
MANAGEMENT DIRECTIVE

205.10
Amended
Number

COMMONWEALTH OF PENNSYLVANIA GOVERNOR'S OFFICE

Subject:

Financial Disclosures Required by the *Public Official and Employee Ethics Act, 65 Pa. C. S. §§ 1101-1113*

By Direction Of:


Joseph S. Martz, Secretary of Administration

Date:

April 17, 2007

This directive establishes policy and procedures for filing financial interest statements by public officials and public employees as required by the *Public Official and Employee Ethics Act, 65 Pa. C. S. §§ 1101-1113*. Changes are indicated by marginal dots.

1. **SCOPE.** Applies to employees in all agencies, boards, commissions, and councils under the Governor's jurisdiction who meet the definition of **public official** or **public employee**.

2. **OBJECTIVES.**

a. To provide a uniform system of identifying and assisting public officials and public employees who are to file financial interest statements as required by the *Public Official and Employee Ethics Act ("Ethics Act")*, 65 Pa. C. S. §§ 1101-1113.

b. To provide a uniform system of filing, maintaining, accessing, and releasing financial interest statements.

c. To provide an appeal process for employees who believe they do not meet the definition of a **public official** or a **public employee** as set forth in the *Ethics Act*, and regulations promulgated by the State Ethics Commission.

3. **POLICY.**

a. Those meeting the definition of **public official** or **public employee**, as set forth in Sections 6.a. and b. of this directive, are required to complete and file financial interest statements every year by no later than **May 1**. **The financial information to be disclosed is for the preceding calendar year. The form must be filed by May 1 each year the position is held and the year following termination of employment. Persons serving in multiple public positions must satisfy the filing requirements for all such positions.**

b. In addition, the Governor may, as a matter of policy, require additional financial disclosures.

c. Reference data:

(1) The *Public Official and Employee Ethics Act*, 65 Pa. C. S. §§ 1101-1113.

(2) 51 Pa. Code §§ 11.1-11.3, 13.1-13.5, 15.1-15.3, 17.1-17.10, 19.1-19.5, 21.1-21.30, 23.1-23.23, and 25.1-25.4 set forth the regulations of the State Ethics Commission under the *Ethics Act*.

4. RESPONSIBILITIES.

a. **The Office of Administration (OA)** is responsible for identifying and notifying agency public officials to make financial disclosures under the *Ethics Act*.

b. **The State Ethics Commission (SEC)** is responsible for identifying and notifying members of boards, commissions, or councils to make financial disclosure under the *Ethics Act*.

c. As new classes are developed, a determination will be made by each agency as to the applicability of the *Ethics Act* to those classes. The **OA** will assist agencies in resolving questionable classes or positions, as well as possible conflict of interest cases.

d. **Heads of agencies** are to ensure that the policy and procedures for financial disclosure are implemented in accordance with this directive.

e. **Human resource directors in each agency** are to:

(1) Generate a list of classes which appear to meet the definition of **public employee**, as set forth in the *Ethics Act* and regulations of the State Ethics Commission and as indicated on the Interim Reporting Information System, with a financial disclosure code of "B." Determine, based on the guidelines and definitions of a **public employee**, any other classes or individual positions which meet the criteria. New hires are to be notified during orientation process of the requirement to file each year the position is held and the year following termination of service. They shall also be provided a financial interest statement with instructions on how to complete the form.

(2) Formally notify each covered employee, provide employees with financial interest statement forms, and indicate due date, filing procedures, and appeal process.

(3) Advise all other employees of the agency of the definition of **public employee** and offer all employees the opportunity to file voluntarily.

(4) Maintain completed financial interest statements in a separate alphabetical file and provide for appropriate access as outlined in this directive.

(5) Provide necessary job information and testimony, as required, at appeal hearings or at other judicial hearings.

(6) Review submitted financial interest statements for conflicts of interest, refer questionable forms to the agency chief counsel, and ensure agency investigation when there is a possible conflict of interest.

f. **Agency chief counsels** are to review questionable financial interest statements for any conflicts of interest and ensure agency investigation when there is a possible conflict of interest.

g. **The Office of General Counsel** is to review financial interest statements of all **public officials** for any conflicts of interest and financial interest statements of **public employees** when agencies have identified possible conflicts of interest.

h. The State Ethics Commission establishes rules and guidelines for interpreting and administering the provisions of the *Ethics Act*. The Commission will review appeals and render formal and final determinations. Should enforcement be required, the State Ethics Commission will be responsible for initiating appropriate proceedings in accordance with the *Ethics Act*.

i. **Those meeting the definition of public official or public employee**, as set forth in the *Ethics Act* and regulations of the State Ethics Commission, are to complete and file financial interest statements each year the position is held and the year following termination of service. The forms are due on or before **May 1**. The forms require the disclosure of financial information for the prior calendar year.

j. **Persons serving in multiple positions must satisfy the filing requirements for all such positions held. Commonwealth employees who are both "public employees" and "public officials" subject to the *Ethics Act*, for example, by serving as designees or alternate members of boards, councils, commissions or the like, must satisfy the filing requirements for their employment positions and their public offices.**

k. **Persons serving in multiple public positions** may satisfy all applicable filing requirements by filling out the Statement of Financial Interests form completely listing all such positions, filing the original form at one required filing location, and filing copies (including photocopies) at all other required filing locations.

5. PROCEDURES.

a. Filing of financial interest statements.

(1) The OA will coordinate the notification and submission of financial interest statements for all agency public officials. Agency human resource directors will coordinate the notification and submission of financial interest statements for public employees.

(2) The SEC will coordinate the notification and submission of financial interest statements for all members of boards, commissions, or councils.

(3) The Office of the Deputy Secretary for Human Resources and Management, OA, will make Statement of Financial Interests forms (SEC-1) available to agencies electronically.

(4) Each agency must conduct, as necessary, a class-by-class analysis as well as a position-by-position analysis to determine applicability of the guidelines and the definition of a **public employee**.

(5) Each agency must submit a complete list of agency **public officials** by name and position title to the Office of the Deputy Secretary for Human Resources and Management, OA, by **May 1** of each year.

(6) Questionable classes or positions (either for addition or deletion) are to be submitted with supporting data to the Office of the Deputy Secretary for Human Resources and Management, OA.

(7) Each agency is to formally notify, in writing, each employee who appears to meet the definition of **public employee** and who is required to complete and file a financial interest statement. Included with this notification must be:

(a) a financial interest statement form and instructions;

(b) the due date;

(c) a copy of an abridged version of this directive is available online at <http://www.oa.state.pa.us> (**Management Directive 205.10 AB**); and

(d) advice as to the availability of the appeal procedure.

(8) In addition to those officials and employees in specifically identified classes, employees may choose to file voluntarily. All officials and employees should be provided with a copy of the abridged version of this directive to make this determination. As employees are hired, they also should be given a copy of this information. The submission and maintenance of financial interest statements which are voluntarily filed shall be in accordance with this directive.

(9) When financial interest statement forms are completed, they are to be filed in the following manner:

(a) **Public Official** – original to the State Ethics Commission and a copy to the agency human resource office to file in an alphabetical file.

(b) **Public Employee** – original to the agency human resource office to file in an alphabetical file.

(10) Failure to file.

(a) If no Statement of Financial Interests form is received by the established due date and no appeal is received from an employee required to file, the agency is to formally contact the employee and again advise of the requirement to file and provide a 15 calendar day due date for either submission of the financial interest statement or the formal appeal form.

(b) If, at the end of the 15 day period, the employee has not complied, the agency is to notify the Office of the Deputy Secretary for Human Resources and Management, OA, of the name, class title, and mailing address of all employees who have not filed. Notification must be submitted to OA no later than June 1 of each year.

(c) The OA will formally notify the employee that failure to comply will result in possible disciplinary action and referral to the State Ethics Commission.

(d) If the employee has not filed within 15 days, the OA will formally present the list of employees failing to file to the State Ethics Commission for official judgment.

(e) If the State Ethics Commission determines that filing is required, the commission will notify the employee of this requirement. In the event the employee still refuses to file, the State Ethics Commission will initiate appropriate proceedings. The Commonwealth may also initiate progressive discipline against the employee if the employee fails to file, as required by the State Ethics Commission.

(11) Individuals who have already completed and filed a financial interest statement with another state agency or political subdivision (such as someone who filed as a Township Commissioner) are not required to complete a second financial interest statement as long as the previously completed form includes all the required information as to each such position or status. The multiple filing requirements may be satisfied by submitting a copy of the completed form at each filing location, including the current agency, in accordance with this directive.

b. Appeal process.

(1) In the event an employee contests coverage by the *Ethics Act*, the employee may submit an appeal. If any member of a board, commission, etc., files an appeal, the decision shall be applied to all members of that board, commission, etc.

(2) The employee is to complete an appeal form and submit it to the agency human resource office if a **public employee**, or to the Secretary of Administration if a **public official**.

(3) Agency representatives and the OA will review each appeal and render a determination. The employee will receive a formal notice of the determination through the agency human resource office.

(4) If the employee is not satisfied with the appeal determination, a formal appeal may be submitted directly to the State Ethics Commission, with a copy submitted to the agency human resource office, in accordance with the rules and regulations of the Commission. A final determination will be rendered by the Commission and the employee will be notified of the determination in writing.

(5) If the employee appeal is denied, the agency human resource office is to ensure that the employee files a financial interest statement within 30 days of receipt of that decision. •

(6) If an employee fails to submit a financial interest statement, the OA should be notified for appropriate action.

c. Review and maintenance of financial interest statements.

(1) Financial interest statements submitted by **public officials** are maintained by the State Ethics Commission and are available for public access and copying in Room 309 of the Finance Building. Such forms are also available online at the State Ethics Commission web site (www.ethics.state.pa.us) in the Commission's e Library.

(2) Financial interest statements submitted by **public employees** are to be maintained in a separate alphabetical file by each agency human resource office and are to be available for public access and copying, as requested.

(3) In the event that an inquiry is made at a location other than where the alphabetical file is located, the supervisor or manager of the work site is to contact the human resource office and arrange to receive a copy of the financial interest statement and make it available for public inspection and copying. Once used, this copy should be destroyed by the supervisor or manager.

(4) Completed financial interest statements are to be maintained for five years from date of receipt.

d. Future disclosure requirements.

(1) Financial disclosure for **public officials** and **public employees** is an annual requirement and each employee designated to disclose is to complete and file a financial interest statement each year the position is held and the year following termination of service. The forms are due on or before **May 1**. The forms require the disclosure of financial information for the prior calendar year.

(2) See *Management Directive 205.12, Financial Disclosures Required of Former Employees by the Public Official and Employee Ethics Act, 65 Pa. C. S. §§ 1101-1113*, for procedures to cover future filings and filings of terminated employees. •

(3) **Employees who are appointed, promoted, or transferred into designated classes or who permanently assume duties which fall under the definition of public employee will be required to complete and file a financial interest statement by May 1.**

6. DEFINITIONS.

a. **Public official.** Positions which are specifically included are:

- (1) Governor and Lieutenant Governor.
- (2) All heads of executive, legislative, and independent agencies, boards, and commissions.
- (3) All Deputy Secretaries.
- (4) All Executive Directors.
- (5) All Deputy Commissioners.

• (6) All members, including persons serving as designees or alternate members, of boards, councils, and commissions or the like, except those serving on advisory boards having no authority to expend funds or otherwise exercise the power of the state.

b. **Public employee.** Any individual employed by the Commonwealth who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) Contracting or procurement.
- (2) Administering or monitoring grants or subsidies.
- (3) Planning or zoning.
- (4) Inspecting, licensing, regulating, or auditing any person, or

(5) Any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

Public employees are those whose work is in the functional areas specified above and who meet any one or more of the criteria in (a) or (b), below:

(a) A person who normally performs his or her responsibility in the field without on-site supervision; or

- Is the immediate supervisor of such a person; or
- Is the supervisor of the highest level field office.

(b) A person with the authority to make final decisions; or

• With the authority to forward or stop recommendations from being sent to the person or body with the authority to make final decisions; or

- Who prepares or supervises the preparation of final recommendations; or
- Who makes the final technical recommendations; or

• Whose recommendations or actions are an inherent and recurring part of his or her position or affect organizations other than his or her own.

Examples of public employees include: bureau directors, division chiefs or heads of equivalent organizational elements, purchasing agents, housing and building inspectors, appraisers, staff attorneys, and grant and contract managers.

Examples of classes not covered by financial disclosure requirements include anyone:

- Who is involved exclusively in ministerial activity (as clerical staff, maintenance workers, construction workers, equipment operators, security guards, probation officers); or

- Who is in a position officially designated as a **trainee** position; or

- Who is employed by the state in teaching, as distinguished from administrative duties, unless performing functions which fall under the criteria above.

c. Ministerial action. An action that a person performs in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of the person's own judgment as to the desirability of the action being taken.

d. Nonministerial action. An action in which a person exercises his or her own judgment as to the desirability of the action being taken.

e. Contracting or procurement. Awarding of a contract or a decision to purchase through the solicitation and evaluation of proposals and selection of a vendor.

f. Administering or monitoring grants. Directing, supervising, or approving the expenditure of a grant or monitoring another person's or organization's administration of a grant. Administering or monitoring does not include compiling expenditures, comparing actual to planned expenditures, preparing comparative reports, or completing grant proposal forms under specific direction.

g. Planning or zoning. An action which is directed by a planning commission, zoning board, department, agency, or governmental body which involves the regulation of real property.

h. Inspecting, licensing, regulating, or auditing any person. These criteria do not include activities which are exclusively internal in nature such as auditing the internal processes of an organization. Clerical and procedural activities in issuing permits and licenses are not included.

- **i. An economic impact of greater than a de minimis nature.** An economic consequence which has a significant effect.

This directive replaces, in its entirety, *Management Directive 205.10* dated March 7, 2006.