

Conflict of Interest Codes Webinar for State Agencies

Presented By
Fair Political Practices Commission
Legal Division

www.fppc.ca.gov

advice@fppc.ca.gov

1-866-275-3772 (ASK FPPC)



The visual aids used in FPPC presentations are guides which contain only highlights of selected provisions of the law; they do not carry the weight of the law.

Ask Questions

Type your questions here

A screenshot of the GoToWebinar interface. The window has a menu bar with 'File', 'View', and 'Help'. Below the menu bar is a vertical toolbar with icons for audio, video, and chat. The main content area is divided into two sections: 'Audio' and 'Questions'. The 'Audio' section has a 'View audio options' link. The 'Questions' section has a large text input area with a placeholder '[Enter a question for staff]' and a 'Send' button. At the bottom of the window, there is a 'Test' button, the 'Webinar ID: 986-824-763', and the 'GoToWebinar' logo.

Overview

- ❑ What is a conflict of interest code?
- ❑ Three components of a conflict of interest code
- ❑ How to identify necessary changes to your agency's conflict of interest code
- ❑ Approval process

How it Works

- Public official/employee/member holds a position that involves:
 - ❖ Making or participating in making governmental decisions
- Position is designated in the code:
 - ❖ Disclosure is based on the position's level of decision making
- Official/employee/member files Statement of Economic Interests (Form 700):
 - ❖ Serves as a reminder to official/employee of potential conflicts
 - ❖ Public document; public oversight

How it Works

| SUNDAY | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | SATURDAY |
|-------------------|--------|---------|-----------|----------|--------|----------|
| MARCH 2017 | | | | | | |
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |

- The biennial notice was emailed to agencies on January 16.
- Each state agency must review its conflict of interest code biennially.
- By March 1: state agencies should have submitted the notice to the FPPC.

2017 State Agency Biennial Notice

| | | | |
|-------------------|---------------------------------------|-------------------------|--------------|
| Name of Agency: | Department of Administrative Services | | |
| Mailing Address: | 888 L Street Sacramento, CA 95814 | | |
| Contact Person: | John Doe | Phone No: | 916.555.5555 |
| Email: | john.doe@das.ca.gov | Alternate Email: | |
| No. of Employees* | 800 | No. of Form 700 Filers* | 213 |

**Including board and committee members*

This notice identifies whether a state agency must amend its conflict of interest code due to changed circumstances. The biennial review examines current programs to ensure that the agency's code requires disclosure by agency officials who make or participate in making governmental decisions. The code must also include disclosure categories that are tailored to work functions and ensure that officials report their financial interests that could foreseeably be affected by the official's decisions.

Each agency must identify whether an amendment is required or whether the agency's current conflict of interest code meets the requirements outlined in Government Code Section 87302.

Please identify which statement accurately defines your agency's status.

- ☐ This agency has reviewed its conflict of interest code. The current code designates all positions which make or participate in making governmental decisions. The designated positions are assigned accurate disclosure categories that require disclosure of investments, business positions in business entities, interests in real property and sources of income. Disclosure categories accurately relate to the job duties of the designated position. The code incorporates FPPC regulation 18730 so that all relevant Government Code Sections are referenced.
- ☒ This agency has reviewed its conflict of interest code and has determined that an amendment is necessary. An amendment may include the following:
- New positions which involve making or participating in making of decisions which may foreseeably have a material impact on a financial interest.
 - Current designated positions need renaming or deletion.
 - Statutorily required provisions of the code need to be addressed.
 - Disclosure categories need revision.

Code Review Process

Compare existing code against current organizational structure.

- ☐ Have new positions or divisions been created? Abolished? Duties merged?
- ☐ Have duties of positions designated in the code changed to warrant adjusting their disclosure obligations?

Three Components of a Conflict of Interest Code

Three Components of a Code

1

Terms of the Code-First Page

Incorporation of Regulation 18730 (when statements are due) and where to file

2

List of Designated Positions

The positions in your agency that are required to file a Form 700

3

Disclosure Categories

The specific interests to be reported on a Form 700

1

Terms of the Code

CONFLICT OF INTEREST CODE DEPARTMENT OF ADMINISTRATIVE SERVICES

Incorporation Language



The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) that contains the terms of a standard conflict of interest code, which may be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendices, designating positions and establishing disclosure categories, shall constitute the conflict of interest code of the **Department of Administrative Services (Department)**.

Where to File



Officials and those holding designated positions must file statements of economic interests with the **Department**, which will make the statements available for public inspection and reproduction (Gov. Code Section 81008). Upon receipt of the statement of the Director, the **Department** must make and retain a copy and forward the original statement to the **Fair Political Practices Commission**. All other statements will be retained by the **Department**.

2

List of Designated Positions

Every position in your agency that is involved in making or participating in making governmental decisions must be designated in your agency's code.

What Does it Mean to “Make” a Decision?

Making a decision means:

- ☐ Voting on a matter
- ☐ Approving the budget
- ☐ Adopting policy
- ☐ Making purchasing decisions
- ☐ Entering into contracts

What Does it Mean to “Participate” in a Decision?

“Participates” means:

- ☐ Negotiating the terms of a contract
- ☐ Writing the specifications of a bid
- ☐ Advising or making recommendations to the decision-maker or governing body without significant intervening substantive review

Reviewing Positions

- Maintain in the code positions that are broad policy/decision makers;
- Eliminate positions whose duties are clerical, secretarial, ministerial, or manual

Then:

Review the duty statements of everyone between these two levels. Look closely at how many levels of substantive review these positions have.

Reviewing Positions - Continued

KEEP

Broad policy decision makers. For example, Directors and executive staff.

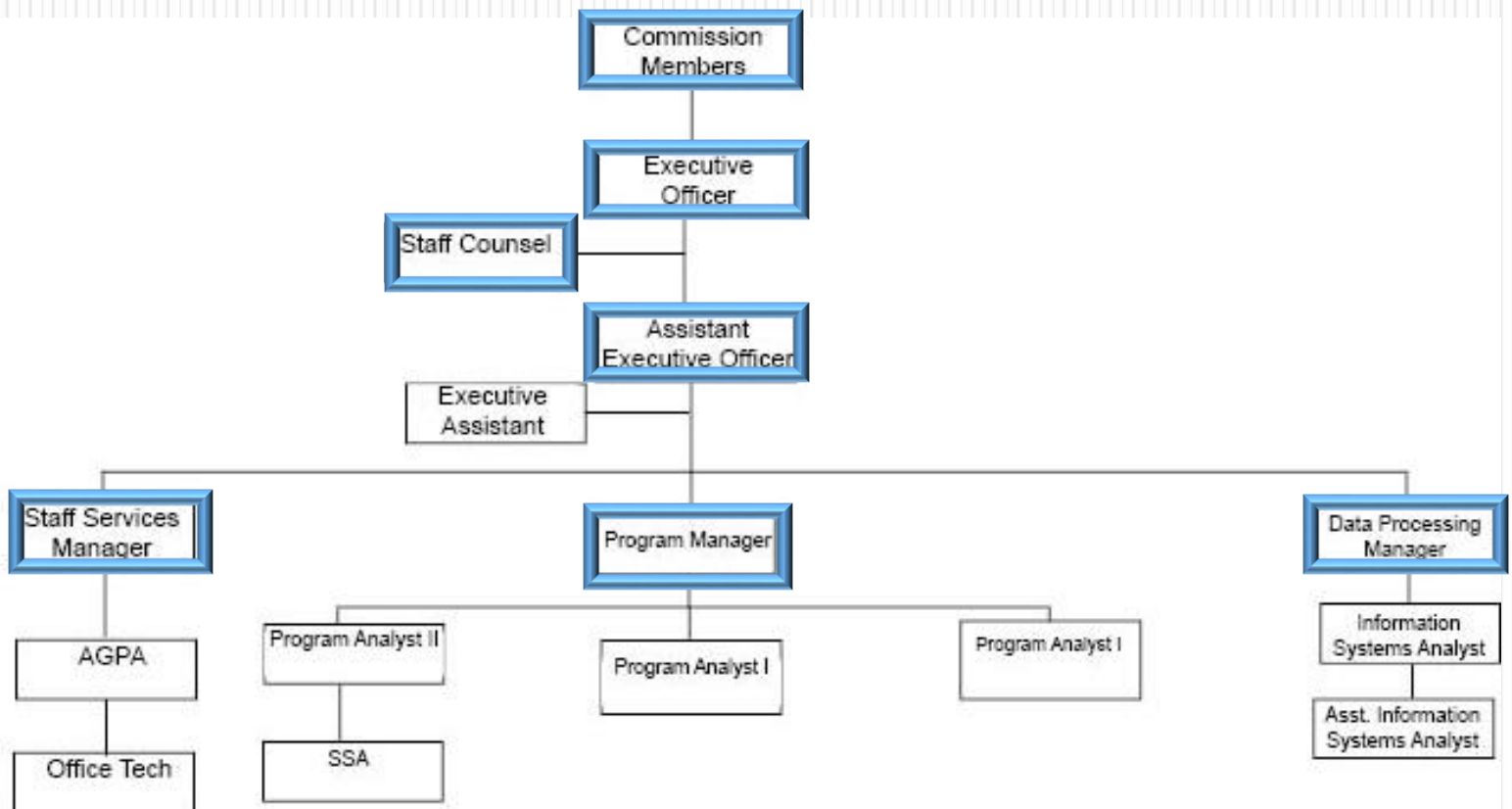
REVIEW DUTY STATEMENTS FOR

Positions that aren't broad policy decision makers or clerical, secretarial, ministerial, or manual. For example, AGPA, SSA, IT Staff, and Staff Services Managers.

ELIMINATE

Positions whose duties are clerical, secretarial, ministerial, or manual. For example, Office Technician and Office Assistant.

Reviewing Positions - Continued



Position List Samples

Incorrect

| <u>Designated Position</u> | <u>Disclosure Category</u> |
|----------------------------|----------------------------|
| <u>Legal Division</u> | |
| Staff Counsel III | 1 |
| Staff Counsel II | 1 |
| Staff Counsel I | 1 |
| Staff Services Manager III | 2 |
| Staff Services Manager II | 2 |
| Staff Services Manager I | 2 |
| Data Processing Manager I | 3 |
| Data Processing Manager II | 3 |

Correct

| <u>Designated Position</u> | <u>Disclosure Category</u> |
|--------------------------------------|----------------------------|
| <u>Legal Division</u> | |
| Staff Counsel (All levels) | 1 |
| Staff Services Manager (All levels) | 2 |
| Data Processing Manager (All levels) | 3 |

Position List Samples

| | |
|---|---|
| <u>EXECUTIVE ADMINISTRATION</u> | |
| Director | 1 |
| Deputy Director | 1 |
| Assistant Deputy Director | 1 |
| | |
| <u>Administration</u> | |
| Deputy Director | 1 |
| Chief, Human Resources | 3 |
| Staff Services Manager (all levels) | 4 |
| Business Services Officer I | 4 |
| | |
| <u>Office of Public Affairs</u> | |
| Deputy Director, Office of Public Affairs | 1 |
| Assistant Deputy Director, Office of Public Affairs | 1 |
| Staff Services Manager (all levels) | 2 |
| Information Officer (all levels) | 5 |

Committees

Does your agency have committees with public members?

- If the committee makes decisions that are routinely adopted by the agency that result in funding or policy changes, committee members may need to be designated in the conflict of interest code.
- If the committee is solely advisory, committee members are not required to be designated in the conflict of interest code.

New Positions - Form 804

- Individuals serving in a new position created on or after January 1, 2010, must file under the broadest disclosure category in your agency's code.
- Your agency may provide more limited disclosure by using Form 804.
- Add newly created positions to the conflict of interest code when it is amended

Consultants - Form 805

Consultants make decisions on behalf of your agency, serve in a staff capacity, and in that capacity, perform duties that would otherwise be performed by a designated position.

The Form 805 can be used to limit disclosure.

Unsure of who is a consultant?

- Contact your agency attorney.
- Utilize FPPC advice services if you still cannot decide.

Consultant/New Position Language

Consultants/New Positions

*

*Consultants/New positions shall be included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Director may determine in writing that a particular consultant or new position, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant or new position’s duties and, based upon that description, a statement of the extent of disclosure requirements. The Director’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Section 81008.)

Q & A

DISCLOSURE CATEGORIES

3

Disclosure Categories

Disclosure categories describe the economic interests to be disclosed on Form 700.

Only require the disclosure of interests that may be affected by a person's decision making.

(City of Carmel-by-the-Sea v. Young)
(County of Nevada v. MacMillen)

Real Property Limitations

Does the designated position participate in decisions affecting real property?

If the answer is “no,” do not require the disclosure of interests in real property.

Sample Vendor Category

Investments and business positions in business entities and sources of income (including receipt of gifts, loans and travel payments) if the business entity or source provides leased facilities, products, equipment, vehicles, machinery or services (including training or consulting services) of the type utilized by *[the Agency.]*

OR

[for the designated position's department/division.]

Regulatory/Licensing/Permitting

Investments and business positions in business entities and sources of income (including receipt of gifts, loans and travel payments) if the business entity or source is subject to the Agency's regulatory, permit or licensing authority.

IT Category

Investments and business positions in business entities and sources of income (including receipt of gifts, loans and travel payments) if the business entity or source provides information technology or telecommunications goods, products or services including computer hardware or software companies, computer consultant services, IT training companies, data processing firms and media services.

Other Categories

1. Does the Agency issue grants?
2. Does the Agency have enforcement authority?
3. Does the Agency have an auditing function?

Sample categories are available on FPPC's website.

Gift and Honoraria Ban

The gift limit and honoraria ban are tied to sources of income required to be disclosed on statements of economic interests.

Quiz

A person's duties include approving licensing programs for health care providers. Which of the following disclosure categories best suits this type of position:

Quiz

All interests in real property in the State of California, as well as investments, business positions and sources of income (including receipt of gifts, loans, and travel payments) and travel payments.

- or -

Investments and business positions in business entities and sources of income (including receipt of gifts, loans and travel payments) if the business entity or source is subject to the Agency's regulatory, permit or licensing authority.

Q & A

APPROVAL PROCESS

Starting the Amendment

Gather:

- Last approved code
- Job descriptions for newly added positions
- Most recent organizational chart
- Meeting minutes from two recent Board/Commission meetings (if any)

Review:

- Compare current organizational structure to code
- Determine changes in positions and disclosure categories

FPPC Review:

Send to advice@fppc.ca.gov:

- Code in strikeout/underline
- If available, current organizational chart
- Description of changes

It works best if the FPPC reviews the code before the agency sends it to employees and conducts a public notice.

Strikeout/Underscore and Written Explanation Example

| | |
|--|--------------------------------|
| A. Business Services | <u>Administration</u> |
| Staff Services Director..... | 2 |
| Staff Services Manager..... | 3 |
| Business Services Assistant Manager | <u>Administrative Services</u> |
| <u>Manager</u> | 3 |

- Business Services became Administration.
- The Business Services Assistant Manager was reclassified to Administrative Services Manager.

Explanations may be included in a separate letter.

Approval Process

- ☐ The agency and the FPPC conducts a 45 day public comment period by filing the Form 400 with OAL.
- ☐ All employees receive a copy of the proposed code. We recommend an all staff email or posting on intranet site.
- ☐ Make changes, if any, after the comment period.
- ☐ Send the CEO Declaration to the FPPC (template available), copy of the notice, and verification the notice was distributed to employees.

Form 400

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| | | | |
|------------------|---------------------------------|--------------------------|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER |
|------------------|---------------------------------|--------------------------|------------------|

For use by Office of Administrative Law (OAL) only

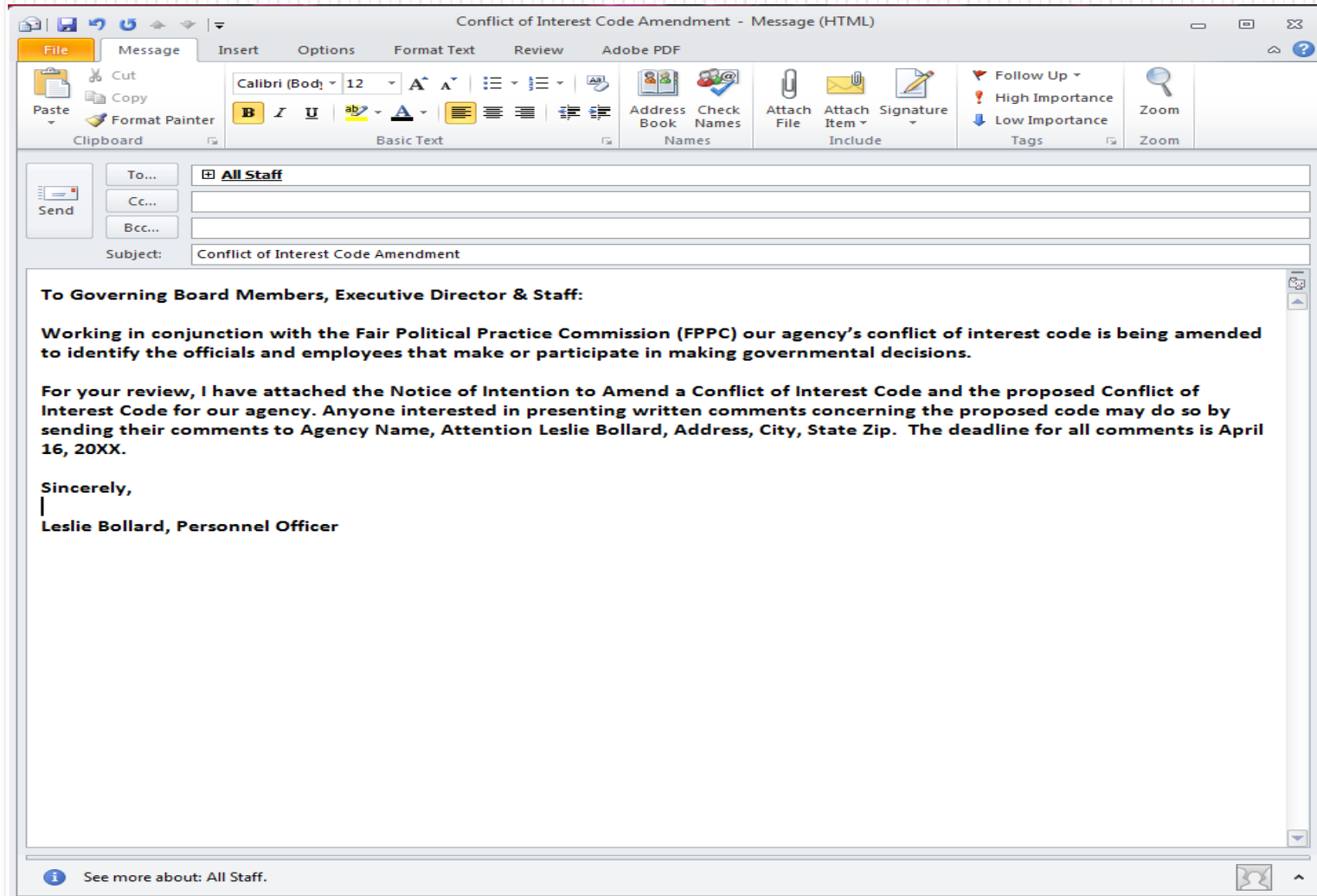
| | |
|--------|-------------|
| NOTICE | REGULATIONS |
|--------|-------------|

| | | |
|----------------------------------|------------------|-----------------------------|
| AGENCY WITH RULEMAKING AUTHORITY | Your Agency Name | AGENCY FILE NUMBER (If any) |
|----------------------------------|------------------|-----------------------------|

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | | | | |
|----------------------|---|--------------------------|-----------|------------------------|--------------|-------------------------------|------------------------|
| 1. SUBJECT OF NOTICE | Conflict-of-Interest Code | TITLE(S) | Title # | FIRST SECTION AFFECTED | Sec. # | 2. REQUESTED PUBLICATION DATE | (Obtain from schedule) |
| 3. NOTICE TYPE | <input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other | 4. AGENCY CONTACT PERSON | Your name | TELEPHONE NUMBER | Your phone # | FAX NUMBER (Optional) | |

Sample Notice to Employees



Approval Process

- ❑ Following the FPPC's Executive Director's signature, file Form 400 and strikeout/underline version of the code with OAL.
- ❑ OAL will send the agency the Secretary of State endorsed Form 400.
- ❑ The code is effective 30 days after Secretary of State's endorsement.

The “Non-Substantive” Amendment Process

Common examples: renaming or deleting an abolished position

- No notice required – must be filed with OAL after approval
- Proposed amendments in ~~strikeout~~/underscore format
- Declaration of agency CEO

Regulation 18750

Form 700 Filings

| Type of Position | When To File Next Form 700 |
|--|--|
| Positions with revised disclosure categories | Next Annual |
| Newly created positions, Form 804 and assuming office Form 700 on file | Next Annual |
| Newly added positions | File assuming office Form 700 within 30 days of effective date of code |
| Deleted positions due to changed duties | File leaving office Form 700 within 30 days of effective date of code |
| Positions listed in code that were determined to have never participated in government decisions | The agency may remove the position from the list of Form 700 filings and is not required to obtain a leaving office Form 700 |

Q & A

New Boards and Commissions

Members of new boards or commissions must file as if they have full disclosure until their positions are included in a conflict of interest code.


- This applies to a government agency that has come into existence on or after January 1, 2003.
- Statements are due not more than 30 days after assuming office.
- Commissions that are solely advisory may request an exemption.

Merging Agencies

If there are major reorganizations or your agency is abolished:

- Let the FPPC know as soon as possible
- No two reorganizations are the same and it is important to work with FPPC to find a workable solution to the conflict of interest code

Resources



CALIFORNIA
Fair Political Practices Commission

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State Agencies-Adopting & Amending Conflict of Interest Codes

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- ▶ [Local Government Agencies-Adopting & Amending Conflict of Interest Codes](#)
- ▶ [Consultants and New Positions Rules](#)

How to Request Advice

If you have questions about your obligations under the Act you can request advice directly from FPPC staff

[Request Advice](#)

State Agencies - Adopting & Amending Conflict of Interest Codes

A state agency's conflict of interest code must reflect the current structure of the organization and properly identify officials and employees who should be filing Statements of Economic Interests (Form 700s). One of the FPPC's primary goals is to streamline the process for adopting and amending conflict of interest codes so it is more efficient for the agency and the FPPC.

The information below provides an overview of the process. For a more detailed description of the process, please refer to the FPPC's guide [How to Amend a State Agency's Conflict of Interest Code](#).

Biennial Review of Conflict of Interest Codes

Over time, the structure of an agency will change because employees' duties shift, positions are renamed or eliminated, and the organizational structure is modified. When an agency makes these types of changes, the conflict of interest code must be amended accordingly. To ensure the codes remain current and accurate, a state agency must review its code biennially during odd-numbered years. The FPPC will send a [State Agency Biennial Notice](#) as a reminder of this obligation.

The Six-Step Process to Amend a State Agency's Conflict of Interest Code

If a state agency determines it must amend its code, there are six steps to complete: 1) collect all necessary documentation, including the current code; 2) review and update the code to reflect the current agency structure; 3) submit the updated code and other required documents to the FPPC for review; 4) consult with the FPPC and amend the code as necessary; 5) conduct a 45-day public notice and comment period; and 6) submit the amended code to the FPPC for final approval.

For detailed information on each step in the process, please refer to the [FPPC's State Agency Conflict of Interest Code Amendment Checklist](#).

If an agency believes it is exempt from the conflict of interest code requirement, information on exemptions is available [here](#).



Resources for State Agencies

- [How to Amend a State Agency's Conflict of Interest Code](#)
- [State Agency Conflict of Interest Code Amendment Checklist](#)
- [Sample Disclosure Categories](#)
- [Samples of Explanations of Changes](#)
- [State Agency Biennial Notice](#)

**PLEASE COMPLETE THE
WEBINAR EVALUATION**

Thank You

Fair Political Practices Commission
Legal Division

☞ 1-866-ASK-FPPC ☞

www.fppc.ca.gov