

Action Item***California Student Aid Commission*****Consideration of approval of incompatible activities request**

The Commission's "Incompatible Activities Policy and Guidelines" requires that any Incompatible Activities Request made by the Commission's Executive Director be approved by the Commission. Executive Director Diana Fuentes-Michel is requesting that the Commission approve her request for authority to teach classes for the University of San Francisco.

University of San Francisco (USF) has approached Ms. Fuentes-Michel inquiring whether she would be interested in teaching a course on "Organizational Analysis" at USF's Sacramento Campus. The course is offered as part of USF's Masters of Public Administration Program and would require Ms. Fuentes-Michel to be available for instruction either in the evening during the work week or on the weekend.

California statutorily prohibits state officers and employees from performing outside activities or employment that are incompatible with employment. (See Govt. Code § 19990). None of the statutory prohibitions apply to the Ms. Fuentes-Michel's request to teach at the University of San Francisco.

Section 19990 also authorizes the Commission is authorized to adopt a "statement of incompatible activities" which can prohibit employees from engaging in any outside employment, activities, or enterprises, which it deems to be inconsistent or in conflict with their duties as agency employees. Effective December 1, 2007, the Commission adopted its current "Incompatible Activities Policy and Guidelines". This policy provides in pertinent part:

California Government Code Section 19990(g) deems incompatible any employment outside state service which causes officers or employees to not devote their full time, attention, and efforts to the job while on duty as a state officer or employee. ... [¶] ... Outside employment involving affiliation with any of the following entities will be carefully considered before approval is granted: Public, private or vocational schools; colleges; or universities in, or outside of, California; ...

As a result of the foregoing, employment involving any of the public, private or vocational schools; colleges; or universities in, or outside of, California must be "carefully considered" but is not expressly prohibited.

The Commission's policy does not provide any express guidance as to why outside employment involving affiliation with a "public, private or vocational school, college, or university" requires careful consideration. Presumably, it is the nature of the services provided by the Commission that creates an inherent risk of impropriety, or the appearance thereof, between the entity providing state funds to students of postsecondary institutions and the institutions that ultimately receives the funds from students.

It should be noted that USF does have an Institutional Participation Agreement with the Commission and does have students that receive Cal Grant Program funds. It is also likely that there are USF students who participate in other Commission programs or who possibly obtain student loans which are guaranteed by CSAC under the Federal Family Education Loan Program.

However, in reviewing the types of activities that are categorically prohibited by the Commission's "Incompatible Activities Policy and Guidelines", those activities that are absolutely barred are those which require the employee to, as a condition of the outside employment, directly engage in duties that either directly or indirectly relate to the Commission such as, reviewing the activities of the Commission, providing services related to the Commission, appearing before another state agency in a matter in which the Commission is involved, and so forth.

Working as an instructor for USF does not appear to fall into the same category of behavior that the Commission expressly prohibited when it adopted its policy. Ms. Fuentes-Michel's position appears to be totally unrelated to any aspect of the operations of the Commission, with the exception that it may be possible that some of her students may have been, or may be, beneficiaries of programs administered by the Commission; as are countless other former and current students.

Instead the policy provides that employment with a public, private or vocational school, college, or university, is to be carefully considered; in essence, to be reviewed on a case-by-case basis to evaluate whether the facts surrounding a certain request warrant a finding that the outside activity is incompatible or in conflict with the duties of the state employee. As it is the Executive Director that is making the request, the policy requires that Commission make the determination of whether it believes that Ms. Fuentes-Michel's request represents an incompatible activity that the Commission should prohibit.

Responsible Person(s): Keri Faseler Tippins
General Counsel



CSAC POLICY AND PROCEDURES MEMO

		DISTRIBUTION: All Staff	CONTROL NUMBER: 2007-07
SUBJECT: Incompatible Activities Policy and Guidelines (Cancels 99/00-011)		EFFECTIVE DATE: 12/01/07	EXPIRES Until Canceled
APPROVED BY: 	APPROVED BY: 		
Robert Illa, Acting Chief Management Services Division	Diana Fuentes-Michel Executive Director		

GENERAL POLICY

It is the policy of the California Student Aid Commission (Commission) to provide its civil service and exempt employees with portions of the California Government Code that pertain to incompatible activities relating to their state employment and also to establish specific guidelines applicable to individual job duties.

California Government Code Section 19990, the portion of law that specifically governs the actions of all state officers and employees, states:

"A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee."

GUIDELINES

Listed below are specific guidelines to help you identify activities that are inconsistent, incompatible, or in conflict with your duties as state officers or employees. However, it should be noted that you are not limited to following only these stated guidelines. Whenever you have questions about a possible incompatible activity, please contact your supervisor, the Commission's Incompatible Activity Officer, or the Commission's Personnel Officer.

A. Outside Employment

California Government Code Section 19990(g) deems incompatible any employment outside state service which causes officers or employees to not devote their full time, attention and efforts to the job while on duty as a state officer or employee.

Employees who plan to engage in outside employment, and/or perform a service for pay or otherwise, must provide written notification to the Chief Deputy Director and their immediate supervisor for approval in advance of such employment. Similarly, an exempt employee must provide written notification to the Executive Director for approval in advance of engaging in outside employment.

Outside employment involving affiliation with any of the following entities will be carefully considered before approval is granted:

- Public, private or vocational schools; colleges; or universities in, or outside of, California;
- Education-oriented and other entities that perform education or financial aid services (state or federal agencies, school or lender contracted servicers, student financial aid processors, etc.);
- Banks, other lenders and secondary markets;
- Collection agencies;
- Business entities that provide services, supplies, material, machinery or equipment of the type used by the Commission;
- Certain peace officer positions;
- Certain public office positions; and
- Contractors used by the Commission.

Listed below are general outside employment activities which are prohibited:

- Outside employment which prevents the employee from immediately leaving that employ in order to respond to the needs of the Commission during an emergency. (*Exceptions: Employees enlisted in the military reserves or National Guard*).
- Outside employment that includes reviewing, controlling, auditing, etc. any Commission activity where decisions may be influenced due to the employee's normal access to confidential information.
- Outside employment which provides a service or legal action related to the Commission.
- Outside employment, such as private practice of law, which may require appearance before a state agency, board, commission, or legislative committee as a condition of employment, regarding a matter in which the Commission may be involved.
- Outside employment for which the employee is selected or retained wholly or partially because of their position with the Commission.
- Outside employment in a public accounting practice which requires the employee to perform accounting or tax work subject to review by the Commission even if the employer takes full responsibility of all work performed by the state employee or officer. (*Permissible exceptions: teaching, bookkeeping and public accounting.*)
- Outside employment that directly or indirectly rents or lends privately-owned tools or equipment to a contractor doing business with the Commission.

- Outside employment that directly or indirectly enters into an agreement, partnership, profit-sharing or employment arrangement, including consulting services, with any firm doing business with the Commission.
- Outside employment as a real estate broker, salesperson, appraiser, investor, etc. when dealing with properties which in anyway affect the Commission's real estate functions, i.e., budget estimating, appraisal, review, approval, control, inspection, relocation, rental, leasing or disposal. *(Employees are required to maintain a record of every real estate transaction affecting the Commission and must notify Commission management.)*

Peace Officer Classification Prohibitions

Unless approved in advance in writing, employees should avoid outside employment that falls in any of these categories:

- Peace officer work in a public or private law enforcement agency, for pay or volunteer, in any capacity.
- Peace officer work that requires an employee to wear a badge or uniform, carry a nightstick, pistol, or other weapon, serve warrants, citations, subpoenas or any legal notice or paper and/or use the influence or prestige of one's state job for personal gain.
- Peace officer work with any corporation, company, association, partnership or private business engaged in the liquor or gambling industry, or presence at any bar, racetrack, gambling establishment, or nightclub.

Public Office Prohibitions (Elected or Appointed)

Unless approved in advance in writing, employees may not run for election or appointment to local public office, including city and county offices, school boards or special districts that a) allocate state funds to local government offices; or b) assign, review or approve plans, specifications, or applications from local government offices.

If approved, you must consider the following:

- The government office must not be full-time, nor interfere with normal working hours or efficiency;
- Employees will disqualify themselves from debating, voting on, or in any way attempting to influence matters appearing before their government office which may affect the Commission or its programs; and
- Employees cannot be involved in Commission recommendations or decisions on matters which are also of direct or indirect concern to the government office they hold or are standing for election. If this occurs, the employee must remove himself/herself temporarily from the process of forming recommendations or making decisions which affect that government office. If such matters occur frequently,

employees will be expected to request removal from the government office, resign from the Commission or, if appropriate, rotate to a different position within the Commission.

B. Misuse of Position

California Government Code Section 19990 (a), (b), (c) and (e) address misuse of position. Each subsection and its guidelines are discussed below in more detail:

Subsection (a) deems using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another to be inconsistent, incompatible or in conflict with duties as state officers or employees.

Actions that are considered misuse of position under this subsection and are therefore prohibited include:

- Service as an officer, employee, member of the Board of Directors of an organization, in which the employee transacts, or attempts to transact, business with the Commission when such employee holds a position of review, control, or influence (however remote) over such business transaction(s).
- Use of Commission status or employment to solicit business, purchase goods or services for private use, or obtain discounts from a person who does business with the state.
- Use of Commission employment to aid another agency or business entity for purposes of obtaining future employment at that agency or business entity. This includes using Commission title, influence, time, and/or resources for purposes of personal employment gain at another organization. This provision stands for two years upon separation from the Commission.
- Adopting, issuing, interpreting, or applying, a rule, directive, regulation, order, standard of conduct, etc. with intent to obtain private gain or advantage.
- Preparing, presenting or publishing a speech, article, or other writing, relating to the Commission's operation for outside use without prior approval.

Subsection (b) deems using state time, facilities, equipment, or supplies for private gain or advantage to be inconsistent, incompatible or in conflict with duties as state officers or employees.

Actions that are considered misuse of position under this subsection and are therefore prohibited include:

- Accepting, taking, or converting to one's own use, products of any kind from the Commission, or during the course of conducting business on behalf of the Commission.
- Arranging or interviewing for employment outside state service while on duty.

Subsection (c) deems using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized to be inconsistent, incompatible or in conflict with duties as state officers or employees.

Actions that are considered misuse of position under this subsection and are therefore prohibited include:

- Using Commission employment to alter or misinterpret information, to convey confidential information for purposes of personal gain including providing confidential information to unauthorized individuals, or to unfairly aid in the personal gain of others.
- Using Commission employment, or knowledge of Commission programs or activities, to unfairly provide financial aid or administrative services to anyone.
- Using knowledge of Commission programs or activities to speculate in or acquire real estate whether for personal gain or the sole benefit of others. (If an employee falls under this category, they must provide written notification and withdraw from making recommendations or decisions relative to the project.)
- Providing services or information to prospective bidders which is not available to all bidders on contracts.
- Providing names of persons or records of the Commission for a mailing list that has not been authorized in advance.

Subsection (e) deems performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee to be inconsistent, incompatible or in conflict with duties as state officers or employees.

Actions that are considered misuse of position under this subsection and are therefore prohibited include:

- Preparing, reviewing, or approving specifications for the purchase or lease of any property, equipment or supplies of a potential bidder and the bidder is a firm, corporation, company, association, partnership or other entity which the employee or a close relative has a beneficial interest.
- Bidding to acquire excess state properties, related improvements, equipment, or furnishings from the Commission. Individual employee cases involving personal hardship may be cleared by requesting a ruling. (Where solicitation of bids is made by another department or state agency, or in open auctions, employees may bid if they have had no connection with the inspection or survey process nor with the bid selection or processing.)

C. Gifts

California Government Code Section 19990 (d) and (f) address gifts, including money.

Subsection (d) deems receiving or accepting money or any other consideration from anyone other than the state for the performance of his or her duties as a state officer or employee to be inconsistent, incompatible or in conflict with duties as state officers or employees.

Subsection (f) deems receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee to be inconsistent, incompatible or in conflict with duties as state officers or employees.

Actions under these subsections that are considered in conflict with an employee's duties and therefore prohibited include:

- Receiving a favor, gift, cash, meals, entertainment, etc. of \$50 value or more. In such cases, the employee must notify his/her immediate supervisor, regardless of whether or not the offer has been refused. Such gifts received by mail must be returned at the Commission's expense, including insurance, through the mailroom. Perishable gifts shall be sent to a charitable organization and the donor so notified. If the return of a gift would be difficult, costly, cause embarrassment, or extreme inconvenience, the Executive Director shall be notified immediately. (Note: An employee is not to accept any construction material or equipment, even of nominal value, from contractors.)
- Soliciting or accepting a personal loan of money or property from any person who does business with the Commission if the loan appears to be awarded wholly or partially because of employment with the Commission.

General Exceptions

- Accepting inexpensive advertising items such as pens, pencils, paperweights, calendars, or telephone directory covers.
- Accepting an infrequent payment of a meal, incidental, or entertainment expense which cannot be refused without undue rudeness. Frequent payment of an employee's meals is improper.

D. Distribution and Retention of the California Student Aid Commission Incompatible Activity Signature Form (Incompatible Activity Form)

- All employees of the Commission shall sign the Incompatible Activity Form (attached) and return it to the CSAC Personnel Office within 30 days of receipt. Originals shall be filed in the employee's Official Personnel File.
- All levels of supervision are responsible for ensuring that their staff read and understand these guidelines. Supervisors/Managers must ensure that their employees sign, date, and return the Incompatible Activity Form to the CSAC

Personnel Office within 30 days of receipt. All new employees and potential employees should be made aware that by accepting employment at the Commission they must consent to these guidelines.

E. Internal Procedures

- **Consultation** - The Commission's Incompatible Activity Officer is available for assistance in explaining and interpreting the uniform application of these guidelines. If the employee is dissatisfied with the results, they should contact the Personnel Officer.
- **Updates/Revisions** – In accordance with California Code of Regulations Section 599.870, updates/revisions to these guidelines are implemented by notifying affected employees and their representatives of the proposed changes in writing for at least thirty (30) calendar days. Upon completion of this 30-day period, the guidelines, along with any comments and/or responses, shall be filed with the Department of Personnel Administration for final approval. The effective date of the Incompatible Activity Statement and Guidelines Policy and Procedure Memo shall be the date of approval by the Department of Personnel Administration.
- **Employee Violation** - An employee will be subject to disciplinary action for violation of any of these guidelines. The severity of any punitive actions taken will depend on the adverse consequence to the state caused by the employee's actions.
- **Grievances/Appeals** - In accordance with California Code of Regulations Section 599.870, an employee has the right to appeal the application of this policy through normal departmental channels, up to the Commission's Executive Director. The Executive Director is the final review level in this process.
- **Employee Disclosure** - The Commission requires that any incompatible activities as described in this document be reported.
- **"Notification"/"Advance Approval"/"Requests for Ruling"** - When in doubt about activities that require these actions, an employee should first consult the Incompatible Activity Officer. If it is determined that the activity falls under the "Advance Approval" or "Request for Ruling" category, the employee must state such, in writing, following this chain of command: Direct a letter or memo to the Chief Deputy Director with a courtesy copy to the supervisor. The Chief Deputy Director will review the matter and advise the Executive Director. The Executive Director rules on the matter within 30 days. A copy of the Executive Director's written response to the employee must also be sent to the Incompatible Activity Officer.
- **Exempt Officers** - Requests for ruling shall be directed to the Executive Director.
- **Executive Director** - Requests for ruling shall be directed to the Commissioners.

CALIFORNIA STUDENT AID COMMISSION
INCOMPATIBLE ACTIVITIES SIGNATURE FORM

Please sign, date, and return this form to the Personnel Office within 30 days of receipt.

I have received a copy of the California Student Aid Commission's Incompatible Activities Policy and Guidelines. I have read and agree to abide by these guidelines as a condition of my employment.

Employee Name (Printed)

Date

Employee Signature