



Date: June 25, 2014
To: ABAG PLAN Board of Directors
From: ABAG PLAN Executive Committee
Subject: Conflict of Interest Code (COIC) – Re-filing required

Recommendation:

The Executive Committee recommends PLAN Board of Directors approve the re-filing of PLAN COIC with the FPPC due to problems encountered in our original filing.

Attachments

1. PLAN Counsel explanatory letter dated June 3, 2014; Conflict of Interest Code and FPPC Adoption.
2. Revised PLAN Resolution, Notice of Intent, Declaration of CEO and PLAN COIC.

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(Superior Court Judge/Retired)
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June 3, 2014

To: ABAG PLAN Board of Directors

From: Robert J. Lanzone
Jean Savaree
Kal Ruess

Re: Conflict of Interest Code and FPPC Adoption

The issue of whether or not ABAG PLAN needed to adopt a Conflict of Interest Code, pursuant to the California Political Reform Act (CPRA) and California Fair Political Practices Commission (FPPC) regulations, was first raised by the Board in 2012. At that time, our office recommended that the Board adopt a Conflict of Interest Code to ensure compliance with all applicable disclosure requirements for Board members and others who perform work on behalf of the PLAN.

Last summer we approached the FPPC about whether or not disclosure requirements under CPRA applied to PLAN as a non-profit corporation with no employees. After making a formal request for guidance, the FPPC returned an opinion letter that indicated that the CPRA did apply and that the PLAN is required to adopt a Conflict of Interest Code.

Based on this opinion letter, a proposed Conflict of Interest Code was brought to the Board during its annual meeting on June 19, 2013. The Board approved a resolution to authorize that a Notice of Intent to Adopt the Conflict of Interest Code be posted and the required 45-day notice period be opened. This Notice and the accompanying Conflict of Interest Code were forwarded to the FPPC. No public comments were received and, having received no feedback from the FPPC, we understood that the Code was adopted.

However, during the disclosure period this spring (i.e. when annual Form 700s were due), concern was expressed that the Conflict of Interest Code had not correctly adopted. We checked with the FPPC and were told that they have no record of receiving the Notice of the PLAN's Conflict of Interest Code.

As a multi-county agency, the FPPC is the body that provides oversight for PLAN. This means that the FPPC must sign-off on the adoption and modifications to the PLAN's Conflict of Interest Code. Since March, we have been working with FPPC

to have the Conflict of Interest Code formally adopted. We have learned that the FPPC will not give its approval of PLAN's Conflict of Interest Code without conducting its own noticing period in conjunction with the noticing period conducted by the PLAN. For that reason, the PLAN must re-authorize the Notice of Intent to Adopt the Conflict of Interest Code and provide another 45-day public comment period. Assuming that again no comments are received by the PLAN or by the FPPC, the Code will be approved by the FPPC at the close of the comment period.

RECOMMENDATION

We recommend that the Board adopt the attached resolution authorizing the Notice of Intent to Adopt the attached Conflict of Interest Code for ABAG PLAN. Assuming the Board approves this action, we will continue to work with FPPC to ensure that the Conflict of Interest Code is adopted.



**Resolution authorizing the Notice of Intention to Adopt a Conflict of Interest Code
by the Pooled Liability Assurance Network**

Whereas, the Pooled Liability Assurance Network (PLAN) was established by the Association of Bay Area governments as a non profit corporation to provide a pooled risk program to manage risk, purchase insurance, provide claims administration and safety/loss control services

Whereas, pursuant to Government Code Section 87300, et seq., members of PLAN's Governing Board (Board) are subject to California's Political Reform Act of 1974, Government Code Section 81000, et seq., and are required to adopt a Conflict of Interest Code (Code); and

Whereas, pursuant to Section 18750.1(c)(3), every agency which proposes to adopt a conflict of interest code shall prepare a Notice of Intention to Adopt a Conflict of Interest Code opening a 45-day comment period to review the proposed Conflict of Interest Code which is attached hereto as Exhibit A.

Now, Therefore, Be It Resolved that the Governing Board of the PLAN Corporation hereby authorizes the Notice of Intention to Adopt the Conflict of Interest opening the 45-day comment period to review the proposed Code.

Passed and adopted this 25th day of June, 2014.

Heather McLaughlin
Chair

Attest:

James Hill
Corporate Secretary

**ASSOCIATION OF BAY AREA GOVERNMENTS POOLED LIABILITY
ASSURANCE NETWORK (ABAG PLAN)
NOTICE OF INTENTION TO ADOPT OR AMEND A
CONFLICT-OF-INTEREST CODE**

NOTICE IS HEREBY GIVEN that the Association of Bay Area Governments Pooled Liability Assurance Network (ABAG PLAN) intends to adopt or amend a conflict-of-interest code pursuant to Government Code Section 87300 and 87306. Pursuant to Government Code Section 87302, the code will designate employees who must disclose certain investments, income, interests in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

A written comment period has been established commencing on June 26, 2014 and terminating on August 11, 2014. Any interested person may present written comments concerning the proposed code no later than August 11, 2014 to ABAG PLAN at 101 Eighth Street, First Floor, Oakland, CA 94607. No public hearing on this matter will be held unless any interested person or his or her representative requests no later than 15 days prior to the close of the written comment period, a public hearing.

ABAG PLAN has prepared a written explanation of the reasons for the designations and the disclosure responsibilities and has available all of the information upon which its proposal is based.

A conflict-of-interest code is being adopted to identify the officials that make or participate in making governmental decisions.

Copies of the proposed code and all of the information upon which it is based may be obtained from ABAG PLAN at 101 Eighth Street, First Floor, Oakland, CA 94607. Any inquiries concerning the proposed code should be directed to James Hill, Risk Management Officer for ABAG PLAN at (510) 464-7969.

NOTE: This notice should be filed with the Fair Political Practices Commission and served individually on agency employees and officers affected by this code 45 days prior to agency action.

**DECLARATION OF CHIEF EXECUTIVE OFFICER
FOR MULTI-COUNTY AGENCIES**

The proposed conflict-of-interest code specifically enumerates each of the positions within the agency that involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest and does not designate positions that are clerical in nature, or which do not otherwise influence agency decisions. The disclosure categories have been written to address only foreseeable issues that may create a conflict of interest, unless the position is such that it meets Government Code Section 87310. The agency has satisfied all of the requirements of Title 2, Division 6 of the California Code of Regulations §18750.1 preliminary to approval of the proposed code, including providing a comment period for both employees and the public.

6/11/14
Date

ABAG PLAN Corporation

Ezra Rapport
President
Ezra Rapport

ASSOCIATION OF BAY AREA GOVERNMENTS PLAN CONFLICT OF INTEREST CODE

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 can 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 **Association of Bay Area Governments Plan Corporate Liability Assurance Network (ABAG PLAN)**.

Individuals holding designated positions shall file their statements of economic interests with **ABAG PLAN**, which will make the statements available for public inspection and reproduction. (Gov. Code Sec. 81008.) All statements will be retained by **ABAG PLAN** in the office of the Association of Bay Area Governments.

APPENDIX A
DESIGNATED POSITIONS

<u>Designated Positions</u>	<u>Disclosure Categories</u>
Executive Director/President	1, 2, 3, 4,
Risk Manager	1, 2, 3, 4
Legal Counsel to the Corporation	1, 2, 3, 4
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 Executive Director/President may determine in writing that a particular consultant or new positions, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this section. Such determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director/President'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 Sec. 81008)

Note: The positions of Executive Director/President and Risk Manager are filled by employees of Association of Bay Area Governments, but act in a staff capacity. The position of Legal Counsel to the Corporation is filled by an outside consultant, but acts in a staff capacity.

The following positions are NOT covered by the conflict of interest code because they must file under Government Code Section 87200 and, therefore, are listed for informational purposes only:

Members of the Board of Directors
Alternates for Members of the Board of Directors
Chief Financial Officer

An individual holding one of the above listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

APPENDIX B

DISCLOSURE CATEGORIES

Designated positions must disclose pursuant to the categories below.

1. Investments and business positions in business entities, and income (including receipt of loans, gifts, and travel payments), from sources of the type that contract with ABAG PLAN to supply goods, services, materials, or supplies.
2. Investments and business positions in business entities, and income (including receipt of loans, gifts, and travel payments), from sources that are engaged in the performance of work or services of the type utilized by ABAG PLAN, including insurance companies, carriers, holding companies, underwriters, brokers, solicitors, agents, adjusters, claims managers, and actuaries.
3. Investments and business positions in business entities, and income (including receipt of loans, gifts, and travel payments), from sources that have filed a claim or have a claim pending that is reviewed and administered by ABAG PLAN.
4. Investments and business positions in business entities, and income (including receipt of loans, gifts, and travel payments), which are financial institutions including banks, savings and loan associations and credit unions.



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

September 16, 2014

**Mr. Kai Ruess
Association of Bay Area Governments PLAN
1001 Lauren Street, Suite A
San Carlos, California 94070**

Re: Conflict of Interest Code for Association of Bay Area Governments PLAN

Dear Mr. Ruess:

Enclosed is the approved conflict of interest code for Association of Bay Area Governments PLAN approved by the Fair Political Practices Commission on September 12, 2014. The code will become effective on October 12, 2014, which is 30 days after the Commission's approval of the code. No further action is required by the agency to make this code effective.

Regulation 18730, which has been incorporated as the body of the agency's conflict-of-interest code, can be obtained via the FPPC website (www.fppc.ca.gov). Form 700 and the Reference Pamphlet, which must be used by all designated positions, also can be obtained from the website. All newly-designated individuals must file Form 700 within 30 days of the effective date of the code.

Please note that FPPC Regulation 18734 requires individuals serving in newly budgeted positions to file Statement of Economic Interests. The disclosure should be tailored to the job duties and treated in the same manner as consultants. A change in Appendix A was made to clarify that these individuals must also file a Form 700. It is no longer required to wait until the agency amends its code.

If you are not the filing officer for the statements of economic interests, it is imperative that this information be forwarded to the appropriate person. If you have any questions, please contact me at (916) 322-5660.

Sincerely,

**Lynda Cassady
Chief, Technical Assistance Division**


**By: Ivy Branaman
Political Reform Consultant**

Enclosure



This is the last page of the conflict of interest code of the Association of Bay Area Governments PLAN.



CERTIFICATION OF FPPC APPROVAL

Pursuant to Government Code Section 87303, the conflict of interest code for the Association of Bay Area Governments PLAN was approved on Sept 12 2014.

This code will become effective on October 12, 2014.

A handwritten signature in blue ink, which appears to read "Erin V. Peth", is written over a horizontal line.

Erin V. Peth

Executive Director

Fair Political Practices Commission