State Agencies: How to Review a Conflict-of-Interest Code

Who is a Designated Employee?

High level positions that have authority to vote on a matter, appoint a person, obligate or commit his or her agency to a course of action, or enter into any contractual agreement on behalf of his or her agency; mid-level positions that have authority to negotiate decisions on behalf of the agency without significant substantive review; or positions that advise or make recommendations to the decision-maker by conducting research or an investigation, preparing or presenting a report, analysis or opinion that requires the exercise of judgment on the part of the employee and the employee is attempting to influence the decision.

A designated employee is an officer, employee, member, or consultant of an agency whose position is designated in the code because the position entails the making or participation in the making of governmental decisions that may foreseeably have a material effect on his or her financial interest. (Government Code Section 82019.) Please note that the FPPC will specifically designate positions that are held by outside consultants who act in a staff capacity. For example, some state agencies do not have their own engineers, but, rather, have consultants filling positions such as “Chief Engineer” and “Senior Supervising Engineer.” These positions must be designated in the code.

Who should not be designated?

Do Not Designate these Positions:

• Public officials who manage public investments
• Solely clerical, ministerial, or manual positions
• Members of boards or commissions that are solely advisory

Review:

First, eliminate positions outlined above that are not designated positions.

Second, evaluate the remaining employees, committees, officers, or consultants. Top level management personnel are normally broad policy makers and should be designated. Also, read duty statements and talk to supervisors. Each position should be analyzed to determine if it makes decisions. Be sure all positions that have authority to authorize contracts are designated.

Next, review the disclosure categories. The FPPC is standardizing language among all codes in order to provide uniformity and to provide clarity for the public and for employees. Disclosure categories for employees with similar positions should provide similar disclosure requirements. Employees should only disclose economic interests that relate to their job. Do not assign the same disclosure to every position as jobs are different. The disclosure category assignments must adequately differentiate between positions. Put forth an effort to tailor the disclosure requirements for each position whenever possible.

1 This information sheet should not be used to determine whether an agency is required to adopt a conflict-of-interest code. Contact the FPPC for assistance in making that determination.