

# MANAGEMENT DIRECTIVE

## Commonwealth of Pennsylvania Governor's Office

<b>Subject:</b> Financial Disclosures Required by the <i>Public Official and Employee Ethics Act</i> , 65 Pa. C.S. §§ 1101-1113	<b>Number:</b> 205.10 Amended
<b>Date:</b>  December 11, 2013	<b>By Direction of:</b>  Kelly Powell Logan, Secretary of Administration
<b>Contact Agency:</b> 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 public officials and 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*.
2. **SCOPE.** This directive applies to all employees of departments, boards, commissions, and councils (hereinafter referred to as “agencies”) under the Governor's jurisdiction who meet the definition of public official or public employee.
3. **OBJECTIVES.**
  - a. To provide a uniform system of identifying and assisting public officials and public employees who are required to file SFIs as required by the *Ethics Act*.
  - b. To provide a uniform system of filing, maintaining, accessing, and releasing SFIs.
  - 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 (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 SEC 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 every year 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 after leaving a position required to file financial statements. Persons serving in multiple public positions must satisfy the filing requirements for all such positions.

6. **RESPONSIBILITIES.**

a. **Office of Administration (OA)** shall:

- (1) Identify and notify public officials and public employees through the online filing website of their requirement to file a SFI under the *Ethics Act*.
- (2) Make the SFI form available for use in the event that a public official or public employee cannot file electronically.
- (3) As new classifications are developed, make a determination as to the applicability of the *Ethics Act* to those classes.

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

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

- (1) Generate a list of jobs which meet the definition of public official or public employee, as set forth in Section 4.h. and Section 4.i. of this directive, with a financial disclosure code.
- (2) Determine, based on the guidelines and definitions of a public official and public employee, any other jobs or individual positions which meet the criteria. New hires are to be notified during the orientation process of the requirement to file each year the position is held and the year after leaving a position that is required to file SFIs.

- (3) Assist OA, Office for Human Resources Management, Human Resources Service Center (HRSC) in providing public officials and public employees with SFI forms, due dates, filing procedures, and the appeal process for public officials and public employees that do not have access to a commonwealth computer. Public officials and public employees with access to a commonwealth computer will be notified automatically through the online filing website and referred to the website at <https://www.fd.state.pa.us>.
  - (4) Establish a single central file of all paper SFIs. Paper SFIs shall not be included in Official Personnel Folders. These paper SFIs shall be uploaded into the online filing website.
  - (5) Provide necessary job information and testimony, as required, at appeal hearings or at other judicial hearings.
  - (6) Review submitted SFIs for conflicts of interest and ensure agency investigation when there is a possible conflict of interest.
- f. **Agency Chief Counsels** shall review SFIs for any conflicts of interest and ensure agency investigation when there is a possible conflict of interest.
- g. **Office of General Counsel** shall:
- (1) Review SFIs of any public officials and public employees when agencies have identified possible conflicts of interest.
  - (2) Review SFIs for Chief Counsel for any conflict of interest.
- h. **Those meeting the definition of public official or public employee**, shall complete and file SFIs each year the position is held and the year after leaving a position required to file SFIs. Public officials and public employees who are appointed, promoted, or transferred into designated classes or who permanently assume duties which fall under the definition of public official or public employee on or before May 1 will be required to complete and file SFIs on or before **May 1**. The forms are to be completed through the online filing website unless the public official or public employee does not have access to a commonwealth computer. The forms require the disclosure of financial information for the prior calendar year.
- i. **Persons serving in multiple public positions** must satisfy the filing requirements for all such positions held. Commonwealth employees who are both "public officials" and "public employees" 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. 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 will coordinate the notification regarding and submission of SFIs for all current and former public officials and public employees. This will be done automatically through the online filing website for current public officials and public employees with commonwealth computer access. Current and former public officials and public employees who do not have commonwealth computer access will be formally notified, in writing, of the requirement to file SFIs. The notification must include the due date and it must advise public officials and public employees of the availability of the appeal procedure.
- (2) 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 definitions of public official and public employee.
- (3) Questionable classes or positions (either for addition or deletion) and supporting data are to be submitted to the Deputy Secretary for Human Resources Management.
- (4) When paper SFIs are completed, they are to be filed in the following manner:
  - (a) **Public Official.** Original to the 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) **Public Employee.** Original to the 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.
- (5) **Failure to File.**
  - (a) If no SFI is received by May 1, or a SFI was received but is considered deficient, and no appeal is received, agency Human Resources Directors are to advise current public officials and public employees of their non-compliance and provide a 10 workday due date for either submission of the SFIs or the formal appeal form. An additional email reminder will also be sent through the online filing website for those public officials and public employees with access to a commonwealth computer.

- (b) 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 public officials and public employees of their respective agencies have not filed SFIs and inform the HRSC of any errors in the data and of any public officials or public employees who are deceased, on extended military leave, or who have filed an appeal that is under review.
  - (c) The HRSC shall formally notify public officials and public employees of their non-compliance and of the requirement to submit a SFI or an appeal form within 10 days of the notification.
  - (d) If a completed SFI or an appeal form has not been submitted within 10 days after the notification from the HRSC, the Deputy Secretary for Human Resources shall formally notify public officials and public employees of their failure to comply.
  - (e) OA will formally present a list of public officials and public employees failing to file or filing deficient SFIs to SEC for official action.
  - (f) If SEC determines that filing is required, SEC will notify the public official or public employee of this requirement. In the event the public official or public employee still refuses to file, SEC may initiate appropriate proceedings. The commonwealth may also initiate progressive discipline if the public official or public employee fails to comply.
- (6) Individuals who have already completed and filed a SFI with another state agency or political subdivision (such as someone who filed as a Township Commissioner) are not required to complete a second SFI 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 a public official or public employee contests coverage by the *Ethics Act*, an appeal may be submitted. 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) Completed appeal forms must be submitted to the agency Human Resources Office if a public employee, or to the Secretary of Administration if a public official.
- (3) Agency representatives and OA will review each appeal and render a determination. The public employee will receive a formal notice of the determination through the agency Human Resources Office. The public official will receive a formal notice from the Secretary of Administration.

- (4) If the public official or public employee is not satisfied with the appeal determination, a formal appeal may be submitted directly to SEC, with a copy submitted to the agency Human Resources Office if a public employee, or to the Secretary of Administration if a public official, in accordance with the rules and regulations of SEC. A final determination will be rendered by SEC and the public official or public employee will be notified of the determination in writing.
- (5) If the appeal is denied by SEC, the agency Human Resources Office is to ensure that the public official or public employee files a SFI within 30 days of receipt of that decision. This must be done through the online filing website <https://www.fd.state.pa.us> if the employee has access to a commonwealth computer.
- (6) If a public official or public employee fails to submit a SFI, OA, Deputy Secretary for Human Resources Management should be notified for appropriate action.

**c. Access, Maintenance and Release of Statements of Financial Interests.**

- (1) SFIs submitted by public officials are maintained by SEC and are available for public access and copying in Room 309 of the Finance Building. Such forms are also available online at SEC 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.
- (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) SFIs shall be maintained in accordance with *Manual 210.9, The Commonwealth of Pennsylvania General Records Retention and Disposition Schedule*.

**This directive replaces, in its entirety, *Management Directive 205.10*, dated January 4, 2011.**