

FINANCIAL DISCLOSURE **FILER IDENTIFICATION MANUAL**

The General Assembly enacted the State Ethics Law in 1979 (Chapter 513, Acts of 1979). The purpose of the law is to protect the public's confidence and trust in government by assuring the impartiality and independent judgment of State officials and employees. The law defines minimum standards of conduct for State officials and employees. It also provides that certain government officials and employees disclose their financial affairs annually as a tool to guard against conflicts of interests and to assure the public that State business is being properly conducted.

While all State employees are subject to the conduct (conflict of interest) provisions of the Law, only some officials and employees are required to file an annual financial disclosure statement. In administering the financial disclosure provisions of the law, the State Ethics Commission initially relies on the employing State agency to identify the positions that meet the criteria for filing. The purpose of this manual is to assist agency personnel to properly identify positions required to file and to set forth the process and the procedures to be followed.

If you have any questions regarding this manual or the proper forms to be used in the identification process, do not hesitate to call the State Ethics Commission staff at 410-260-7770 or 1-877-669-6085.

I.

ROLE OF AGENCIES, DEPARTMENT OF BUDGET & MANAGEMENT'S OFFICE OF PERSONNEL SERVICES & BENEFITS, AND THE STATE ETHICS COMMISSION **IN IDENTIFYING FILERS**

A. REQUEST TO ADD OR DELETE POSITIONS REQUIRED TO FILE FINANCIAL DISCLOSURE

Public Ethics Law §15-103 Md. Code Ann., State Gov't Title establishes the decision-making process for the State Ethics Commission, with the advice of the Department of Budget and Management Office of Personnel Services and Benefits, regarding positions to be included in the financial disclosure filing program. The process for identifying filers is as follows:

1. The personnel or human resources staff of the department or independent agency applies the statutory criteria to the positions in their agency.
2. The personnel or human resources staff forwards to the State Ethics Commission a request to add a position to the financial disclosure list and submits a **Form No. 9** for each position not already on the filing list. Often this action will occur with newly created positions, reorganizations, or changes in rates of pay for existing positions or reclassifications. A copy of Form No. 9, Request to Add, is included in the Appendix to this manual. It is very important to include the job description for the position, if available, and if procurement is

part of the justification for filing, the amount of the contract authority. For positions included in the State Personnel Management System (“SPMS”), the PIN number must be included as this is the number used to identify the position’s filing status. Financial disclosure statements should NOT be distributed to a person who fills a position recommended to be added to the list until the State Ethics Commission has made its decision as to whether the position requires a financial disclosure filing.

3. The State Ethics Commission reviews the “Add Position” request and makes its decision. The State Ethics Commission advises the Department of Budget & Management Office of Personnel Services and Benefits of its decision, and the latter may concur or recommend further review. If, after considering the input from the Office of Personnel Services and Benefits, the Commission decides that the position should be included, the Commission will send a letter to the agency advising of the decision on the position to be added.
4. The personnel or human resources staff should distribute the form to the employee who fills the position, and the employee has thirty days (30) to submit the completed form to the State Ethics Commission. The individual should be encouraged to file this form electronically.

The procedure for deleting a position from the financial disclosure list is essentially the same as the process for adding a position to the list, with the exception that Ethics Commission **Form No. 8** (also included in the Appendix to this Manual) is used for this process. Deletions of positions required to file financial disclosure can occur due to changes in programs, staff reorganization, or revisions in job duties. Changes also occur when a position (often a vacant position) is reclassified to a lower level.

If the employee in the position or the agency disagrees with the Commission decision, the employee or agency may write to the State Ethics Commission and ask for reconsideration.

It is important for personnel and human resources managers to be alert to the need for additions and deletions and to make recommended changes as new positions or position adjustments occur during the year. The Ethics Commission should also be notified when a person leaves a position, which is subsequently filled by another person. The Commission will entertain requests for adjustments at any time during the year that a personnel action results in a change in the filing list. Request-to-Add a Position (Form No. 9) and Request-to-Delete a Position (Form No. 8) forms should be scrutinized and approved at the agency level if it has sufficient authority to take the action. In large departments the authority usually resides in the highest-level personnel official. In small agencies, the agency director generally has the requisite authority. Agency approval, evidenced by the signature on the appropriate form, is required prior to Ethics Commission consideration of the request.

B. REQUEST TO ADD OR DELETE A PERSON FROM THE FINANCIAL DISCLOSURE FILING MASTER LIST.

If a person leaves a position required to file and/or a new person fills the position requiring financial disclosure, the Commission should be notified of the change immediately by submitting a Request-to-Add a Person (**Form No. 9A**) and/or Request to Delete a Person (**Form No. 8A**) form. For requests to add or delete in situations in which only the person filling the position changes, forms 8A and 9A should be used and the email address must be included for a person requested to be added. These requests are automatically processed and the filer should be notified by the agency to submit the appropriate financial disclosure statement or financial disclosure termination statement to the Commission. The filer should be encouraged to file electronically.

As a result of the financial disclosure addition and deletion process, the Commission is able to maintain a current list of filers. It is important that all information on these forms be filed out completely and transmitted to the Commission immediately. In January or February of each year, the Commission will send to each agency a copy of its portion of the financial disclosure filing list in preparation for the April 30th annual filing deadline.

II.

TYPES OF POSITIONS INCLUDED IN REGULAR FINANCIAL DISCLOSURE FILING

Generally, persons in the positions listed below are required to file financial disclosure statements with the State Ethics Commission:

1. State elected officials.
2. Employees in the Executive Branch who are compensated at or equal to at least State Grade 16 base who have operational responsibilities or policy advisory responsibilities, especially regarding programs, regulations, licensing, auditing and procurement matters.
3. Employees in the Executive Branch, regardless of pay grade, who have significant involvement in individual State contracts in excess of \$10,000. The \$10,000 per contract criterion also applies to corporate credit card purchases.
4. Employees in the Legislative Branch of government who are compensated at or equal to at least Grade 16 base, or, due to their responsibilities, are identified by the Speaker of the House of Delegates or the President of the Senate as having to file.
5. Employees in the Judicial Branch of government who are compensated at or equal to at least Grade 16 base unless specifically exempted.
6. Faculty members in universities, colleges and community colleges are required to file financial disclosure statements only if they are compensated at or equal to at least State Grade 16 base and have responsibilities as described in this manual.
7. Generally, part-time members of boards and commissions, even if not compensated, must file a limited financial disclosure statement unless they are specifically exempted from the filing requirement. The exemption has been limited to members of boards or commissions having advisory responsibilities only. The State Ethics Commission may approve an exemption in response to a written request from the agency having oversight responsibility for the board or commission and from the chairman of the board or commission. Ethics Commission **Form No. 10** is to be used to request an exemption for new boards or commissions from the filing requirement.

III.

FILER IDENTIFICATION - CRITERIA

A. Compensation and Duties Criteria

Maryland Code Annotated, State Government Article, Title 15 (“Public Ethics Law”), Subtitle 6 requires all public officials and candidates for office as State officials to file financial disclosure

statements. Judicial officials, including judges, masters, examiners, commissioners, auditors and referees of the Judicial Branch, file as required by the Court of Appeals. All others (including judicial employees) file with the State Ethics Commission.

"**State Official**" includes members or members-elect of the General Assembly, judges or judges-elect of a court created by Article IV, §1 of the Constitution, judicial appointees as defined in Maryland Rule No. 16-814, and constitutional officers or officers-elect in the executive branch of the State government. "State Official" also means a person holding office as a State's Attorney, Clerk of the Circuit Court, Register of Wills and Sheriff. (See Public Ethics Law §15-102 (II)).

"**Public Official**," as defined in Public Ethics Law § 15-103 includes: an individual employee who receives compensation at a rate equivalent to at least State **grade level 16**, or who is appointed to a board, if the Ethics Commission determines that the individual, acting alone or as a member of an executive unit, has discretionary or decision making authority or acts as a principal advisor to one with authority in making State policy in an executive unit or in exercising quasi-judicial, regulatory, licensing, inspecting or auditing functions and the individual's duties are not essentially administrative and ministerial.

Public Official also includes contractual employees who are employed full time for at least 6 months and who are identified as having decision making authority, acting a principal advisor to a decision making authority, or exercise quasi judicial, regulatory, licensing, inspecting or auditing functions.

Finally, public official also includes a member, appointee, or employee of the Maryland Stadium Authority; a member, appointee, or employee of the Canal Place Preservation and Development Authority; and a member of the Emergency Medical Services Board, all of whom are required to file financial disclosure forms unless specifically exempted from this requirement by the Commission.

B. Non-Salary Contracting Criteria

Public Ethics Law 15-103 defines "public official" to include an individual in an executive unit who, regardless of compensation level, is charged with decision making authority or acts as a principal advisor to one with such authority in drafting specifications for negotiating or executing contracts which commit the State or any executive unit to expend in excess of \$10,000 for an individual contract. The \$10,000 per contract criterion also applies to corporate credit card purchases. The non-salary contracting criteria are separate and independent from other criteria in § 15-103 related to the definition of "public official." Individuals identified as public officials must file financial disclosure forms.

C. Faculty Disclosure Criteria

Faculty members are required to file financial disclosure if, in addition to their teaching responsibilities, they meet the compensation/duties criteria set forth above and are involved either in direct procurement or in influencing procurements as described below:

1. Direct Procurement Involvement

Financial disclosure is required when a faculty member's official responsibilities include the direct procurement of goods, services, real estate or other items, other than routine supplies and routine classroom or laboratory materials which are not reasonably expected to have an annual dollar value in

excess of \$2,000. Direct procurement includes, but is not limited to, placing an order with a vendor, approval of bills or invoices, signing of sales agreements, or selection of vendors.

2. Direct Influence on Procurement

Financial disclosure is required if a faculty member's position, due to its responsibilities, nature, expertise or placement in the institution, involves some continuing likelihood of directly influencing or otherwise directly affecting the formation or execution of one or more agency contracts, purchases or sales reasonably expected to have an annual dollar value in excess of \$10,000. The faculty member's position description and actual past activities should be reviewed to determine whether financial disclosure will be required.

Directly influencing or otherwise directly affecting the formation or execution of a contract includes:

- a. Recommendation of a vendor;
- b. Authority to provide the required signature, approval or other sign-off of a document relating to specifications, a purchase or a payment;
- c. Involvement in communications or conferences with potential contractors in an attempt to arrange the terms of a purchase, lease or contract;
- d. Recommendation of specifications, being a principal advisor regarding specifications, or approving specifications which form the basis for part or all of a contract;
- e. Authority to determine or being a principal advisor in determining terms acceptable to the State.

Directly influencing or otherwise directly affecting the formation or execution of a contract does not include the generic identification of the need for an item without any further activity to directly influence or otherwise directly affect the transaction.

In summary, in order to determine if a faculty member is required to file financial disclosure, first determine if the compensation and duties criteria would require disclosure. If the person would not be required to file under those criteria, then the person is not required to file financial disclosure unless he or she met the direct influence or involvement in procurement activities set forth above.

D. Judicial Officials and Employees Criteria

State officials of the Judicial Branch, including judges of courts established under Article IV, §1 of the Constitution, candidates for elective office as judges, and judicial appointees as defined in Maryland Rule 16-814, file financial disclosure as required by the Court of Appeals. (See §§15-601(b) and 15-610, and Maryland Rule 16-815 and 16-816)

Other individuals employed in the Judicial Branch are required to file financial disclosure if they are public officials as defined in §15-103(d) of the State Ethics Law. This section includes in its definition of public official individuals receiving compensation at a rate equivalent to at least a State Grade 16 (Judicial Grades J12 or T07). For the purposes of this Section, persons employed in the judicial branch include individuals who are:

1. employed in the office of clerk of court;
2. paid by a county to perform services in an orphans' court or circuit court;
3. employed by the Attorney Grievance Commission;

4. employed by the State Board of Law Examiners; or
5. employed by the Court of Appeals Standing Committee on Rules of Practice and Procedure.

Individuals meeting the above criteria are required to file financial disclosure with the State Ethics Commission on Form No. 1. Section 15-103(d)(3) of the Public Ethics Law further provides that persons meeting the above criteria may be excluded from the filing requirement by the State Ethics Commission upon recommendation of the State Court Administrator if the Ethics Commission determines that the person's position does not have policy, policy advice, quasi-judicial or procurement functions. **Persons serving in contractual positions in the Judicial Branch are not required to file financial disclosure statements.** If you have any questions with regard to this issue, contact the offices of the State Ethics Commission.

The State of Maryland Judiciary Salary Structure, as of July 1, 2011 for graded employees is as follows:

Grade J12		\$41,478 to \$66,881
	AND	
Grade T07		\$41,555 to \$67,001

IV.

BOARDS AND COMMISSIONS –

FINANCIAL DISCLOSURE IDENTIFICATION

A. Background

Executive Branch boards, commissions, councils, or task forces (hereinafter “boards and commissions”) created by law, regulation, or executive order having the force of law, are subject to the Ethics Law, and except for those instances in which the board or commission is exempted by the Commission from the filing requirement, their members must file limited financial disclosure statements (Ethics Commission **Form No. 2**). The board and commission member financial disclosure form requires disclosure of substantially less information than the regular financial disclosure statement. However, board or commission members who are compensated at a rate equal to or above 25% of a Grade 16 base must complete the regular financial disclosure form (Ethics Commission **Form No. 1**).

The identification and filing process for boards and commissions is similar to the employee identification process. The appropriate department or agency may submit to the Commission an Ethics Commission **Form No. 10** when the board or commission is created. The Ethics Commission will review the form and determine whether members of the board or commission should file financial disclosure statements. Ethics Commission Form No. 10 can also be used when an existing board modifies its duties, and the Commission will then reconsider its financial disclosure status. The form addresses five issues:

1. Is the board or commission an executive agency created by law or regulation, or executive order having the force of law?
2. Does the board or commission have a policy or policy advice role that would make its members public officials?
3. Does the board or commission have governing, regulatory, granting or other decision-making authority?

4. Are the board or commission members compensated at a rate of less than 25 percent of a Grade 16 base, thus making the members subject to limited disclosures rather than full disclosure?
5. Does the head of the agency maintain that the function of the board or commission is purely advisory, or that the purposes of the Law and the need to attract members would be better served by exempting the members from filing annual financial disclosure statements?

The Commission generally will exempt from the financial disclosure filing requirement, boards and commissions that are purely advisory in nature and of short-term duration. If a board or commission is exempted from financial disclosure, the members remain subject to the conflict of interest provisions of the Ethics Law.

B. Board and Commission Appointee Exemption Disclosure Form No. 5

Appointees to State boards or commissions file this form pursuant to §15-502(c)(4) for situations in which the appointee has an existing employment relationship or financial interest resulting in a conflict of interest. The Law recognizes the special status of part-time board and commission members and seeks to provide a way to allow the appointment of these persons when special expertise or capability is needed notwithstanding certain conflict of interest situations. Individuals appointed under these circumstances are, however, subject to the Ethics Law and may not participate in matters relating to their specific conflicts.

For an appointee to validly file the Time of Appointment Exemption (**Form No. 5**) and receive the exemption, he or she must comply with the following requirements:

1. The appointee must submit the exemption disclosure form to the appointing authority and the State Ethics Commission at the time of appointment. The appointing authority is usually the Governor, but, in some instances, it will be the Secretary of a State department or some other appointing authority. The requirement for disclosure to the appointing authority and the Ethics Commission is the same in either case.
2. The form must describe a conflict of interest in existence at the time of appointment.

The appointing authority must receive notice of the conflict and proceed with the appointment. If the Senate must confirm the appointment, the Senate Executive Nominations Committee must also receive a copy of the disclosure, which it will consider as part of the confirmation process. It is the responsibility of the appointing authority to distribute a copy of the form on a timely basis to the appointee, and to see that submitted forms are provided to the Senate Committee.

Generally, the time of appointment disclosure process is administered by the Governor's Office, the State Ethics Commission and the Maryland Senate. However, for those boards and commissions subject to the Public Ethics Law and appointed by agency officials, the agency officials handle the distribution of forms and exemption decisions.

Members of licensing and other regulatory boards and commission, who are required to be on a licensing or regulatory board in their regulated capacity, do not file time of appointment disclosures. (See the Public Ethics Law §15-502(c)(2).) These individuals, however, would be required to disclose other types of conflicts.

V.

WHERE TO GET FORMS AND OTHER INFORMATION

The Financial Disclosure Statement (**Form #1**) and the Board and Commission Financial Disclosure Statement (**Form #2**) are available to be filed electronically at <https://efds.ethics.state.md.us>. Please encourage all employees and board and commission members to utilize this system. Other forms can be downloaded from our website at <http://ethics.gov.state.md.us> or are available at the State Ethics Commission office at 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401 or by calling the office at 410-260-7770 or toll free 1-877-669-6085.

VI.

TIMING OF FILING FINANCIAL DISCLOSURE STATEMENTS

Financial disclosure statements are filed at the following times:

A. New employees, current employees placed in jobs already subject to financial disclosure, and employees in positions just added to the list are required to file financial disclosure statements within thirty days of appointment to position. The financial disclosure statement relates to the previous calendar year, even if the person was not in State service during that year. The agency should notify the employees of the requirement to file and direct the employee to the Ethics Commission web site, <https://efds.ethics.state.md.us>, and encourage the employee to file electronically. If the employee chooses to file a paper form, a copy can be downloaded from the general ethics web site, <http://ethics.gov.state.md.us>, or provide the employee with the appropriate paper form (Ethics Commission Form No. 1), which is included in Appendix II of this manual.

B. After the initial filing is made, persons in positions requiring financial disclosure must file annually by April 30th for the previous calendar year.

C. Persons leaving State service, or transferring into positions that do not require financial disclosure, must file a financial disclosure termination statement with the State Ethics Commission for the period of January 1 of the current calendar year through as follows: if the individual is terminating the position on or prior to April 30th, the financial disclosure termination statement is for the previous calendar year and the current year through the date of termination; if the individual is terminating the position after he or she has filed by April 30th for the previous calendar year, the financial disclosure termination statement is for January 1 of the current year through the date of termination. Agency personnel managers should encourage the individuals to file termination statements electronically, <https://efds.ethics.state.md.us>, or provide a paper financial disclosure form to the employee or official involved (which the personnel managers may download from the Commission web site <http://ethics.gov.state.md.us>). The same form is used for the termination statement as is used for the annual financial disclosure. The Agency should notify the Ethics Commission that the employee terminated the position, and, if a person is hired to fill the vacated position, it should notify the Commission of the name and email address of the person and now filling the position.

D. Board and commission members required to file financial disclosure statements are subject to the same new appointee, annual and termination statement requirements as are the other officials and employees. A termination statement will be due when a board member completes service on the board.

E. Candidates for state office must file a financial disclosure statement with the appropriate Board of Supervisors of Elections at the time they file for office, unless they have on file with the State Ethics Commission a full statement (Form No. 1) covering the relevant period. Candidates are also required to file by April 30th in each year of candidacy for the previous calendar year.

VII. **ENFORCEMENT FOR LATE FILING**

In enacting the Public Ethics Law, the Maryland Legislature stated the purpose of the law as follows:

For the purpose of guarding against improper influence, the General Assembly enacts this Maryland Public Ethics Law to require certain government officials and employees to disclose their financial affairs and to set minimum ethical standards for the conduct of State and local business (§15-101(b)).

The legislature added that, with the exception of its provisions for criminal sanctions, the law is to “be liberally construed to accomplish this purpose” (§ 15-101(c)).

The Law gives the State Ethics Commission authority to enforce the filing requirement through an administrative complaint process. Failure to file, incomplete filing, and late filing may result in a Commission initiated enforcement action. The enforcement process involves a progression of correspondence followed by the issuance of a complaint. The process is time consuming and expensive to the Commission and may result in the assessment of late fees or fines, and the Commission may recommend to the filer’s agency that disciplinary action be taken against the employee. In view of the State Ethics Law’s focus on public disclosure, it is not likely that the Commission will accept a submission of a late statement as a total settlement (or cure) of a violation.

If the Commission conducts a hearing on a complaint in accordance with the provisions of Public Ethics Law § 15-404 and Code of Maryland Regulations (“COMAR”) 19A.01.03, the late filer may be represented by counsel and present evidence. The evidence may relate to compliance with the law, mitigating circumstances, and other relevant information. If, after the hearing, the Commission finds that the late filer has violated the financial disclosure provisions of the Law, the matter will become public and the Commission will notify his or her agency department head and the head of the branch of government involved. Additionally, in accordance with Public Ethics Law § 15-405, the Commission may

1. Issue a reprimand.
2. Levy late fees of \$2 per day up to a maximum of \$250 for each delinquent or late statement.
3. Petition the court to levy a fine of up to \$5,000 per violation, with each day that the violation occurs being considered a separate violation.
4. Recommend to the delinquent filer’s agency other appropriate discipline, including censure or removal, if that discipline is authorized by law.
5. Order the delinquent filer’s salary be suspended pending compliance with the Commission’s order.

VIII.

TRAINING REQUIREMENTS

Section 15-205(d) of the State Ethics Law requires new financial disclosure filers to receive two (2) hours of Ethics training within six (6) months of being required to file. The training will cover all areas of the Ethics Law but will focus on conflict of interest and standards of conduct.

Financial disclosure filers can access the training link by signing into their electronic accounts at <https://efds.ethics.state.md.us>. This is the same account where they would file the financial disclosure forms. The training link is located in the upper left-hand side of the screen. The training does not have to be completed at one time. They can stop the training at the END of any chapter and return to the point you stopped to view the remaining chapters. The training should take at least 1½ to 2 hours to complete.

We will continue to offer classroom training three to four times a year. Training dates and registration forms can be found on our website.

Once an individual has taken the training, he/she is not required to take the training again. If an individual has been filing financial disclosure forms prior to October 1, 1999, they are exempt from the training requirements.

IX.

QUESTIONS AND ANSWERS

A. Purposes of the Law

1. What are the purposes of filing financial disclosure statements?

Answer: The purposes are to:

- a. Allow the Commission, officials, employees, other agency personnel and the public to have access to documents disclosing possible conflicts of interests;
- b. Provide access to documents that demonstrate to the public that financial interests are not hidden and that, generally, officials and employees are not engaging in conflict of interest;
- c. Provide those who complete the form a once-a-year review of matters that might need some attention in view of possible conflicts of interest; and
- d. Assist voters in evaluating the suitability of candidates for the office they are seeking.

2. Who can inspect and copy financial disclosure forms?

Answer: Any member of the public including State employees and officials may inspect and copy completed financial disclosure forms, subject to two requirements:

- a. The person examining or copying the form must appear in person and register his or her name and home address with the Commission along with the name of the person whose form is to be inspected.

- b. A person who has a form on file is entitled, upon request, to be notified of the name and address of anyone inspecting his or her form.

B. Compensation and Duties Criteria

1. Are employees compensated at grades lower than Grade 16 required to file if they are currently compensated at a figure equal to or above a Grade 16 base?

Answer: No. The legislation is directed toward people with certain duties or discretion. People in grades below 16 generally have less discretion, impact, and responsibility than those at Grade 16 although salaries in the higher steps of the lower grades tend to reflect seniority in a position rather than qualitatively different duties. Based on the Law and past practice, those in Grades 13, 14 and 15 are thus not included, even though they may be at a high step and actually receive more than the Grade 16 base salary. Individuals compensated at grade levels below a Grade 16 may be required to file if they meet the contractual criteria that apply regardless of salary.

2. Do people who are not compensated according to the Standard Salary Schedule have to file?

Answer: State employees who are compensated at a rate equal to or above the Grade 16 base salary must file financial disclosure statements if they perform the duties specified in the definition of public official. Full-time contractual employees who work for more than 6 months must also file. Please contact the State Ethics Commission with specific questions involving comparability of positions and pay.

3. Must a part-time employee file a financial disclosure statement if the employee is compensated at a rate that would be at or above the Grade 16 base salary if the employee worked full-time?

Answer: In general, part-time employees are subject to the same rules as regular full-time employees even if the amount they actually receive is less than a full year's pay. The Commission is guided by the pay rate or pay grade, not by the amount received. Please contact the State Ethics Commission with specific questions involving the applicability of the Public Ethics Law to part-time personnel.

4. What "principal advisors" must file financial disclosure statements?

Answer: The Ethics Law requires that individuals who serve as principal advisors to any of the following categories of people file financial disclosure statements:

- A person making State policy in an executive unit and
- A person exercising quasi-judicial, regulatory, licensing, inspecting, or auditing functions.

An individual is a public official under this provision if the individual meets the following standards:

- Meets the compensation requirements;
- Provides advice on a regular basis to the person with decision-making authority in making policy, or in exercising quasi-judicial, regulatory, licensing, inspecting or auditing functions;
- Has advisory duties that are significant, and involve discretion; and

- If the person is a full-time or part-time faculty member at a State institution of higher education, in addition to having decision making authority or being a principal advisor as outlined above, the person must also directly procure, directly influence, or otherwise directly affect the formation or execution of any State contract or sale as established by guidelines of the State Ethics Commission.

C. Non-Salary Contracting Criteria

1. **Must an employee meet all of the criteria (i.e., act as a decider or principal advisor to one in decision making authority in: a) drafting specifications for, and b) negotiating and c) executing a contract) in order to be included?**

Answer: No. The Law sets out three independent categories:

- Having decision making authority or acting as a principal advisor to one having such authority in drafting specifications;
- Having decision making authority or acting as a principal advisor to one having such authority in negotiating; or
- Having decision making authority or acting as a principal advisor to one having such authority in executing contracts.

An individual who meets one or more of the categories is a public official if his or her compensation reaches the required contractual amount.

2. **What does "decision making authority or principal advisor to one with such authority" mean in regard to drafting specifications?**

Answer: "Decision making authority" is a general authorization within the person's duties permitting or directing the person to prepare specifications that form the basis for part or all of a contract. It would not include persons who prepare parts of documents but do not have discretion regarding the contents of the documents. Thus, typists, similar clerical personnel and certain technical support personnel would not be required to file financial disclosure forms. This category also does not include persons who perform functions that are supportive of the process, but who are preparing material that is not in itself part of the specifications.

3. **What does "decision making authority or principal advisor to one with such authority in regard to negotiating" mean?**

Answer: "Decision making authority in regard to negotiating" refers to general authorization within the person's duties that permit or direct the person to negotiate a contract. Negotiation is generally beyond the specification phase and includes communications or conferences with potential contractors in an attempt to arrange the terms of a purchase, lease or other contract. It relates to the actual discussions with vendors regarding the terms of an agreement or purchase. Negotiation is the activity that occurs when vendors are in the process of finalizing the terms of an agreement. Although a person who negotiates does not have to possess the authority to actually conclude the agreement, the position to be identified should include sufficient authority and responsibility having a significant impact on the ultimate terms to which the State agrees.

Additionally, this provision covers those persons who may not do the actual negotiating, but, because of their supervisory responsibilities or other job functions, play a significant role as advisors regarding specific contract negotiations.

4. What does "decision making authority or principal advisor to one with such authority in regard to executing a contract" mean?

Answer: The execution of the contract is the act necessary to render a contract complete. In general, the person who executes a contract is the agency official who signs the agreement. Neither routine approval of a legal advisor as to uniform standards of legal sufficiency, the routine approval of a person in a control agency regarding form and procedure, nor routine review of a contract as it proceeds through the contractual process is contemplated by this criterion. Included in this criterion is the individual who can sign the agreement on behalf of an agency and make it binding without the signature of another person within the department or agency. It also includes those persons in responsible positions who are major advisors in the substantive decisions regarding whether a contract should be signed.

5. What is a contract that commits the State or any of its boards, agencies or departments to expend in excess of \$10,000?

Answer: This language requires a person to be involved with a contract that commits the State or its agencies to expend in excess of \$10,000 in one contract, rather than in a series of such agreements. The authority of the person must contemplate the requisite advisory or actual involvement in individual contracts of more than \$10,000. Contracts may include purchases, leases, grants, loans or other types of agreements involving fund expenditures or commitments by the State. The \$10,000 per contract criterion applies to corporate credit card purchases as well. The requirements also apply to individual contract changes or amendments that involve additional expenditures or commitments of more than \$10,000. For the purpose of these requirements, substantial involvement in contractual employment contracts over \$10,000 is also covered.

D. Judicial Officials and Employees Criteria

1. Are individuals with grades lower than Grade J12 or T07 required to file financial disclosure statements if they are currently compensated at a figure equal to or above a Grade J12 or T07 base?

Answer: Persons employed at Grades J11 or J10 and T06 or T05, regardless of current compensation, are not required to file financial disclosure statements.

2. Do people who are neither classified nor compensated at a pay grade have to file?

Answer: No. Only employees with flat pay rates equal to a J12 or T07 base or above are required to file financial disclosure statements.

3. Do people who serve in State or local graded, flat rate or classified systems different from the Maryland Grade 1 to 20 program need to file financial disclosure forms?

Answer: **If the base of the grade is at or above a State Grade 16 base, then they are required to file financial disclosure statements;** if below, they are not. Flat rate employees under local or other special personnel systems will be required to file if the rate is equal to or higher than a State Grade 16. Employees of the judicial branch of government and certain other agencies must file

with the State Ethics Commission even if they generally are treated as local government employees for payroll purposes. Specific questions involving comparability of positions and pay should be referred to the Ethics Commission.

4. Are part-time employees who are compensated at a rate at or above State Grade 16 base but, because of their part-time status, do not actually earn a salary equal to a State Grade 16 base need to file financial disclosure statements?

Answer: In general, part-time employees will be treated under the same rules as regular full-time employees even if the amount they actually receive is less than a full year's pay. It is the pay rate or pay grade that governs the need for the individual to file a financial disclosure statement rather than his earned yearly income. Specific questions involving the applicability of the Ethics Law to part-time personnel should be referred to the Ethics Commission.

HELP!

Do not hesitate to call the staff at the State Ethics Commission with any questions you may have. Thank you for your assistance in this effort.

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