


## Memorandum

**To:** Honorable Jerome E. Horton, Chairman  
Honorable Michelle Steel, Vice Chair  
Honorable Betty T. Yee, First District  
Senator George Runner, Second District  
Honorable John Chiang, State Controller

**Date:** February 3, 2011

**From:** Randy Ferris   
Acting Chief Counsel

**Subject:** Chief Counsel Matters, Item J Rulemaking:  
Request for Authorization to Begin the Formal Rulemaking Process to Amend  
the Board's Conflict of Interest Code

Government Code section 87300 requires the Board to adopt a conflict of interest code. Government Code section 87302 requires that the Board's conflict of interest code: (A) contain a "[s]pecific enumeration of the positions within the agency," other than the elected Board Members, "which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest"; and (B) identify "the specific types of investments, business positions, interests in real property, and sources of income which are reportable" by a staff member in each enumerated position on his or her Form 700, Statement of Economic Interests, or Form 700-A, Statement of Economic Interests for Auditors and Claims Managers/Adjusters. The Board's conflict of interest code is set forth in California Code of Regulations, title 18, section (Regulation) 6001, *General Provisions*, and appendices A and B thereto. Appendix A designates (or lists) the Board's positions that involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest, and specifies each listed position's reportable economic interests by reference to the numbered disclosure categories of reportable economic interests described in appendix B.

Board staff requests the Board's authorization to publish the attached Notice of Intention<sup>1</sup> and begin the formal rulemaking process for the Board to adopt the attached proposed amendments to appendices A<sup>2</sup> and B<sup>3</sup> to Regulation 6001. The proposed amendments to appendix A update the list of Board positions that involve the making or participation in the making of decisions to reflect changes in the Board's staff and organizational structure since appendix A was last amended in 2005. The proposed amendments to appendix A are based upon Board staff's review of the Board's current organizational chart,<sup>4</sup> the description for each job classification (position) utilized at the Board,<sup>5</sup> and input from all of the Board's departments and divisions that report

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<sup>1</sup> See Attachment A.

<sup>2</sup> See Attachment B.

<sup>3</sup> See Attachment C.

<sup>4</sup> See Attachment D.

<sup>5</sup> See Attachment E.

directly to the Executive Director. The proposed amendments to appendices A and B also incorporate recommendations from Fair Political Practices Commission (FPPC) staff that simplify and update the disclosure categories described in appendix B by creating a full disclosure category, combining the disclosure categories applicable to business taxes and fees, and combining the disclosure categories applicable to information and telecommunications technology and services.

#### APA and FCCP Rulemaking Procedures

In general, the Board's formal rulemaking activities are governed by the provisions of the California Administrative Procedures Act (APA) set forth in chapter 3.5 (commencing with section 11340) of part 1 of division 3 of the Government Code. Under the APA, the Board must generally comply with the following procedures in order to adopt substantive amendments to a regulation:

- Publish, post, and mail a Notice of Proposed Regulatory Action at least 45 days prior to the public hearing and close of the public comment period regarding the proposed amendments;
- Make the text of the proposed amendments, the initial statement of reasons for the proposed amendments, and any other documents the Board is relying upon available to the public during the entire comment period;
- Conduct a public hearing if a public hearing is requested at least 15 days before the close of the public comment period;
- Adopt the proposed amendments after considering any public comments received during the public comment period;<sup>6</sup> and
- Prepare a final statement of reasons that responds to any public comments received prior to the adoption of the proposed amendments.

Then, the Board must submit the rulemaking file to the Office of Administrative Law (OAL), which is required to determine whether the Board substantially complied with the APA rulemaking procedures. And, if OAL determines that the APA rulemaking procedures were followed, OAL must approve the proposed amendments for filing with the Secretary of State and publication in the California Code of Regulations.

In addition to the APA, substantive amendments to Regulation 6001 and the appendices thereto are subject to the provisions of California Code of Regulations, title 2, section (FPPC Regulation) 18750, *Procedures for the Promulgation and Adoption of Conflict of Interest Codes for State Agencies*. As relevant here, FPPC Regulation 18750 requires the Board to comply with the following procedures in addition to or instead of the APA procedures before adopting substantive amendments to Regulation 6001 or the appendices thereto:

- Publish, post, and mail a Notice of Intention to Amend the Board Conflict of Interest Code, instead of a Notice of Proposed Regulatory Action;
- File the notice with OAL at least 60 days prior to the public hearing and close of the public comment period (the APA does not specify a time period);

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<sup>6</sup> Note that the Board's policy is to formally adopt proposed amendments at a public hearing regardless of whether a hearing is requested.

- File the notice, endorsed by OAL, with the FPPC at least 45 days prior to the public hearing and close of the public comment period in addition to filing the notice with OAL; and
- Provide a copy of the notice to every Board employee affected by the proposed amendments at least 45 days prior to the public hearing and close of the public comment period in addition to the normal APA procedures for publishing, posting, and mailing a notice.

Then, if the Board adopts the substantive amendments at the end of the public comment period, FPPC Regulation 18750 requires the Board to submit the adopted amendments to the FPPC with a declaration of compliance with Government Code section 87302 from the Board's Executive Director, a summary of the public hearing at which the amendments were adopted, copies of any written comments received prior to adoption, a written explanation of and justification for each amendment, the Board's current organizational chart, and job descriptions for all designated and newly designated positions.

Once this is done, the FPPC's Executive Director will substantively review the adopted amendments and may either return the amendments to the Board with recommendations for revision or have the FPPC issue its own notice establishing a new public comment period for the FPPC's proposed approval of the amendments. If the FPPC's Executive Director decides to return the adopted amendments to the Board, the Board may appeal the decision by requesting a hearing before the full FPPC. Neither the FPPC's Executive Director nor the full FPPC can approve the adopted amendments until after the close of the public comment period.

If the FPPC issues its own notice and a public hearing is requested at least 15 days prior to the close of the FPPC's public comment period, then the full FPPC will conduct a public hearing and will decide to approve the adopted amendments as submitted, approve the adopted amendments with its own revisions, or return the adopted amendments to the Board for revision and resubmission within 60 days. If the FPPC issues its own notice and no public hearing is requested, the FPPC's Executive Director may decide to approve the adopted amendments as submitted or return the adopted amendments to the Board for revision at the end of the comment period and without conducting a hearing. The FPPC's Executive Director may not approve the adopted amendments with his or her own revisions. If the FPPC's Executive Director decides to return the adopted amendments to the Board at the end of the FPPC's public comment period, the Board may also appeal the decision by requesting a hearing before the full FPPC.

If the FPPC's Executive Director or the full FPPC approves Board-adopted amendments, the FPPC will return an endorsed copy of the amendments to the Board for filing with OAL. Then, the Board must transmit the FPPC-approved amendments to OAL, which is required to file the amendments with the Secretary of State and publish the amendments in the California Code of Regulations without further review of any kind. Finally, the FPPC-approved amendments are effective 30 days after OAL files them with the Secretary of State.<sup>7</sup>

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<sup>7</sup> See attachment F.

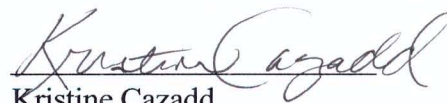
Staff Recommendation and Board Options

Board staff recommends that the Board authorize staff to publish the attached Notice of Intention and begin the formal rulemaking process for the Board to adopt the proposed amendments to appendices A and B to Regulation 6001 because Board staff believes that the proposed amendments are necessary to reflect changes in the Board's staff and organizational structure since 2005. The Board may:

1. Agree with Board staff's recommendation and authorize staff to publish the attached Notice of Intention with whatever revisions, if any, the Board deems necessary to the notice or proposed amendments to appendices A and B to Regulation 6001;
2. Direct staff to conduct a meeting or meetings with interested parties to discuss the proposed amendments before bringing them back to the Board for further approval to publish; or
3. The Board may decide not to initiate a formal rulemaking or interested parties process at this time with or without providing further direction to staff.

If you need more information or have any questions, please contact Tax Counsel III (Specialist) Bradley Heller at (916) 323-3091.

Approved:



Kristine Cazadd  
Interim Executive Director

RMF:bk

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Attachments

cc: Ms. Kristine Cazadd MIC:73  
Ms. Christine Bisauta MIC:82  
Mr. David Gau MIC:63  
Mr. Jeff McGuire MIC:43  
Mr. Todd Gilman MIC:70  
Mr. Bradley Heller MIC:82