

**PROPOSED AMENDMENTS TO TITLE 10, CALIFORNIA CODE OF REGULATIONS,
RULE 260.607**

§ 260.607. Conflicts of Interests

(a) The Department *of Business Oversight* is charged with the responsibility of administering regulatory statutes which vitally affect the interests of private citizens and of the general public. It is important that persons employed in the Department maintain unusually high standards of honesty, integrity, impartiality and conduct. They must be constantly aware of the need to avoid situations which might result in either actual or apparent misconduct or conflict of interests, since any such actual or apparent conflict of interests may impair public confidence in the integrity of the Department regardless of whether any improper influence or action has resulted therefrom.

(b) Scope: The requirements of this section shall uniformly apply to all officials and employees of the Department of Business Oversight regardless of duties or divisional assignment, if any, unless otherwise specified.

~~(b)~~ (c) No *official or* employee of the Department shall:

(1) Engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit which accrues from or is based upon official position or authority or upon confidential or non-public information which he or she gains by reason of such position or authority.

(2) Solicit or accept, directly or indirectly, any valuable gift, gratuity, fee, entertainment, loan, service, or any other thing of monetary value from any person with whom he or she transacts business or may reasonably expect to transact business on behalf of the Department or who has any other interest which may be substantially affected by the performance or nonperformance of the employee's official duties.

This **Clause Paragraph** (2) does not prohibit the acceptance of food and refreshments of nominal value (not on a repetitive basis), or unsolicited advertising or promotional material, such as pens, note pads, calendars, etc., or any similar gratuity of nominal value which could not reasonably be alleged to have influenced the official conduct of the employee., ~~and~~ **It also** does not prohibit the acceptance of reimbursement for the expenses of meetings *(including admission costs for events that are substantially related to the official or employee's job duties and are predominantly informative or educational in nature)* attended in an official capacity, with the

approval of the Commissioner, to the extent such expenses are not reimbursed in any manner from public funds.

This Paragraph (2) does not authorize an official or employee to engage in any financial activity that is prohibited to such employee by Financial Code section 355.

This **Clause Paragraph** (2) also does not prohibit an employee who is, or who may be, assigned to work on any application, filing or other matter involving the California Residential Mortgage Lending Act (commencing with *Section 50000 of the Financial Code*) from making **an** application for or receiving a residential mortgage loan (as defined by subdivision (n) of *Section 50003 of the Financial Code*) from the residential mortgage lender licensed under the California Residential Mortgage Lending Act and subject to the employee's work on the application, filing or other matter so long as the employee immediately reports in writing to the **Assistant Deputy** Commissioner in charge of the application, filing or other matter the fact of the making of an application for or receiving of a residential mortgage loan from the residential mortgage lender. The **Assistant Deputy** Commissioner to whom such report is made shall normally relieve the employee in question of the assignment in writing; but the **Assistant Deputy** Commissioner may in writing direct the reporting employee to continue with the assignment in question if the **Assistant Deputy** Commissioner determines that the personal interest of the reporting employee is so insignificant as not to create even the appearance of a substantial conflict of interests. In making this determination, the **Assistant Deputy** Commissioner may take into consideration the extent to which the reporting employee's activities will be supervised and the difficulty in assigning the matter to some other employee, but all doubts must be resolved in favor of avoiding any substantial conflict of interests.

(3) Discuss or entertain any proposal for future employment by any person outside the government with whom he or she is personally transacting business on behalf of the Department or by the **attorney representative or agent** for any such person.

(4) Act in any manner, whether or not specifically prohibited by this Section, which might result in, or create the appearance of, using public office for private gain, giving preferential treatment to any person, losing complete independence or impartiality, or affecting adversely the confidence of the public in the integrity of the Department.

~~(e)~~ **(d)** No **official or** employee of the Department shall:

(1) Permit his or her name to be associated in any way with any legal, accounting or other professional firm or office.

(2) Have any outside or private employment or activity or affiliation incompatible with concurrent employment by the Department.

Any official or employee who proposes to engage in outside employment of any kind must report such intention to the Commissioner and receive the written approval of the Commissioner, which shall be placed in his or her personnel file, prior to his or her accepting such outside employment. For the purposes of this subsection (c) the private employment or affiliation of an official's or employee's spouse by any person holding a license from the Commissioner is deemed to be incompatible with the official's or employee's concurrent employment in the Department, except as otherwise determined by the Commissioner in a specific case. Nothing in this section is intended to prohibit an official or employee from engaging in teaching, lecturing, or writing activities which do not interfere with the performance of his or her duties to the Department, with or without compensation; provided, however, that any publication by an official or employee which refers to his or her connection with the Department must contain an appropriate disclaimer indicating that the views expressed are his or her own and do not necessarily reflect the views of the Commissioner or the policy of the Department.

(3) Be employed in any capacity by any company or firm which holds a license from the Commissioner.

~~Any employee who proposes to engage in outside employment of any kind must report such intention to the Commissioner and receive the written approval of the Commissioner, which shall be placed in his or her personnel file, prior to his or her accepting such outside employment. For the purposes of this subsection (c) the private employment or affiliation of an employee's parent, spouse, child, or any other relative living in his or her household by any person holding a license from the Commissioner is deemed to be incompatible with the employee's concurrent employment in the Department, except as otherwise determined by the Commissioner in a specific case. Nothing in this section is intended to prohibit an employee from engaging in teaching, lecturing, or writing activities which do not interfere with the performance of his or her duties to the Department, with or without compensation; provided, however, that any publication by an employee which refers to his or her connection with the Department must contain an appropriate disclaimer indicating that the views expressed are his or her own and do not necessarily reflect the views of the Commissioner or the policy of the Department.~~

~~(d)~~ ~~(e)~~ ~~(1)~~ Pursuant to subdivision (b) of Section 25607 of the *Corporations* Code, the following rules are adopted with respect to the purchasing and holding of securities by any ~~assistant, clerk or deputy~~ *official or employee* of the Department *of Business Oversight*,

and govern all transactions in securities *in which the official or employee has a property interest in addition to transactions that are* effected by or on behalf of any such person, including transactions for the accounts of other persons effected by such person, directly or indirectly, under a power of attorney or otherwise, and including any transactions by any trust or estate in which he or she holds a beneficial interest (unless the transactions by such trust or estate are effected without any knowledge or participation by such person). Any ~~assistant, clerk or deputy~~ *official or employee* is considered to have sufficient interest in the securities transactions of his or her spouse, ~~or dependent~~ children, ~~or any other relatives living in his or her household~~ that such transactions are subject to the provisions of this subsection.

~~(2)~~ (1) No ~~assistant, clerk or deputy~~ *official or employee* shall effect any securities transaction involving any short sale, put, call, straddle or spread; and no ~~assistant, clerk or deputy~~ *official or employee* shall purchase or hold any security in any *of the following: a* licensee of the Department, *an entity that the employee knows or reasonably should know is seeking to obtain a license under any of the laws administered by the Commissioner, or a corporate parent or subsidiary of a licensee or prospective licensee* ~~or in any business outside the State of California which, if conducted within this State, would require a license from the Commissioner.~~

~~(3)~~ (2) ~~Within 30 days after December 31st and June 30th~~ *No later than May 1st* of each year, *or on such other date as the Commissioner may designate*, each ~~assistant, clerk or deputy~~ *official or employee* shall file a report with the Commissioner detailing, *except as specified in paragraph (5), all securities transactions effected by him or her within the previous calendar year and all* of his or her *current* holdings of securities ~~as of those dates~~ on a form to be supplied by the Commissioner; and each ~~assistant, clerk or deputy~~ *official or employee* shall report to the Commissioner any purchase or disposition of any security (other than a security exempted by Chapter 1 of Part 2 of the Corporate Securities Law of 1968) within five days after the date of each such transaction. *A new officer or employee (including any current employee appointed to a new position subject to reporting pursuant to this section) shall file an annual report for the period of one year prior to the effective date of such officer or employee's appointment upon or prior to the expiration of 30 days following the effective date of appointment. Annual reports shall detail the total number of shares of each reportable security purchased, held, and disposed of by an employee during the prescribed reporting period. Each report shall specify a range within which is represented the total fair market value of each security as of whichever of the following has occurred first, the last date of the reporting period or the date of sale. The ranges*

*provided on the report form shall correspond to those provided in Schedule A-1 of the Statement of Economic Interests report form periodically published by the Fair Political Practices Commission. Provided, however, that the report shall also specify a range between \$1 and an amount that is \$1 less than the lowest dollar amount of the first range prescribed by the Commission. This **Clause Paragraph** (3) does not require any report with respect to any interest in any professional, charitable, religious, social, civic, political, or other similar organization which is not conducted as a business enterprise for profit, ~~and securities purchased pursuant to the State of California Deferred Compensation Plan may be reported only in the semi-annual reports herein required.~~ All reports pursuant to this **Clause Paragraph** (3) shall be furnished directly to the Commissioner, or ~~the Chief Deputy Commissioner~~ *such other person as the Commissioner may designate*, marked "Confidential" and will be maintained in a confidential file. *In the case of the Commissioner, a report required to be filed by this paragraph shall be furnished directly to the Chief Deputy Commissioner and will be maintained in the same confidential file.* Only those officials or employees of the Department whose access thereto is necessary for the purpose of carrying out the provisions of this Section shall be permitted access to such *confidential files.**

~~(4)~~ (3) Any ~~assistant, clerk or deputy~~ **assistant** *official or employee* assigned to work on any application, filing or other matter involving a person in which he or she (or any of the persons whose securities transactions he or she is required to report pursuant to this Section) owns any amount of securities or with respect to whom for any other reason (including current or prior employment or other association) he or she has a personal interest, shall immediately report such fact in writing to the Commissioner, the Chief Deputy Commissioner, or the **Assistant Deputy** Commissioner in charge of the matter. The official to whom such report is made shall normally relieve the employee in question of the assignment in writing; but such official may in writing direct the reporting employee to continue with the assignment in question if the official determines that the personal interest or the holding of securities is so insignificant as not to create even the appearance of a substantial conflict of interests. In making this determination, the official may take into consideration the extent to which the reporting employee's activities will be supervised and the difficulty of assigning the matter to some other employee, but all doubts must be resolved in favor of avoiding any substantial conflict of interests.

~~(5)~~ (4) The reporting and disqualification provisions of **Clauses Paragraphs** ~~(3)~~ (2) and ~~(4)~~ (3) of this subsection (d) do not apply to any employee of the Department who ~~is assigned to purely stenographic, clerical, or other nondiscretionary duties~~ *does not make,*

or participate in the making of, government decisions. For the purposes of this paragraph, "make a government decision" and "participate in the making of a government decision" shall be interpreted as having the same meaning as under the Political Reform Act (Government Code section 81000 et seq.) and regulations promulgated thereunder by the Fair Political Practices Commission.

(5) For the purpose of compliance with the reporting requirement in Paragraph 2 of this subdivision, the following holdings shall not be reportable:

(A) Securities holdings and transactions of any person other than the official or employee provided that the official or employee has no property interest in such holdings and does not control or advise with respect to those holdings and transactions;

(B) Securities issued by the United States Government, or one of its agencies, or any state or municipal government thereof, or one of its agencies;

(C) Investments in a fund administered by the State of California as part of a deferred compensation program;

(D) Certificates of deposit or other comparable instruments issued by depository institutions subject to Federal or state regulation and Federal deposit insurance;

(E) Shares in any type of mutual fund other than one which holds itself out as a banking and/or financial services sector fund.

(6) Pursuant to subdivision (b) of Section 25607 of the Code, all purchases and holdings of securities made in accordance with the rules contained in this Section (including all purchases and holdings of securities by employees exempted from the reporting requirement by **this Clause Paragraph** (5)), are exempted from the prohibition contained in subdivision (a) of Section 25607 of the Code.

~~(e) No person shall appear in a representative capacity before the Department in a particular matter if such person, or anyone assisting him or her or participating with him or her in such representation, personally considered the matter or gained knowledge of the facts thereof during any former employment or association with the Department. Nothing in the preceding sentence shall prohibit appearance in a proceeding more than two years after a person ceases to be an official or employee of the Department, unless it appears to the Commissioner that there is such identity of particular issues or pertinent facts as to create a reasonably substantial possibility that confidential information, derived by such person while an official or employee of the Department, would have continuing relevance to the proceeding. No person who has been a commissioner, a chief deputy commissioner, or an assistant commissioner shall within one~~

~~year after his or her employment has ceased appear in a representative capacity before the Department with respect to any application or proceeding that was pending under his or her official responsibility (whether or not it was brought to his or her personal attention) at any time while he or she was employed by the Department.~~

(f) Knowing violation or knowing participation in a violation of any of the provisions of this section by any official or employee of the Department shall constitute a breach of his or her duties as an employee of the State of California and shall constitute grounds for dismissal for cause.

AUTHORITY:

Note: Authority cited: *Section 25610, Corporations Code; and Sections 326 and 50304, Financial Code.* Reference: *Sections 25607, Corporations Code; and Sections 355 and 50303, Financial Code; and Government Code Section 19990.*

ADD: Title 10, California Code of Regulations, Rule 260.607.5

§ 260.607.5. Restrictions on Appearances by Former Officials and Employees

No person shall appear in a representative capacity before the Department of Business Oversight in a particular matter if such person, or anyone assisting him or her or participating with him or her in such representation, personally considered the matter or gained knowledge of the facts thereof during any former employment or association with the Department. Nothing in the preceding sentence shall prohibit appearance in a proceeding more than two years after a person ceases to be an official or employee of the Department, unless it appears to the Commissioner that there is such identity of particular issues or pertinent facts as to create a reasonably substantial possibility that confidential information, derived by such person while an official or employee of the Department, would have continuing relevance to the proceeding. No person who has been a commissioner, chief deputy commissioner, senior deputy commissioner, or a deputy commissioner shall within one year after his or her employment has ceased appear in a representative capacity before the Department with respect to any application or proceeding that was pending under his or her official responsibility (whether or not it was brought to his or her personal attention) at any time while he or she was employed by the Department.

AUTHORITY:

Note: Authority cited: Financial Code Section 326. Reference: Financial Code Section 352; Government Code Section 19990.