

LFN 2012-8

April 3, 2012

Local Finance Notice

Chris Christie
Governor

Kim Guadagno
Lt. Governor

Richard E. Constable, III
Acting Commissioner

Thomas H. Neff
Director

Contact Information

Director's Office

V. 609.292.6613
F. 609.292.9073

Local Government Research

V. 609.292.6110
F. 609.292.9073

Financial Regulation and Assistance

V. 609.292.4806
F. 609.984.7388

Local Finance Board

V. 609.292.0479
F. 609.633.6243

Local Management Services

V. 609.292.7842
F. 609.633.6243

Authority Regulation

V. 609.984.0132
F. 609.984.7388

Mail and Delivery

101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803

Web:

www.nj.gov/dca/divisions/dlgs/

E-mail: dlgs@dca.state.nj.us

Distribution

Municipal Clerks
County Clerks
Local Ethics Board Secretaries
Regional Authority Board
Secretaries
County College Presidents

Local Government Ethics Law Important Update on New Filing Procedure 2012 Financial Disclosure Statements Covering Calendar Year 2011 (Due April 30, 2012)

Introduction

The Local Government Ethics Law requires the annual filing of a Financial Disclosure Statement (FDS) by local government officers. This Notice outlines the new procedures for those officials charged with distributing and collecting forms from covered individuals. It should be carefully reviewed by all local officials involved in the filing process.

All local government officers serving a local government during any portion of the calendar year are required to file a statement for that year. The Local Finance Board ("Board") promulgated the Financial Disclosure Statement form for use by all local government officers. The form is only available as a downloadable PDF "[fill-in form](#)" from the Board's website <http://www.nj.gov/dca/divisions/dlgs/programs/ethics.html>. [Fill-in Instructions](#) are part of the same PDF form found at the same web link. (Please be sure to access the FDS from the Department of Community Affairs/Division of Local Government Services website and NOT the State Ethics Commission website.)

Please read this notice carefully, as the filing process has changed significantly from previous years. Of special note, in a departure from past practice, the Board is only disseminating copies of the FDS forms electronically. The Board will no longer be printing 70,000 paper copies of the Financial Disclosure Statement and mailing them out to each local government. This change will save the State at least \$25,000 associated with printing and mailing paper copies for filing year 2012.

Similarly, the Board is requiring filing agencies to return completed and collected FDS forms to the Board by emailing the forms in the PDF format. This is in lieu of the past practice of requiring filing agencies to make paper copies of completed forms and mailing them to the Board.

This new process will save the State and filing agencies scarce taxpayers funds associated with paper copying and postage. Equally important, the new process will allow for the electronic storage and dissemination of documents by the Board, which will allow for more timely and appropriate disclosure to the public with respect to these important documents.

DLGS is hoping to eventually establish a system whereby all such disclosures can be posted online. This will not only allow for greater disclosure for the public, it will relieve records custodians as the public will no longer need to contact you or us directly to obtain copies of FDS forms once this site is established. When our constituents contact us, we will be able to direct them to a site established by DLGS to accommodate their request, rather than to track down forms and make copies. This site is not yet available, but when it is, it will help us all, as well as, the constituents we serve.

The [FDS fill-in form](#) is available on the Division of Local Government Services website. The website contains a link to a PDF version of the FDS. It is your obligation to make sure that local government officers are provided with a copy of the form by either printing one out for them or directing them to the website. As in prior years, you should instruct them to complete the form and submit it to you. Once all of the forms are compiled with original signature, rather than making paper copies and placing them in the mail, you are asked to email them as a PDF attachment to LFB_FDS@dca.state.nj.us by the statutory due date of April 30, 2012.

Because of the new manner in which forms are being disseminated and collected, you can inform local officials that the LFB will not penalize late filers if they are received through June 29, 2012. However, please stress to these officials that it is essential that these forms be completed and turned in to you. If they do not, the Local Finance Board will impose penalties against the non-filer as complaints are filed. Additionally, the LFB may be spot checking for compliance by checking rosters and initiating enforcement action against non-filers unilaterally.

PAPER COPIES OF THE FINANCIAL DISCLOSURE STATEMENT WILL NO LONGER BE ACCEPTED BY THE LOCAL FINANCE BOARD. ALL COMPLETED FINANCIAL DISCLOSURE STATEMENTS MUST BE SUBMITTED TO THE BOARD AS A PDF BY THE ASSIGNED AGENT OF THE MUNICIPALITY, COUNTY, REGIONAL AUTHORITY, OR COMMUNITY COLLEGE.

Your email submission should be titled in the Subject line: "2012 <County Name> <Local Unit Name> <Muni Code># X." For example, the submission from Trenton should be entitled "2012 Mercer County, Trenton City 1111 #1." Each subsequent email should then be identified numerically. Additionally, the attachment should be similarly named. Any submissions not properly titled in the Subject line will not be accepted by the Board. (If you do not know your Muni Code, it can be found on the [Division's Muni Code weblink](#). Or the page can be found on the Division's website under Programs by going to Municipal and County Budgets. Under CY 2012 budget information, go to CY 2012 Local Examination Eligibility Spreadsheet. Each municipality's Muni Code is on this spreadsheet. The spreadsheet is in County order.)

You are further requested to use the Roster format provided on the [Division of Local Government Services webpage](#) and submit this roster electronically to the same email address as an attachment. Once complete, you must certify the roster. This certification will confirm that you have reviewed the filing requirement of each position listed on the roster and that you have made affirmative contact with each individual listed on the roster. **Your certification on the roster, that each local government officer was personally contacted by you, will serve the Local Finance Board's goal of greater adherence to the filing requirement.** The Board may assess fines to delinquent filers upon receipt of a complaint or internal review, provided that the roster is certified. Clerks/secretaries who have made good faith efforts to contact filers will have met their obligations and will not be held accountable for officials who fail to file. Please email the roster as a stand-alone submission with the subject line as requested above, but kindly include the word "roster" at the beginning of the subject line.

For example: 2012 Roster <County Name> <Local Unit Name> <Muni Code> #1.

Any 2012 FDS forms which have already been submitted to the Board are required to be resubmitted electronically as an attachment.

It is anticipated that this updated procedure will better meet the financial disclosure requirements provided for in the Local Government Ethics Law by: electronically organizing the filing by local governments; allowing for routine public inspection of the filings; providing a secure electronic mechanism for the five year required retention of the records; and reducing the amount of paper and costs associated with printing and mailing.

The Board recognizes that this new process will require an adjustment at the local level. **While the statutory deadline for filing of the FDS is April 30th, the Local Finance Board will provide clerks an additional sixty (60) days to convert the forms to an electronic file and email that file to the appropriate Local Finance Board FDS inbox. Thus, please email your files to the Local Finance Board by June 29, 2012.**

As the local official charged with the responsibility of distributing and collecting forms, this Notice also serves to **alert you to the Board's policy concerning non-filing by local government officers so that you may share the following policy with your local government officers.**

In prior years, upon submission of a signed written complaint against a local government officer alleging non-filing or inadequate disclosure on a filed FDS, the Board's policy was to provide the accused with one opportunity to file or correct the filing. Upon submission of the late or corrected filing, the Board dismissed the complaint.

Currently, upon receipt of a complaint of this nature and based on the completed, certified roster, the Board authorizes Board staff to initiate an investigation. The local government officer is given an opportunity to file the FDS and to provide an explanation as to the reason for the late or incomplete filing. The Board then reviews the explanation and circumstances. Unless good cause is shown for the lack of a timely and complete filing, the Board will determine the matter to be a violation and will assess an appropriate fine of no less than \$100 pursuant to N.J.S.A. 40A:9-22.10.

Please remind local government officers that ignorance of the requirement to file the FDS is not considered "good cause." It is anticipated that local government officers will take their position seriously and will also take the filing of the FDS seriously. Your continued assistance with the creation and submission of the Roster will assist greatly in the Board's effort to gain state-wide filing compliance.

We appreciate that the new process reflected here will require the new use of technology and appreciate your help in making this cheaper, more effective disclosure process a reality. It is our hope that in the end, taxpayer resources will be saved, our jobs will become a bit easier, and the public will be better served with enhanced transparency.

Review of Rosters

The Board is requesting each clerk/agency secretary to review their Roster of Local Government Officers required to file the FDS in conjunction with the information in the next section of this Notice. For further guidance, the [Attorney General Opinions](#) on the Board's website and consultation with legal advisors can help confirm whether specific position titles are required to file. There have been no changes made this year with respect to which positions are deemed local government officers and therefore which positions are required to file the FDS.

If, after review, it is determined that some positions within the local government are not deemed to be local government officers and therefore not required to file an FDS, please update/revise the Roster and notify those individuals of your determination. If the Board receives a signed

written complaint against a local government officer alleging non-filing or inadequate disclosure on a filed FDS which results in a determination that there are position titles on the Roster that appear inconsistent with the filing requirements, the Board will require an explanation as to how they are deemed LGOs and thus required to file an FDS.

Determining Local Government Officers Required to File

While the Ethics Law applies to all employees and officers of local governments, only local government officers are required to file an FDS. N.J.S.A. 40A: 9-22.3g defines a local government officer as:

... any person, whether compensated or not, whether part-time or full- time:

- (1) elected to any office of a local government agency;
- (2) serving on a local government agency, which has the authority to enact ordinances, approve development applications or grant zoning variances;
- (3) who is a member of an independent municipal, county or regional authority; or
- (4) who is a managerial executive or confidential employee of a local government agency, as defined in Section 3 of the "New Jersey Employer-Employee Relations Act," P.L. 1941, c.100 (C.34: 13A-3), but shall not mean any employee of a school district or member of a school board.

The Office of the Attorney General has issued a series of opinions that give advice as to the type of positions that are considered "local government officers." These opinions may be viewed on the [Division of Local Government Services' website](http://www.nj.gov/dca/divisions/dlgs/programs/ethics.html):

<http://www.nj.gov/dca/divisions/dlgs/programs/ethics.html>. Click on [Ethics Law and Complaints/Ethics Related Opinions](#) to view these opinions.

Neither the Board, nor the Attorney General's Office can examine every local position or body in the State that is created by ordinance and determine whether or not it is subject to filing requirements. These determinations, to a large extent, are fact sensitive and must be determined on a case-by-case basis by each local government. It is recommended that clerks/agency secretaries consult with the local attorney to make the determinations.

As noted above, each clerk and/or agency secretary is asked to review their Roster of Local Government Officers to determine the individuals in their organization that are required to file an FDS. To assist in the review, the following information, extracted from the Attorney General Opinions, provides specific guidance on various positions.

Positions Specifically Required to File an FDS

The following positions are specifically **required** to file the FDS (listed in opinion number order):

- AO 91-0090: County Prosecutor
- AO 91-0092: Municipal Attorney
- AO 91-0093:
 - Elected Officials (and any person selected to fill a vacancy in an elected position.)
 - Board of Health Members
 - Planning Board Members
 - Board of Adjustment Members
 - Zoning Board of Adjustment Members
 - Independent Authority Members
 - Fire District Commissioners
 - Special Tax District Commissioners

- AO 91-0132: Board of Recreation Commissioners
- AO 91-0133: Planning/Zoning Board Attorney
- AO 91-0134: Independent Local Government Agency Attorney
- AO 92-0061: Local Ethics Board Members
- AO 92-0069: Rent Leveling Board Members
- AO 92-0072: Joint Insurance Fund Commissioners
- AO 92-0109: County and Municipal Emergency Management Coordinators
- AO 00-0041: County Agricultural Development Board Members

Positions Specifically NOT Required to File an FDS

Attorney General Opinions have been issued determining that the following are specifically **not required** to file the FDS (listed in opinion number order):

- AO 91-0096: Court Personnel – Including Judges and Court Administrators
- AO 91-0141: County Board of Taxation Commissioners
- AO 92-0070: Local Assistance Board Members
- AO 92-0071: Municipal Environmental Commission Members
- AO 92-0109: Emergency Management Council Members
- AO 95-0168:
 - County/Local Advisory Committee on Alcoholism and Drug Abuse Members
 - County Alliance Steering Subcommittee Members
 - Municipal Alliance Committee Members
- AO 97-0135: Registered Municipal Accountants Serving as Local Government Auditors

In addition, while Board of Elections Members/County Superintendent of Elections are not covered under the Local Government Ethics Law, they are covered by the State Ethics Commission.

Managerial Executive and/or Confidential Employees

The determination regarding **managerial executive and/or confidential employees** is fact sensitive. [Attorney General Opinion #91-0093](#) provides a six page analysis of how such determinations have been made by the Public Employment Relations Commission (PERC) in interpreting the NJ Employer-Employee Relations Act, which is tied to the Local Government Ethics Law at N.J.S.A. 40A:9-22.3g(4). Please review this opinion to make determinations locally for these categories. If a local government employee's title is covered by a bargaining unit, most likely, that person would not be required to file an FDS.

As general guidance, please also note that the opinion points out the **following have been deemed by PERC as managerial executive and/or confidential employees** in at least one local government:

Municipal Clerk	Deputy Municipal Clerk
Police Chief	*Deputy Police Chief
*Police Captain	Public Works Superintendent
Assistant County Treasurer	Health Officer
Treasurer	Fire Chief
*Deputy Fire Chief	Library Board Trustees
Board of Trustees of County College	Administrative Assistants (Confidential)
Secretary (Confidential)	Assistant County Attorney

Additionally, the following have been deemed by PERC as **not managerial executive and/or confidential employees** in at least one local government:

Construction Official	Fire Marshal
Fire Inspector	*Deputy Police Chief
*Deputy Fire Chief	*Police Captain
Police Sergeant	Assistant Engineer
Lifeguard Captain	Zoning Officer
Tax Assessor	Library Director
Deputy Warden	Tax Collector
Assistant Tax Collector	

* listed in both categories

As can be seen from these Attorney General Opinions, PERC has taken a different position on the same title in different local governments. Local governments are asked to make a thorough analysis of the titles of positions they have deemed to be local government officers. Please review those individuals you deem required to file the FDS against the various Attorney General Opinions to ensure that only those positions required to file are included on your Roster.

Common Misunderstandings

For a variety of reasons found in the Local Government Ethics Law and in the Attorney General Opinions, there are positions that are not required to file the FDS. Please note that the Local Finance Board will not pursue the non-filing of those positions not required to be filed even if the local government includes such a position on the roster. They include:

- Advisory Board Members
- Court Personnel
- Registered Municipal Accountants
- Bond Counsel
- Labor Counsel

If, after review, it is determined that some positions within the local government are not deemed to be local government officers and therefore not required to file an FDS, please update/revise the roster and notify those individuals of your determination. If there are position titles on the roster that appear inconsistent with the filing requirements, the Board will require an explanation as to how the positions are deemed LGOs and thus required to file an FDS.

Failure to file the FDS is a violation of the Local Government Ethics Law. Under the provisions of the Law, N.J.S.A. 40A: 9-22.10, local government officers are subject to fines of up to \$500 for each violation of the statute.

Distribution of Financial Disclosure Statement Forms

Municipal and County Clerks are responsible for transmitting the FDS forms to local government officers, in accordance with N.J.S.A. 40A: 9-22.6. For purposes of this statute, officers and employees serving independent local authorities are deemed to be serving the local government.

In [Attorney General Opinion #91-0093](#), the Office of the Attorney General has determined that the term "independent authorities" encompasses most autonomous local authorities and special tax districts. This includes fire districts. Thus, the clerk also makes distribution to independent local authorities and fire districts.

However, for a municipality or county that has established an ethics board, the local ethics boards are required to make the forms available to local government officers within their jurisdiction. Please forward this communication to representatives of your local ethics board for necessary action. The Board does not have direct contact information for local ethics boards.

Where Local Government Officers File

In order to facilitate filing with the Board, local government clerks and local ethics board secretaries must email scanned copies of the original signed forms which are filed with their office to the Board. The form instructs the filer to provide the clerk with a signed copy of their completed form. When these are received, please retain the original for your file and forward a scanned version to the Board. Once the filing is completed locally, please send an email or emails with the forms attached. **You may need to send more than one email as the attachment should reflect no more than 40 pages of scanned documents to ensure successful transmission and receipt.** The size of your PDF attachment is limited to the technology available to each local government. If your scanner can create larger PDF files, and your email system can forward larger PDF files, you may email more pages at one time. Be sure to scan both page 1 and page 2 of each FDS in order so that a complete record is created. Emails should be sent to LFB_FDS@dca.state.nj.us.

As stated previously, email submissions should be titled in the Subject line: "2012 <County Name> <Local Unit Name> <Muni Code>#X." For example, the submission from Trenton should be entitled "2012 Mercer County, Trenton City 1111 #1." Additionally, the attachment should be similarly named. Any submissions not properly titled in the Subject line will not be accepted by the Board.

Instruct municipal/county local government officers to file the financial disclosure statement forms with your office. This includes local authority and fire district officers.

In counties or municipalities that have established local ethics boards, a copy of the statement shall also be filed with the ethics board having jurisdiction over the local government officer.

Regional authorities and county colleges should designate a person to serve as the holder of public records, who can coordinate the filing for their entity in the manner previously described, including retaining the original file for public access.

Filing Status

Finally, once the filing deadline has passed, a Roster must be emailed to the Board containing the following information:

Name of each person deemed to be a local government officer
Title/agency served
Filing status

This information is vital to the Board's effective administration of the Local Government Ethics Law. Refusal to file a Financial Disclosure Statement is a violation of the Law, and the Board is prepared to take the necessary action against local government officers to bring officers into compliance.

The Roster form includes sections for each category of officer or employee that may be required to file. **It is imperative that the Roster be completed in every category in accordance with your specific local government agency's information.** The Roster is not to be considered as a

transmittal cover sheet; rather, it is a complete list of local government officials required to file the FDS. **Please email a scanned copy of the completed Roster form by June 29, 2012.**

For your convenience, the Division also created the Rosters as Excel workbooks to simplify data entry. The [workbook rosters](#) are found on our website. Please note that each category is shown as a separate worksheet, with the tabs at the bottom of the workbook. Additionally, you must print the entire workbook in order to print the entire roster. Use of the workbook is not mandatory; it is an option that can be used in lieu of a Word document.

Other Information

Statement available at Website: The [Financial Disclosure Statement form](#), along with the Fill-in Instructions for completing the form, may be downloaded from the Ethics section of the Division of Local Government Services' website <http://www.nj.gov/dca/divisions/dlgs/programs/ethics.html#2> (not the State Ethics Commission website). The link should be forwarded to local government officials. The form is an Adobe Acrobat form that can also be filled in using a computer, and then printed for original signature and submission. The form cannot be submitted without the required original signature.

County Colleges: Officers and employees of the county colleges are under the jurisdiction of the Local Finance Board (Board) in the Division of Local Government Services, Department of Community Affairs, for the purposes of compliance with the provisions of the Local Government Ethics Law.

The office of the president of the county colleges should transmit form links to county college local government officers in accordance with [N.J.S.A. 40A: 9-22.6](#). All copies of forms that are filed with their office should be scanned and emailed to the Board at LFB_FDS@dca.state.nj.us. County colleges should retain the original for their file as previously described.

Filing Deadline: ON or BEFORE APRIL 30, however, records custodians will have until June 29 to transmit the PDF version to the LFB.

[N.J.S.A. 40A:9-22.6b](#) requires that “... *statements shall be filed on or before April 30th each year, except that each local government officer shall file a financial disclosure statement within 30 days of taking office.*” For example, if an officer takes office on November 1, 2012, that officer shall file a 2012 Financial Disclosure Statement by December 1, 2012. The officer supplies the required information in Section II of the form that is based on the previous calendar year, 2011, even though the officer did not serve during 2011.

Year: The filing year is the year in which you serve, thus **2012** should be indicated above Section I on the form.

Public Records: Financial Disclosure Statements are considered public records and must be maintained for five years.

Questions: Please e-mail us at dlgs@dca.state.nj.us or call (609) 292-0479. If no one is available to answer your call, please leave a message on the answering machine. Due to the heavy volume of inquiries, we may be unable to immediately answer all calls; however, staff will return calls as soon as possible. Please do not send inquiries to the LFB_FDS email address as this inbox will not be monitored for general correspondence. The Board will prepare and distribute a Frequently Asked Questions sheet to address common questions we receive. If you have a question, please submit it to the DLGS email box at dlgs@dca.state.nj.us for consideration. Additionally, several conference calls will be set up to share information with interested parties. Dates, times and call-in information will be distributed in the near future.