

Document: [proposed regulations.pdf](#)

§ 60804. Appointment to Federal or State Office

Should those individuals on the “short list” prior to an appointment actually being offered and especially those persons who were offered an appointment and declined be excluded as having a prima-facie conflict of interest?

Also, Employees of the State of California as well as employees of office holders affected by the Act should be considered “appointed” since all continue in their positions at the pleasure of the office holder (Governor, Member of the Legislature, Member of the State Board of Equalization), notwithstanding provisions of civil service laws.

Since the title of this paragraph includes “Federal”, employees of Members of Congress from California or even the President should be included within the scope of this definition.

§ 60806. Bona Fide Relationship

Since 8252 (A)(2)(a) states very simply “immediate family”, we need to expand that term to explicitly name those relationships of interest as follows:

Definition:

Spouse, parents and grand parents, children and grand children, brothers and sisters, mother in law and father in law, brothers in law and sisters in law, daughters in law and sons in law. Adopted and step members are also included in immediate family.

This definition is on the internet at:

<http://www.businessdictionary.com/definition/immediate-family.html>

For the purposes of the Commission selection process, “immediate family” includes:

- You
- Your parents and/or adoptive parents
- Your aunts and uncles (siblings of your parents), their spouses, their children (your first cousins) and spouses
- Your siblings, their spouses, their children and spouses
- Your spouse

Your children and step children, their spouses
Your grand children, their spouses

Parents and/or adoptive parents of your spouse
Aunts and Uncles of your spouse (siblings of your spouse's parents), their spouses, their children (your spouse's first cousins) and spouses
Siblings of your spouse, their children and spouses
Children and step children of your spouse, their spouses
Grand children of your spouse, their spouses

Of lesser interest here, but included in the definition above are:

Your Grand parents, their spouses, their children (your Aunts and Uncles) and spouses
Grand parents of your spouse, their spouses, their children (Aunts and Uncles of your spouse) and spouses

NOTE: The terms "you" and "your" mean the applicant.

NOTE: The term "spouse" refers to a marriage partner, significant other, or domestic partner (registered or not).

NOTE: The terms "children" and "sibling" refer to both natural and adopted relationships.

Whether the applicant has frequent social contact with various members of his "immediate family" should also be considered when assessing conflict of Interest. The applicant and an immediate family member may be employed by the same company, attend the same church or same country club or reside on the same street wherein it could be assumed regular daily or weekly social contact occurs.

§ 60813. Consultant

A person employed by a consulting firm and who in-turn applies their services to effect the decisions and direction of any political process or election should be included when filtering for conflict of interest. One need not hold ownership interest in the consulting firm to significantly affect the entity with whom they are consulting.

If the applicant is providing consulting services to a national political party or is consulting on any partisan political activity anywhere in the USA, they should be considered to have a presumed conflict of interest due solely to that active contact and association with one or more political party(s).

§ 60815. Federal Office

If the applicant actively participates in partisan Presidential political activities, these do affect politics within California. Consulting, staffing or volunteering for the election of Presidential candidate constitutes a significant involvement in partisan politics on behalf of a specific political party and must be considered a conflict of interest for the purpose of the Act.

§ 60816. In-Law

See page [4](#), § 60806.

§ 60818. Most Qualified Applicants

(b) We need to list the specific recent elections which are considered “Statewide General Elections”.

The website of the California Secretary of State Debra Bowen [http://www.sos.ca.gov/elections/elections_elections.htm] indicates that **Nov 2004**, **Nov 2006** and **Nov 2008** are the three most recent General Elections. All other past elections listed during that period are either Statewide Special Elections, or Primary Elections.

§ 60819. Paid Congressional, Legislative, or Board of Equalization Staff

While we are at it, let’s also exclude staff for the President of the United States. Such involvement has a clear partisan political leaning with a possible effect on California and can be presumptive of a Conflict of Interest.

Though the California’s federal officers are not presently and directly affected by the Act, it is clear that upon successful completion of the first iteration of this process, the next step would be to have the 2020 Commission draw district lines for the Members of the U.S. Congress. **NOTE:** U.S. Senators are elected by statewide vote.

§ 60822. Political Party Central Committee

The definition must include a situation where the “party central committee” is a single person. This may be the case for very small political parties.

§ 60824. Randomly Draw

(c)(2) ... The balls for each of the subpools shall be affixed with a label. The label shall have written on it the identifying ...

Placing a sticky label (flat piece of paper) on a round surface (the ball) may well lead to malfunction within the mechanics of the bingo cage selection process. The labels may even come loose, stick together or otherwise gum-up the mechanism after the cage is “rotated vigorously”.

It would be better to clearly inscribe the unique number upon each ball with indelible ink. A black “Sharpie” pen may be a good choice to do this assuming that the balls are of a white or light hue.

Note that the digits 6 and 9 must be underlined (as 6 and 9) since each can easily be mistaken for the other (ie: “16” looks like “91” when upside down)

§ 60830. Selection of Panel Members and Alternate Panel Members

At least one alternate should be selected from each subpool.

Alternate panel members should be present at panel meetings, though they may not speak or vote in the proceedings. The purpose for this is to ensure that each is aware of the content of the proceedings and is able to substitute for a removed panel member on short notice and with little effect on the results, progress or schedule of the panel.

Access to the materials used by the panel to-date would entail delay while the alternate reviewed those materials ... unless the regulation specified that no past decisions were to be invalidated upon seating an alternate Panel member.

There is a process for revisiting prior decisions on a case-by-case basis.

§ 60832. Duties of Panel Members

(?) A new section is needed to address and emphasize timely execution of the panel’s duties. The panel must be formed by 1 February of 2010 and must complete its work and present the names of the 60 most qualified applicants to legislative leaders by 1 October 2010. The amount of work to be performed in those 8 months could be staggering and includes some notification cycle delays which must be taken into account when setting the schedule.

§ 60833. Removal of Panel Members

Erata;

(a)(3) ... Regulations title 2, section ~~60833~~ 60832.

§ 60840. Outreach Program

At the public meeting on September 14 2009, please provide a discussion of the current status of funding and action regarding outreach. Is funding in fact available and sufficient to perform the tasks contemplated?

§ 60841. Overview of the Application Process

Erata;

(d) ... not more than 24 names shall be removed form the list **by** the legislative leaders.

Furthermore, it would be prudent to restate that the rules of removal require that no more than 8 names be removed from each of the three 20 person subpools since this section leaves the impression that one of the subpools could be exhausted through the striking process. See the Act 8252 (e) and § 60852 (c).

Since each of the 60 most qualified applicants are aware of their status, they should be notified if the legislative leaders have chosen to remove them from the list as well as why they have been removed. It is important when notifying applicants removed to provide them with the reason(s) why they have been removed.

§ 60842. General Requirements Applicable to Every Phase of the Application Process

(b) In electronically submitting an application for Phase I or Phase II, it would be important for the system to timestamp that application and to eMail a response to the applicant indicating that the application has been accepted for processing at the date and time which was recorded.

Incomplete submissions (to the extent that can be determined within the submission process), should be returned to an incomplete and pending state with immediate feedback to the applicant/submitter and should possibly include an eMail message to the applicant with the reasons for the incomplete status (as a backstop in the case where the submit is triggered and the applicant fails to notice the error).

Late submissions can be rejected, with the requisite eMail message stating such. Late submissions in Phase II should still be stored due to the possibility of a challenge.

- (d)(3) Letters of Recommendation and some other supporting materials will likely be submitted on paper and through the mails. Is it the date of receipt or the postmark which will be used to determine if they are on-time?
- (f)(2) The applicants (and all others submitting materials) should be put on stern notice that inclusion of any content of an Offensive or Harassing nature shall be cause for exclusion of the applicant or other materials with no recourse.

§60843. Phase I Application

At or before the public meeting on September 14, it would be nice to view a sample of or other discussion on the electronic process of filling out and submitting an application.

Of interest is both the actual questions being presented and the constraints enforced on applicant responses (is there enough space to provide a reasonable answer. ie: is the name field long enough to contain the full name of any eligible California voter without scrolling?).

- (c)(1) Contact information must include mailing address in addition to the residence address. For example, USPS does not deliver mail to my residence, so if that address were used to send materials to me, they will never arrive.

Add both Birth Date and Age to the required responses. The Act is silent as to age except to require that applicants be voters in three recent general elections, therefore we can assume 22 to be the minimum acceptable age (18 + 4).

Age is also a factor that can be used to demonstrate diversity in each of the pools created.

- (c)(2) Economic status could mean stating the annual household income as reported on the most recent Federal Tax Return (2008 Form 1040, line 37 or equivalent on other forms). An alternative might be an estimated household income for the then current year. The Social Security Number for the applicant would be needed if this information is to be verified with the Internal Revenue Service or the Franchise Tax Board.
- (c)(3) Requests for the applicants' voter registration status should include the county in which they are registered. This aids the process of checking the information for validity.

- (c)(4) See page [6](#), § 60818 (b) for a list the elections considered “Statewide General Elections”. The application form needs to be clear on which elections qualify.
- (c)(5) The application form needs to be clear on the categories considered to be conflicts of interest. 8252 (a)(2) briefly lists elements to be considered and these need to be individually amplified and clearly stated within the application form so as to elicit accurate responses.

§ 60846. Written Public Comments and Responses

- (b)(1) Is the deadline for submission based on the date a paper comment is received or on the postmark affixed to the envelope? Note that some mail never receives a postmark or a readable postmark. For electronic submissions, this is not an issue since they can be time stamped by the server upon receipt.

And, comments or other materials received late cannot be discarded as they may be used during a later phase of the process for a surviving applicant.

- (b)(4) Some mechanism must be implemented in the electronic venue to ensure proper and accurate identification of the individual submitting written comments. At the very least, the eMail address provided must be verified with certainty.

Furthermore, it is of minimum necessity that the contact information include:

- (a) Full name
- (b) Residence Address
- (c) Mailing Address (if different from Residence Address)
- (d) eMail Address (person@provider.net)
- (e) Telephone Number(s)
- (f) Relationship or association with the applicant (if any) including length of time knowing each other

Content of a written comment or recommendation must include at least the following information (besides all contact information about the author):

- (a) Complete name of the subject candidate (a mis-match may not be cause to exclude the written comment, but a close match avoiding ambiguity would be required)
 - (b) Brief statement of the author’s support or concern (250 words?)
 - (c) Citations supporting concern (name and date of source(s) if a person, full unambiguous identification of source(s) otherwise)
- (c)(?) Comments of a clearly offensive or harassing nature due to sexual, profane, racist or otherwise bigoted content need to be handled in some manner and would perhaps be cause for dismissal and rejection of the comment.

§ 60847. Phase II Application

- (b) Is the intent of this regulation to customize questions to the applicant or will there be a standard list of questions for response from each and every remaining applicant?
- (b)(4) Should the sources for letters of recommendation be limited to only those individuals and organizations residing and operating within California?
- (e) See page [10](#), § 60846 for suggestions about written comments.

§ 60848. Phase II Application Review

- (g) In reducing the applicant pool to no more than 120, those applicants removed are to be notified. That notification should include the reason(s) why they have been removed.

§ 60849. Phase III Interviews

- (d) Recordings of the interviews must be posted to the website in a timely manner. Any delay beyond one or two days is too much.
- (e) The interval for written comment cannot start until each and every interview recording has been posted to the site rather than upon completion of the last interview.

§ 60850. Phase III Applicant Review

- (f) In reducing the pool of 120 to a pool of 60, those applicants removed are to be notified. That notification should include the reason(s) why they have been removed.

§ 60852. Phase IV: Applicant Name Striking Process

- (d) See comments on page [8](#), § 60841 above.

When an applicant is stricken from the list by the legislative leaders, they should be informed and told the reason(s).

§ 60855. Commission Vacancies

Is the Panel (of three independent auditors) to be dissolved upon completion of its work? This could be construed as being when the Phase V Random Drawing has been completed.

Filling a vacancy prior to the Commission completing the three maps, need not involve the Panel since the sub-pools of 20 each and even the pool of 120 are still known and viable sources for filling a vacancy. Vacancies to be filled from those sources should be accomplished in the same manner as when the first eight commissioners choose the remaining 6 from the subpools of 20. In this instance, the unanimous agreement of all remaining commissioners would be required. The triple-plurality rules may be used instead of unanimity and the regulation needs to be precise on this.

Filling vacancies following publication of the three maps and the resolution of all legal challenges to them is less urgent. Because of attrition and changes in qualification of the candidates, the same or a newly constituted Panel may be required for the task of vetting a new candidate pool for the selection process. Again, the actual selection from the available pool should be performed by the unanimous or triple-plurality agreement among the remaining commissioners, not the Panel

(c) This paragraph is a definition which should be assigned its own paragraph number.

(d) Shall we assume that the same phases I, II, III and IV shall occur in forming a completely new subpool?