

GAO Topic of the Month – October 2022

CONFLICT OF INTEREST FORMS & REQUIREMENTS



BACKGROUND

Arizona law requires employees of public agencies and public officers to avoid conflicts of interest that might influence or affect their official conduct. To determine whether a conflict of interest exists, employees/public officers must first evaluate whether they or a relative has a “substantial interest” in (1) any contract, sale, purchase, or service to the public agency or (2) any decision of the public agency. If an employee/public officer or a relative has a substantial interest, statute requires the employee/public officer to fully disclose the interest and refrain from voting upon or otherwise participating in the matter in any way as an employee/public officer.^{1 2}

Per A.R.S. § 38-509, every political subdivision and public agency subject to A.R.S. §§ 38-501 through 38-511 must "maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article." A.R.S. § 38-503(A), (B) requires that, any public officer or employee who has a conflict of interest in any agency decision or in the award of a contract must provide written disclosure of that interest in the agency's special conflict of interest file. The officer or employee may either file a signed written disclosure statement fully disclosing the interest or file a copy of the official minutes of the agency, which fully discloses the interest in accordance with A.R.S. §§ 38-502(3).

To help ensure compliance with these statutory requirements, the Arizona Department of Administration's (ADOA) State Personnel System Employee Handbook require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. The Form GAO-CI-101-A, *Annual Declaration and Disclosure*, and related supplemental B forms, also facilitates the ability for State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an “affirmative no” as well as, be able to disclose related party declarations due to ownership, compensation, office, and fees and commissions. This form is not required as the only means to meet

¹ See A.R.S. §§38-502 and 38-503 (A) and (B)

² A.R.S. §38-502(8) defines “public officer” as all elected or appointed officers of a public agency established by charter, ordinance, resolution, State constitution, or statute. According to the Arizona Agency Handbook, public officers include directors of State agencies and members of State boards, commissions, and committees—whether paid or unpaid.

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the requirements of the statute, however, use of the form will help agencies obtain the necessary full disclosures and provide evidence of the agency's review. A.R.S. §38-509 requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest, including disclosure forms and official meeting minutes, and to make this file available for public inspection.

STATE OF ARIZONA - ANNUAL DECLARATION & DISCLOSURE FORM

All employees of public agencies and public officers must notify his superior authority of the conflict interest per statute. The form GAO-CI-101-A, *Annual Declaration and Disclosure*, and related supplemental forms, B1 – B4, can be used for employees and public officers to indicate all potential conflicts of interest by completing, signing, and submitting the form(s). The form(s) must be completed and signed by the employee/public officer and then reviewed and signed by the Agency Head or Designee. If a "YES" answer is provided to any of the questions on Part A, the individual is also required to complete and submit all applicable supplemental Disclosure Statement Forms (B1, B2, B3, and/or B4) to provide greater details of the specific interests and conflicts. If all answers on Part A are "NO," the individual does not need to complete the supplemental Forms B1, B2, B3 or B4.

DOCUMENT FILE

Per A.R.S. §38-509, public agencies are required to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest, including disclosure forms and official meeting minutes with full disclosures of the details of the conflict of interest. This file must also be available for public inspection.

MANAGEMENT RESPONSIBILITIES

Per SAAM 0535, *Related Party Transactions*, management at each agency must, in the normal course of business, but at least annually, monitor transactions for substantial or remote interest. Management must also retain documentation relating to any conflict of interest situations, how they were resolved, and submit a report by August 31st of each year to the State Comptroller identifying all related party transactions that aggregate to \$1,000,000 or more during the immediately preceding fiscal year. Transactions that may involve a conflict of interest should be immediately reported to the State Comptroller. See SAAM 0535 for additional guidance.

The GAO form is titled, "Annual Declaration and Disclosure." While, there is no policy that requires the form to be completed annually, policy does require the annual reporting and statute requires the disclosure and the maintenance of the file for review. Having an annual or routine process to address Conflicts of Interest can help to make sure that employees and public officers are aware of the statutes and requirements, which will help to facilitate the necessary reporting. Utilizing the form will help those individuals know the process to make a declaration and disclosure, as well as, consider the various areas where a declaration is needed.

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RESOURCES

- Arizona Revised Statutes (A.R.S.) §§ 38-501 through 38-511 (<https://www.azleg.gov/arsDetail/?title=38>)
- Arizona Attorney General Arizona Agency Handbook – (See Chapter 8 - *Conflict of Interest*) (<https://www.azag.gov/outreach/publications/agency-handbook>)
- State Personnel System Employee Handbook (<https://hr.az.gov/about/resources/lawsrulespolicies>)
- State of Arizona Accounting Manual (SAAM) 0535 – *Related Party Transactions* (<https://gao.az.gov/publications/saam>)
- ADOA Annual Declaration and Disclosure Forms (GAO-CI-101-A, B1, B2, B3, B4) (<https://gao.az.gov/publications/forms>)
- Disclosure Statement (ASPS/HRD – FA5.03) (<https://hr.az.gov/about/resources/hr-forms-and-templates>)

CONCLUSION

All employees of public agencies and public officers are required to have current declarations of any conflicts of interest. To be compliant, individuals should at a minimum, make an initial disclosure when first employed by the State and anytime there is a change. It is the agency's responsibility to ensure that all required Disclosures/Forms are properly completed, reviewed, signed, and retained for public inspection in accordance with applicable laws and that all necessary disclosures have been made. If you have any questions, see the provided resources or reach out to your agency's legal counsel. For questions on the forms or the SAAM, please send an email to gaopolicy@azdoa.gov.