

CHAPTER 8.02 CONFLICT OF INTEREST CODE

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8.02.01 Introduction

Incorporated by reference the terms of 2 Cal. Code Regs. Section 18730. Provisions of Conflict of Interest Codes, along with the designation of employees and the formulation of disclosure categories in Appendix A & B attached hereto constitute the adoption of a conflict of interest code within the meaning of Government Code section 87306. The terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other local laws pertaining to conflicts of interest.

8.02.02 Definitions

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18100 et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

8.02.03 Designated Employees and Others Required to File

A. The persons holding positions listed in Appendix A & B (without a reference to Government Code section 87200) are termed “designated” employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on their personal financial interests.

B. Designated positions and others required to file under Government Code section 87200 are included in Appendix A attached hereto for information purposes only and are identified by the code sections which apply.

8.02.04 Disclosure Categories

A. This code does not establish any additional disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, et seq.

B. In addition, this code does not establish any additional disclosure obligation for any designated employees who are

designated in a Conflict of Interest Code for another agency, if all of the following apply:

1. The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency.
2. The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200.
3. The filing officer is the same for both agencies.

C. The persons in B (1 thru 3) above are covered by this code for disqualification from involvement in the approval process purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix B specify which kinds of financial interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in Appendix A. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her position.

8.02.05 Statements of Economic Interest: Place of Filing

All designated employees identified in the Appendix shall file an annual statement disclosing the employee's interest in real property, investments, loans, income and gifts with the clerk or secretary of the department or commission who will receive the statement, make and retain a copy and forward the original to the County Clerk.

8.02.06 Statements of Economic Interest: Time of Filing

A. Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

B. Assuming Employment Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions.

C. Annual Statements. All designated employees shall file statements no later than April 1.

D. Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

8.02.07 Statements for Persons Who Resign Prior to Assuming Office

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming-employment statement, is not deemed to have assumed employment or left employment, provided he or she did not make or participate in the making of, or use his or her position to influence, any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

A. Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

1. File a written resignation with the appointing power.
2. File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

8.02.08 Contents of and Period Covered by Statements of Economic Interests

A. Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

B. Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming position and income received during the 12 months prior to the date of assuming position or the date of being hired.

C. Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year, provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later.

D. Contents of Leaving Office Statements. Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

8.02.09 Manner of Reporting

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

A. Investment and Real Property Disclosure. When an investment or an interest in real property within Glenn County or within two miles of the County is required to be reported, the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

B. Personal Income Disclosure. When personal income is required to be reported, the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

C. Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported, the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;
2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

D. Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

E. Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

8.02.10 Prohibition on Receipt of Gifts

No designated employee of a local government agency shall accept gifts that exceeds the amount allowed by Fair Political Practices Commission pursuant to Regulation 18730 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

8.02.11 Loans to Designated Positions Employees

A. No designated employee of a local government agency shall, from the date of his or her employment to the designated position through the date that he or she leaves the designated position, receive a personal loan from any individual officer, employee, member, or consultant of the local government agency in which the designated employee has direction and control.

B. No designated employee of a local government agency shall, from the date of his or her employment to the designated position through the date that he or she leaves, receive a personal loan from any person who has a contract with the local government agency to which that designated position employee has been employed or over which that designated employee's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the designated employee's official status.

C. This section shall not apply to the following:

1. Loans made by a designated employee's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
2. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.
3. Loans made, or offered in writing, before January 1, 1998.

8.02.12 Loan Terms

A. Except as set forth in subdivision (B), no designated employee of a local government agency shall, from the date of his or her employment to the designated position through the date he or she leaves, receive a personal loan of five hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

B. This section shall not apply to the following types of loans:

1. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
2. Loans made, or offered in writing, before January 1, 1998.

C. Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

8.02.13 Personal Loans

A. Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

- a. The date the loan was made.
 - b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.
 - c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.
- B. This section shall not apply to the following types of loans:
- 1. A loan that would otherwise not be a gift as defined in this title.
 - 2. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
 - 3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
 - 4. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.
- C. Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

8.02.14 Disqualification

No designated employee shall make, participate in making, or in any way attempt to use his or her position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the designated employee or a member of his or her immediate family or on:

- A. Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- B. Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- C. Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made.
- D. Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.
- E. Any donor of, or any intermediary or agent for a donor of, a gift or gifts exceeding the amount allowed by FPPC, pursuant to Regulation 18730, provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

8.02.15 Disclosure of Disqualifying Interest and Manner of Doing So

- A. Elected and Appointed Officials (Included for information only):

A public official who holds an office specified in section 87200 who has a financial interest in a decision within the meaning of section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

- 1. Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.
- 2. Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of section 87100.
- 3. Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

4. Notwithstanding paragraph (3), a public official described in subdivision (a) may speak on the issue during the time that the general public speaks on the issue.

B. Designated Employees:

1. When a designated employee determines that he or she should not make a governmental decision because he or she has a financial interest in it, the determination not to act must be accompanied by disclosure of financial interest.
2. Where the designated employee is the head of a department, this determination and disclosure shall be made in writing to his or her appointing authority.
3. All other designated employees shall make this determination and disclosure in writing to the designated employee's supervisor.

8.02.16 Legally Required Participation (Included for informational purposes only)

No elected or appointed public official or designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required in order to have a quorum, for the decision to be made. The fact that the vote of a elected or appointed official or designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section. Where more than one member is disqualified and only one is required to make up a quorum, the member shall be chosen by lot.

8.02.17 Assistance of FPPC or County Counsel

Any person who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 or from the County Counsel, provided that nothing in this section requires the County Counsel to issue any formal or informal opinion.

8.02.18 Consultants

Consultants retained by the Board of Supervisors under contract pursuant to section 31000 of the Government Code or any other provision of law shall be required to file a disclosure statement except when the Board makes a specific finding that the consultant could not foreseeably be involved in the making or participate in the making of decisions which may foreseeably have a material effect on any financial interest. For purposes of this section, consultant is defined as set forth in section 18700 of the Regulations promulgated by the Fair Political Practices Commission.

8.02.19 Assistance of the Commission and Counsel

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

8.02.20 Violations

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000 - 91015. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

8.02.21 Mandatory Ethics Training

Effective January 1, 2006, any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties, shall be required to receive ethics training. In addition, all employees designated by a local agency legislative body, as listed in Appendix A of this title as county officers and employees that are required to file conflict of interest statement, shall also receive the ethics training.

TITLE 8 OF GLENN COUNTY ADMINISTRATIVE MANUAL

APPENDIX A

COUNTY OFFICERS AND EMPLOYEES REQUIRED TO FILE CONFLICT OF INTEREST STATEMENT

Filing Category	Department
	<u>AGRICULTURAL DEPARTMENT</u>
1	Agricultural Commissioner and Sealer of Weights and Measures
1	Deputy Agricultural Commissioner/Deputy Sealer of Weights and Measures
	<u>AIRPORT LAND USE COMMISSION</u>
1	Commissioners (as to all gifts and loans and only real property interests within the planning boundaries of the land use plan)
	<u>ASSESSOR</u>
1	Assessor
1	Assistant Assessor
1	Senior Appraiser
1	Administrative Assistant
1	Office Technician (employee that makes change in ownership decisions)
	<u>BOARD OF SUPERVISORS</u>
1	Supervisors – Districts 1 – 5 (Filing required by Gov. Code § 87200)
1	County Administrative Officer (Filing required by Gov. Code § 87200)
	<u>CHILD SUPPORT SERVICES AGENCY</u>
1	Director
	<u>CLERK OF THE BOARD OF SUPERVISORS</u>
1	Clerk of the Board
	<u>COUNTY CLERK-RECORDER</u>
1	County Clerk-Recorder
1	Assistant Clerk-Recorder
1	Administrative Assistant
1	Supervising Office Technician
	<u>COUNTY COUNSEL</u>
1	County Counsel (Filing required by Gov. Code § 87200)
	<u>COUNTY FACILITIES</u>
1	County Facilities Field Operations Manager
	<u>DEPARTMENT OF FINANCE</u>
1	Finance Director (Filing required by Gov. Code § 87200)
1	Assistant Finance Director
1	Assistant Director Treasury
1	Staff Services Manager

Filing Category	Department
	<u>DISTRICT ATTORNEY</u>
1	District Attorney (Filing required by Gov. Code § 87200)
1	Assistant District Attorney
	<u>FLEET SERVICE CENTER</u>
1	Fleet Operations Manager
	<u>HEALTH & HUMAN SERVICES AGENCY</u>
1	Health and Human Services Agency Director
1	Health and Human Services Agency Deputy Director
1	Health and Human Services Agency Administration Manager
1	Health and Human Services Agency Fiscal Manager
1	Health and Human Services Agency Program Manager
1	Compliance and Quality Improvement Manager
1	Environmental Health Director
1	Community Development Director
1	Health Officer
1	Program Manager II
1	Supervising Welfare Investigator
1	Chief Deputy Public Guardian/Administrator
1	Administrative Services Analyst III
1	Information Systems Analyst III
1	Supervising Accountant
	<u>LOCAL AGENCY FORMATION COMMISSION</u>
1	Commissioners
1	Executive Officer
	<u>OFFICE OF EMERGENCY SERVICES</u>
1	Director
1	Deputy Director
	<u>PERSONNEL</u>
1	Personnel Director
	<u>PLANNING AND COMMUNITY DEVELOPMENT SERVICES</u>
1	Planning Commissioners – Districts 1 – 5 (Filing required by Gov. Code § 87200)
1	Planning and Community Development Director
4	Principle Planner
	<u>PROBATION DEPARTMENT</u>
1	Chief Probation Officer/Juvenile Hall Superintendent
	<u>PUBLIC WORKS</u>
1	Public Works Director
1	Assistant Director Public Works
4	Public Works Field Operations Manager
4	Public Works Maintenance Supervisor
4	Associate Engineer
4	Engineering Technician IV

Filing Category	Department
	<u>SHERIFF-CORONER/ANIMAL CONTROL</u>
1	Sheriff-Coroner/Animal Control Officer
1	Undersheriff
	<u>SUPERINTENDENT OF SCHOOLS</u>
1	Members, Board of Education
1	Superintendent of Schools
	<u>VETERANS SERVICE OFFICE</u>
1	Veterans Service Officer

*Persons who qualify as "consultants" may be required by the agency head to make disclosure under the appropriate category.

**TITLE 8 OF GLENN COUNTY ADMINISTRATIVE MANUAL
APPENDIX B**

**STATEMENT OF ECONOMIC INTEREST REPORTING
Disclosure Categories**

1. Full Disclosure
2. Full Disclosure (Excluding interests in real property)
3. Interests in Real Property
4. General Contracting/Consultants Categories
5. Regulatory, Permit or Licensing Agency
6. Grant/Service Providers/Agencies that Oversee Programs
7. New Positions

TITLE 8 OF GLENN COUNTY ADMINISTRATIVE MANUAL

APPENDIX B

STATEMENT OF ECONOMIC INTEREST REPORTING DISCLOSURE CATEGORIES

INTRODUCTION

Pursuant to the Political Reform Act (Act), individuals who make or participate in making governmental decisions that could affect their personal economic interest shall file a Statement of Economic Interest. Each conflict of interest code must provide a description of the financial interests that each designated employee must disclose. Reg. 18730 contains a description of each type of disclosable financial interest: real property, investments, income (including gifts and loans) and business positions. However, disclosure categories describe the specific types of financial interests that an *individual or class of employee* to whom the category is assigned must disclose.

STANDARD DISCLOSURE CATEGORIES

The County of Glenn has seven standard disclosure categories that departments may assign to positions and classes of positions in appropriate combinations in order to ensure that adequate economic disclosure is made by each designated employee in accordance with the FPPC. The categories currently read as follows:

CATEGORY 1. Full Disclosure

Persons in this category shall disclose all interests in real property within the jurisdiction or within two miles of the boundaries of the jurisdiction or within two miles of any land owned or used by the agency, as well as investments¹, business positions² and sources of income³, including gifts, loans and travel payments. Persons are not required to disclose property used primarily as their residence or for personal recreational purposes.

CATEGORY 2. Full Disclosure (excluding interests in real property)

Persons in this category shall disclose all investments, business positions and sources of income, including gifts, loans and travel payments.

CATEGORY 3. Interests in Real Property

Persons in this category shall disclose all interests in real property located within the jurisdiction or within two miles of the boundaries of the jurisdiction or within two miles of any land owned or used by the agency.

CATEGORY 4. General Contracting & Consultants Categories

GENERAL CONTRACTING (Two Models)

(Note: The first model can be used for an individual who contracts for the entire agency. The second model is for an individual who has contracting authority for a specific department).

(1) Persons in this category shall disclose all investments, business positions and income, including gifts, loans and travel payments, from sources that provide leased facilities, goods, equipment, vehicles, machinery or services, including training or consulting services, of the type utilized by the County; or

(2) Persons in this category shall disclose all investments, business positions and income, including gifts, loans and travel payments, from sources that provide leased facilities, goods, equipment, vehicles, machinery or services, including training or consulting services, of the type utilized by the employee's department or area of authority.

CONSULTANTS⁴

Individuals who perform under contract the duties of any designated position shall be required to file Statements of Economic Interests disclosing reportable interests in the categories assigned to that designated position. In other words, a consultant is someone who, under contract, makes or participates in making agency decisions affecting a financial interest. A consultant, then, is treated just like an agency employee who has similar authority.

In addition, individuals who, under contract, participate in decisions which affect financial interests by providing information, advice, recommendations or counsel to the agency which could affect financial interests shall be required to file Statements of Economic Interests, unless they fall within the Political Reform Act's exceptions⁵ to the definition of consultant. The level of disclosure shall be as determined by the Department Head and/or County Counsel.

CATEGORY 5. Regulatory, Permit or Licensing Agency

(Two models - The first model can be used by an agency that licenses or regulates. The second model can be used by an agency that licenses occupations, as well as approves classes or curricula to obtain, or maintain an occupational license).

(1) Persons in this category shall disclose all investments, business positions and income, including gifts, loans and travel payments, from sources that are subject to the regulatory, permit or licensing authority of, or have an application for a license or permit pending before, the County of Glenn.

(2) Persons in this category shall disclose all investments, business positions and income, including gifts, loans and travel payments, from sources that either contract to provide education or training required by the County of Glenn to qualify for or maintain a license, or entities that provide education or training services which courses or curricula are approved by the County of Glenn.

CATEGORY 6. Grant/Service Providers/Agencies that Oversee Programs

(Two models - The first model can be used by an agency that awards monies or grants to organizations or individuals. The second model is for an agency that also approves programs for rehabilitative services).

(1) Persons in this category shall disclose all investments, business positions and income, including gifts, loans and travel payments, or income from a nonprofit organization, if the source is of the type to receive grants or other monies from or through the County of Glenn.

(2) Persons in this category shall disclose All investments, business positions and income, including gifts, loans and travel payments, or income from a nonprofit organization, if the source is of the type to offer or provide consulting, rehabilitative or educational services concerning the prevention, treatment or rehabilitation of persons suffering from (alcohol related problems/drug abuse).

CATEGORY 7. New Positions (Positions Not Yet Covered Under a Conflict-of-Interest Code)

Effective January 1, 2010, an individual hired for a position not yet covered under an agency's conflict-of-interest code must file Form 700 if the individual serves in a position that makes or participates in making governmental decisions. These individuals must file under the broadest disclosure category until the code is amended to include the new position unless the agency has provided in writing a limited disclosure requirement. Such individuals are referred to as "code filers." See Regulation 18734 and 18219 below.

REGULATIONS RELATING TO CATEGORIES 4 & 7, CONSULTANTS, NEW POSITIONS & DESIGNATED EMPLOYEES

§ 18734. Designated Employees and Consultants - Positions Pending Code Amendment.

(a) New Positions and Consultants - Interim Disclosure: Consultants and newly created positions as set forth in Regulation 18219 that make or participate in the making of decisions that may foreseeably have a material effect on any financial interest shall file interim disclosure under this category.

§ 18219. Designated Employees.

For purposes of Section 82019 the term "designated employee" includes a consultant as defined under Regulation 18701(a)(2) and an employee in a newly created position that makes or participates in the making of decisions and whose specific position is not yet listed in an agency's conflict-of-interest code.

DEFINITIONS

¹ **"Investment"** means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest *owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family*, if the business entity or any parent, subsidiary or otherwise related business has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business in the jurisdiction at any

time during the two years prior to the time any statement or other action is required under this title. No asset shall be deemed an investment unless its fair market value equals or exceeds one thousand dollars [now \$2,000 in the Act]. The term "investment" does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code, or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns directly, indirectly or beneficially, a 10-percent interest or greater.

² A **“Business Position”** is a position of director, officer, partner, trustee, employee or any position of management in any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

³ **“Income”** means a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater.

⁴ Those assigned to file under the **“Consultant”** category are only persons who qualify as "consultants" under the Political Reform Act. "Consultant" is defined in Fair Political Practices Commission Regulation 18701 - Public Official, Definitions - as follows:

- (2) "Consultant" means an individual who, pursuant to a contract with a state or local *government* agency:
- (A) Makes a *governmental* decision whether to:
1. Approve a rate, rule, or regulation;
 2. Adopt or enforce a law;
 3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
 4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
 5. Grant agency approval to a contract that requires agency *approval* and to which the agency is a party, or to the specifications for such a contract;
 6. Grant agency approval to a plan, design, report, study, or similar item;
 7. Adopt or grant agency *approval* of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or
- (B) Serves in a staff capacity with the agency and in that capacity participates in making a *governmental* decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's 'Conflict of Interest Code under Government Code Section 87302.

⁵ **Exemptions from Disclosure:** The Political Reform Act exempts from disclosure employees whose duties are secretarial, clerical or ministerial, because they do not exercise judgment in performing their duties. The same exemption applies to members of boards and commissions that serve solely in an advisory capacity. However, one of the difficulties of code review and analysis lies in identifying those individuals who *do* exercise judgment *and* whose decisions or input to agency decisions may foreseeably have a material effect on a financial interest. It is not always easy to identify who should be exempted from making disclosure and who should be included

in a code.

Analysts will find that agencies suffer from a very common misconception with regard to who should be included in a code when it comes to positions that have any kind of duties related to money. Very frequently, an agency will propose to include budget staff, including budget supervisors and even managers, who have no decision making authority with respect to purchasing and contracting or any other agency decision that might affect a specific financial interest. The belief is that, because these individuals "hold the purse strings", they must make disclosure. However, this is not the case. Even though they may have a significant role in developing the agency's budget, they are not in a position by which they could feather their own nests by directing funds of the agency to a specific financial interest.

Also, agencies will frequently propose to include accounting staff, including accounting supervisors and managers. They firmly believe that, because these individuals are in a position to "cook the books", they should make disclosure. What they often do not understand is that accounting does not involve the exercise of discretion that would direct payments to a business or other type of financial interest. This decision is made by others in the agency. The accountants merely keep a record of *where* the money went, *when* it went, and *how much* money went there. This is an important job, to be sure, but not one that triggers disclosure under the Political Reform Act.

This raises an important point: The Political Reform Act was never intended to, and is not structured to prevent embezzlement or other forms of actual theft. It is intended to prevent conflicts of interest from arising when public officials make decisions affecting financial interests.