

GOVERNMENT CODE SECTION 1090

- Very similar to PRA conflicts of interest, but limited to contracts only
- Financial interests creating a Section 1090 conflict are broad/not defined
- Abstaining from the contract decision is not permitted--Contract is void
- Exceptions numerous
 - Remote interest—official must abstain and Board may act
 - Non-interests

POST EMPLOYMENT

- Public officials shall not make, participate in making or attempting to influence a decision directly relating to a person with whom the official is negotiating or has arranged prospective employment
- PRA imposes a 2-year ban on former Board members accepting compensation to aid, advice, consult with, or assist a business entity in obtaining a contract with CalPERS
- PRA imposes a 4-year ban on former Board members accepting compensation to represent and appear before CalPERS or its employees/officers for the purpose of influencing a administrative action or with issuance of any permit, license, grant, contract or sale/purchase of goods or property
- PRA imposes a 10-year ban on former Board members accepting compensation for providing services as a placement agent

The image features a dark blue background. A light blue diagonal stripe runs from the bottom-left towards the top-right. In the lower-right quadrant, the word "Questions?" is written in a white, sans-serif font.

Questions?