



CITY OF *Los Angeles*

DEFERRED COMPENSATION PLAN

Board Report 21-09

Date: February 16, 2021

To: Board of Deferred Compensation Administration

From: Staff

Subject: Statements of Economic Interests Filing for Staff Positions

Board of Deferred Compensation Administration

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Recommendation:

That the Board of Deferred Compensation Administration (Board): (a) find that all Deferred Compensation Plan (DCP) professional staff positions participate in decision-making for the purpose of procurements, contracts, and policy development for the DCP and (b) recommend to the Personnel Department General Manager that all of the DCP professional staff positions be included on the Personnel Department's COI Code for the purpose of DCP staff support.

Discussion:

A. Background

At its January 19, 2021 meeting, the Board adopted recommended Deferred Compensation Plan (DCP) strategic initiatives for Plan Year 2021. Included among these initiatives was developing Board findings regarding filing of Statements of Economic Interests and related requirements.

Staff indicated that, in the past, the Personnel Department has included the DCP within its liaison work with the Los Angeles City Ethics Commission (Ethics Commission) for the purpose of identifying positions required to file Statements of Economic Interests and coordinating related requirements. Staff further indicated that DCP staff have assisted but not been the primary interface with the Ethics Commission, but that in connection with DCP autonomy provisions as reflected in the recently adopted Memorandum of Understanding between the Board and Personnel Department with respect to the DCP (DCP MOU), the Board should establish independent findings with respect to identifying positions required to file Statements of Economic Interests and coordinating related requirements. This report provides recommendations to the Board regarding making certain recommendations on this matter to the Personnel Department General Manager.

B. Findings and Recommended Board Action

Staff reached out to the Ethics Commission for guidance regarding the process and criteria for establishing an agency's designated filers, i.e. those individuals who are, due to the nature of their position or assignment, listed on an agency's Conflict of Interest (COI) code and required to file annual Statements of Economic Interest. It should be noted that use of the term "code" in this context refers strictly to establishing required filing positions and their associated duties as those relate to filing, not establishing a unique set of policies separate from the State's established requirements.

Government Code Section 82003 defines an agency as "any state agency or local government agency." Government Code Section 82011 defines who is a code reviewing body, depending on jurisdiction. Included within its list of code reviewing bodies are city councils. The Los Angeles City Council is ultimately responsible for adopting the City's COI Code. City departments make recommendations with respect to which of their positions and staff members should be included on the COI Code.

Ethics Commission staff provided staff with a "COI Code Revision Schedule A Review" (**Attachment A**). This document is a guide the Ethics Commission created based off criteria the State of California has established regarding determining who should become a designated filer and be listed on an agency's COI Code.

The Ethics Commission's Code Revision Schedule A Review indicates that "every position in your agency that is involved in making or participating in making governmental decisions must be designated in your agency's code." Examples of *decision-making* included in the document, such as voting, adopting policy, and entering into contracts, apply to the Board. Examples of "*participation*" in decision-making included in the document, such as negotiating terms of a contract, writing specifications for a procurement, or making recommendations to a governing body, apply to staff.

With respect to making recommendations to a governing body, the Ethics Commission guidelines include the caveat that this is not meant to include recommendations having significant intervening substantive review, and that if there are several layers of substantive review the position should not be designated in the COI Code. The Ethics Commission guidelines distinguish between directors and executive staff making recommendations, which should be included as designated filers, and positions which are clerical, secretarial, or ministerial, which should not be included. The guidelines then recommend reviewing the duties of staff positions falling between these two levels.

Presently the required filers associated with the DCP include the following:

- a. Board Members
- b. Chief Personnel Analyst
- c. Senior Management Analyst II

For DCP staff, the duties of the current Chief Personnel Analyst and Senior Management Analyst II clearly fall within the category of “directors and executive staff.” Both of these positions are responsible for negotiating contracts, writing procurements such as Requests for Proposal (RFPs), and making policy and other recommendations to the Board. Similar duties will apply to the DC Plan Manager once that position is filled and the Chief Personnel Analyst and Senior Management Analyst II positions are no longer supporting the DCP.

There are three other professional staff positions assigned to the DCP:

- Senior Personnel Analyst I (vacant)
- Management Analyst (filled)
- Management Analyst (filled)

Each of these analyst positions is involved in drafting procurements, participating in evaluating responses to those procurements, drafting contracts, and developing recommended policy positions for the Board. Although all lower-level staff work is reviewed by DCP executive staff, due to the small size of DCP staff there is no assurance that there will always be multiple levels of executive review, nor can executives substitute their judgment for the analyst’s judgment in certain instances (for example the evaluation of proposer responses to a procurement). Also, to various degrees (depending on the assignment) the executive staff person must rely on the analyst to conduct and synthesize the detailed and complex analytical review of information as that may relate to procurements, contracting, and policy development. As a result, staff’s analysis is that these three positions fall within the intended meaning of participation in decision-making and should be included on the COI Code for staff positions providing support to the DCP.

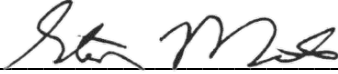
The DCP MOU recognizes the Personnel Department General Manager as the head of the department with the powers and duties of general managers as set forth in Charter Sections 506 and 510. As the hiring authority, the Personnel Department is responsible for making recommendations with respect to those positions and staff members to be included on the Personnel Department’s COI Code.

The MOU further provides that the Personnel Department General Manager will delegate “to the DC Plan Manager, or equivalent DCP manager, (and by extension, those staff positions reporting to same), subject to the requirements of the Charter, LAAC and internal Personnel Department policies and rules, the responsibility of reporting directly to the Board for the purposes of DCP administration, including for the purpose of generating reports and recommendations, strategic planning, policy development and execution, and all other administrative and oversight functions.”

As the Board regularly reviews and acts on the work performed by DCP staff, the Board should provide the Personnel Department General Manager with its findings and recommendations with respect to identifying positions required to file Statements of Economic Interests. Based on the information included in this report, staff recommends that the Board (a) find that all DCP professional staff positions participate in decision-making for the purpose of procurements,

contracts, and policy development for the DCP and (b) recommend to the Personnel Department General Manager that all of the DCP professional staff positions be included on the Personnel Department's COI Code for the purpose of DCP staff support

Submitted by:



Steven Montagna, Chief Personnel Analyst

Los Angeles City Ethics Commission

COI Code Revision Schedule A Review

Which Positions Should be Designated on Schedule A

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

However, these terms have particular meanings and not every employee that "participates" in making a decision should be included on your conflict of interest code.

Each agency must review the draft code to ensure that only those employees that meet this criteria are included on Schedule A.

Here are a few definitions and guideposts.

Definitions:

"Making a decision" means:

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

If an employee makes a decision, that position should be listed on the Schedule A.

"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*

If there are several layers of "substantive review," the position should not be designated in the code.

However, substantive review does not occur when (1) the superior is relying on the data or analysis without checking on the data or analysis independently, (2) the superior relies on the professional judgment of the employee, or (3) the employee influences the final decision in some other way.

Directly advising the final decision maker necessarily does not involve "significant intervening substantive review" because no intervening review has occurred and if the position advises a final decision maker directly, the position must be included on the conflict of interest code.

The number of layers of review is not always the deciding factor, but the quality of the review and the experience level of the supervisor(s) conducting the review of discretionary decisions that would determine whether an employee is "participating in a decision." Of course, if the employee actually makes a decision, that employee should be designated.

General guidance:

Maintain in the code your broad policy/decision makers. For example, Directors and executive staff.

Eliminate positions whose duties are clerical, secretarial, ministerial, or manual. For example, Secretary and Tree Trimmer.

Then review the duty statements of everyone between these two levels. For example, Information Systems Analyst, Fleet Manager, Purchasing Agent and Administrator Officer. Look closely at how many levels of substantive review these positions have.

For example, based on the stated duties, which of the following positions should be in the agency's code?

Director of Operations Prepares and administers the department budget. Works independently in the development of capital improvement projects. YES

Administrative Assistant Prepares accounting spreadsheets and meeting minutes, schedules meetings, posts information on website. PROBABLY NOT