

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania
Governor's Office

Subject: Financial Disclosures Required of Former Public Employees and Former Public Officials by the <i>Public Official and Employee Ethics Act</i> , 65 Pa. C.S. Sections 1101-1113	Number: 205.12 Amended
Date: March 27, 2014	By Direction of:  Kelly Powell Logan, Secretary of Administration
Contact Agency: Office of Administration, Office for Human Resources Management, Human Resources Service Center, Business Information & Support Division, Telephone 717.787.8001	

This directive establishes policy, responsibilities and procedures for filing Statements of Financial Interests (SFIs) by former public officials and former public employees as required by the *Public Official and Employee Ethics Act*, 65 Pa. C. S. §§ 1101-1113 (“*Ethics Act*”). Marginal dots are excluded due to major changes.

1. **PURPOSE.** To establish policy, responsibilities, and procedures for implementing the financial disclosure requirements of the Ethics Act as it pertains to former public officials and former public employees.
2. **SCOPE.** This directive applies to all former public officials and former public employees with prior service in all departments, boards, commissions, and councils (hereinafter referred to as “agencies”) under the Governor’s jurisdiction.
3. **OBJECTIVES.**
 - a. To provide a uniform system of identifying and notifying former public officials and former public employees who are to file SFIs as required by the *Ethics Act*.
 - b. To provide a uniform system of filing, maintaining, accessing, and releasing SFIs of former public officials and former public employees.
 - c. To provide an appeal process for former public officials and former public 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 (SEC).

4. DEFINITIONS.

- a. **Administering or Monitoring Grants.** Directing, supervising, or approving the expenditure or reimbursement of grant funds or monitoring another person's or organization's administration of grants or funds. Administering or monitoring does not include compiling expenditures, comparing actual to planned expenditures or reimbursements, preparing comparative reports, or completing grant proposals or reimbursement forms under specific direction.
- b. **Contracting or Procurement.** Awarding a contract or making a decision to purchase by the preparation of requests for bids and proposals, the solicitation and evaluation of proposals, or the selection of a vendor.
- c. **Economic Impact of Greater than a De Minimis Nature.** An economic consequence which has a significant effect.
- d. **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.
- e. **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.
- f. **Nonministerial Action.** An action in which a person exercises his or her own judgment as to the desirability of the action being taken.
- 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. **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. The regulations of the State Ethics Commission set forth the following criteria in (a) and (b) below, to be used in part to determine status as a public employee:

- (a) A person who normally performs responsibilities 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.

i. **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 under the Governor's jurisdiction, except those serving on advisory boards having no authority to expend public funds (other than reimbursement for personal expenses) or otherwise exercise the power of the state.

5. **POLICY.** Those meeting the definition of public official or public employee, as set forth in Section 4.h. and Section 4.i. of this directive, are required to complete and file SFIs by **May 1** of the year following termination of service. The forms require the disclosure of financial information for the prior calendar year. Persons serving in multiple public positions must satisfy the filing requirements for all such positions.

6. **RESPONSIBILITIES.**

a. **Office of Administration (OA)** shall identify public employees and officials who terminated employment in the previous calendar year and notify them of their requirement to file a SFI under the *Ethics Act*.

b. **Agency Heads** shall ensure that the policy and procedures for the financial disclosure of former public officials and former public employees are implemented in accordance with this directive.

c. **Agency Human Resources Directors** shall:

- (1) Assist OA, Office for Human Resources Management and the Human Resources Service Center (HRSC) in providing former public officials and former public employees with SFI forms, due dates, filing procedures, and information regarding the appeal process.

- (2) Advise all employees of the restrictions outlined in the *Ethics Act* regarding former public officials and former public employees at time of termination or during exit interview.

- (3) Maintain completed paper SFIs in a single central file and provide for appropriate access as outlined in this directive. Paper SFIs shall not be included in Official Personnel Folders. These paper SFIs shall be uploaded into the online filing website.

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

- (5) Review submitted SFIs for conflicts of interest and ensure agency investigation when there are possible conflicts of interest.

d. **Agency Chief Counsels** shall review SFIs for conflicts of interest and ensure agency investigation when there are possible conflicts of interest.

e. **Office of General Counsel** shall:

- (1) Review SFIs of any former public officials and former public employees when agencies have identified possible conflicts of interest.

(2) Review SFIs of former Chief Counsel for any conflicts of interest.

- f. **Those meeting the definition of public official or public employee** at any time during the calendar year in which they terminate service, shall complete and file SFIs the year following termination of service. SFIs are due on or before **May 1** and require disclosure of financial information for the prior calendar year.
- g. **Persons serving in multiple public positions** must satisfy the filing requirements for all such positions held. Former commonwealth employees who were 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 former employment positions and their public offices. All applicable filing requirements may be satisfied by listing all such positions when completing SFIs, filing the original form at one required filing location and filing copies at all other required filing locations.

7. PROCEDURES.

a. Filing of SFIs.

- (1) The HRSC shall formally notify, in writing, those who appear to be former public officials or former public employees. Included with this notification must be:
 - (a) a letter explaining obligations to file;
 - (b) instructions on how to file; and
 - (c) the due date.
- (2) At the time of termination, each terminated public official and public employee should be advised of restrictions placed on former public officials and former public employees and they should be provided with a copy of the standard form outlining these obligations and restrictions (see Enclosure 1).
- (3) When paper SFIs are completed, they are to be filed in the following manner:
 - (a) **Former Public Official** – original to agency Human Resources Office where an electronic copy will be uploaded to the filing website and electronically routed to SEC. The original will be filed in a central agency file and maintained in accordance with the current retention procedure.
 - (b) **Former Public Employee** – original to agency Human Resources Office where an electronic copy will be uploaded to the filing website. The original will be filed in a central agency file and maintained in accordance with the current retention procedure and a copy is to be retained by former employee.

b. Failure to File.

- (1) If a SFI is not received by **May 1** from a former public official or former public employee or a SFI was received but is considered deficient, HRSC will formally contact the former public official or former public employee and again advise them of their requirement to file and provide a 10 work day due date for submission of the SFI.
- (2) By **June 1** (or the first scheduled workday following) of each year, agency Human Resources Offices shall review the data provided by the HRSC indicating which former public officials or former public employees of their respective agencies have not filed SFIs and inform the HRSC of any errors in the data and of any former public officials or former public employees who, if known, are deceased, or have filed an appeal that is under review.
- (3) The HRSC shall formally notify the former public official or public employee of their non-compliance and of the requirement to submit a SFI within 10 days of the notification.
- (4) If a completed SFI has not been submitted within 10 days after the notification from the HRSC, the Deputy Secretary for Human Resources shall formally notify former public officials and former public employees of their failure to comply.
- (5) OA will formally present a list of former public officials and former public employees failing to file or filing deficient SFIs to the SEC for official action.
- (6) If the SEC determines that filing is required, the SEC will notify the former public official or former public employee of this requirement. In the event the former public official or former public employee still refuses to file, SEC may initiate appropriate proceedings.

c. Appeal Process.

- (1) In the event a former public official or former public employee contests coverage by the *Ethics Act*, the individual may submit an appeal directly to SEC with a copy of the appeal to the agency Human Resources Office.
- (2) SEC will respond to the appeal and ensure compliance if the appeal is denied.

d. Access, Maintenance and Release of SFIs of Former Public Officials and Former Public Employees.

- (1) SFIs submitted by former public officials are maintained by the SEC and are available for public access and copying in Room 309, Finance Building. SFIs are also available online at the SEC's website (<http://www.ethics.state.pa.us>) in SEC's e-Library.
- (2) Agency Human Resources Directors shall establish a central file of all paper statements submitted under the *Ethics Act*. They shall not be included in Official Personnel Folders. These statements must also be uploaded into the online filing website.

- (3) Either the agency Human Resources Director or a supervisor in the agency Human Resources Office at Division Chief level, shall ensure the completed SFIs are retained in a confidential file.
- (4) SFIs may be released in response to any requests, including requests made pursuant to the *Right-to-Know Law* (RTKL), 65 P.S. §§ 67.101, *et seq.*, only after the agency notifies and coordinates with OA, Office of Enterprise Records Management (OERM).
- (5) SFIs shall be provided, upon request, to the Governor, the Lieutenant Governor, the Secretary of Administration, the General Counsel, and the Inspector General.
- (6) Completed SFIs are to be maintained for five years.

Enclosure 1 – Requirements for all Former Public Officials and Former Public Employees under the *Public Official and Public Employee Ethics Act, 65 PA. C. S. §§ 1101-1113*

This directive replaces, in its entirety, *Management Directive 205.12*, dated January 4, 2011.

**Requirements for all Former Public Officials and Former Public Employees
under the *Public Official and Public Employee Ethics Act*, 65 PA. C. S. §§ 1101-
1113**

The *Public Official and Employee Ethics Act* ("*Ethics Act*"), 65 Pa. C. S. §§ 1101-1113, requires that all public officials and public employees complete and file financial disclosure statements. In addition, certain requirements and restrictions apply to former public officials and former public employees. They include:

- (1) All employees who meet the definition of public official or public employee, as set forth in the *Ethics Act*, are required 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. All public officials and public employees will be officially notified and provided a financial disclosure form in order to meet this requirement.
- (2) No former public official or former public employee shall represent a person, with actual or promised compensation, on any matter before the agency with which the employee was associated for one year after the employee leaves that agency.
- (3) No former executive-level state employee may, for a period of two years from the time that the employee terminates state employment, be employed by, receive compensation from, assist, or act in a representative capacity for any business or corporation that the employee actively participated in recruiting to the Commonwealth of Pennsylvania or that he actively participated in inducing to open a new plant, facility, or branch in the commonwealth or that he/she actively participated in inducing to expand an existing plant or facility within the commonwealth, provided that the above prohibition will be invoked only when the recruitment or inducement is accomplished by a grant or loan of money or a promise of a grant or loan of money from the commonwealth to the business or corporation recruited or induced to expand.
 - Definition — "**Executive-Level State Employee**" – The Governor, Lieutenant Governor, cabinet members, deputy secretaries, the Governor's office staff, and any state employee with discretionary powers which may affect the outcome of a state agency's decision in relation to a private corporation or business or any employee who by virtue of his job function could influence the outcome of such a decision.

Specific questions and further information regarding the *Ethics Act*, its requirements and prohibitions for commonwealth employees, can be obtained from the:

State Ethics Commission
Room 309 Finance Building
613 North Street
Harrisburg, Pennsylvania 17120
Telephone: 717.783.1610