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Local Finance Notice

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Local Government Ethics Law 2014 Financial Disclosure Statements Important Information Concerning New Filing Procedure

Introduction

The Local Government Ethics Law requires local government officers to annually file a financial disclosure statement. This Local Finance Notice outlines a new filing procedure that is designed to facilitate efficiency and enhance transparency by using available technology to accept and report financial disclosure statements online. This notice is intended for municipal clerks, county clerks, and other local government entity representatives who have administrative responsibilities concerning financial disclosure statements. A separate Local Finance Notice (LFN 2014-7) containing information for local government officers will be released within the next week.

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The following abbreviations are used throughout this notice:

LGO = local government officer
FDS = financial disclosure statement(s)
LGE = local government entity
LFB = Local Finance Board
LFN = Local Finance Notice
DLGS = Division of Local Government Services

Also, “local government entity representative” is intended herein to mean the municipal clerk, county clerk, or other person who has administrative responsibilities on behalf of a local government entity regarding financial disclosure statements.

I. Background

Prior to 2012, the FDS distribution and filing process relied upon a traditional paper based system. Two years ago, however, the LFB implemented a new FDS distribution and filing process that was designed to eliminate the practice of annually printing 70,000 paper copies of the FDS form and mailing them to each LGA. In particular, in a departure from past practice, the LFB only disseminated the FDS forms electronically (as a fillable PDF document). Similarly, the LFB required local government entity representatives to return completed and collected FDS forms to the LFB by e-mailing the forms as PDF files. This changed the past practice of requiring local government entity representatives to mail to the LFB paper photocopies of completed forms.

The change was estimated to save the State at least \$25,000 every year by eliminating costs associated with printing and mailing the forms. Equally important, the new process was intended to allow for the electronic storage and dissemination of documents by the LFB, which would provide more timely and appropriate disclosure to the public with respect to these important documents.

In preparation for the 2013 filing year, DLGS staff designed an online filing system that required all FDS forms to be submitted electronically and posted online at the DLGS web site. This resulted in greater public disclosure of FDS forms while also relieving records custodians of some of the burdens associated with Open Public Records Act (“OPRA”) compliance. For 2014, the DLGS contracted with an outside vendor to provide an even more robust online filing system that resolves many of the technical problems we experienced last year. For example, LGOs will now be able to save their FDS forms year to year, the system is compatible with Apple products including iPads, and FDS forms will be available for public search and download immediately after the LGO submits his or her FDS electronically.

PAPER COPIES OF THE FINANCIAL DISCLOSURE STATEMENT WILL NOT BE ACCEPTED BY THE LOCAL FINANCE BOARD. ALL COMPLETED FINANCIAL DISCLOSURE STATEMENTS MUST BE SUBMITTED USING THE ONLINE FILING SYSTEM.

II. Statutory Requirements/Concepts

N.J.S.A. 40A:9-22.6(a.) provides that “[l]ocal government officers shall annually file a financial disclosure statement.”

The concept that LGOs have personal responsibility for annually filing their FDS forms is an important one. Municipal clerks, county clerks, and other local government entity representatives who have administrative responsibilities concerning the FDS filing process are not required to complete FDS forms on behalf of LGOs, nor are they required to ensure that LGOs satisfy their statutory obligation to annually file a FDS. The failure of any LGO to comply with the annual filing requirement subjects the LGO to the penalties and disciplinary action provisions set forth in N.J.S.A. 40A:9-22.10 and 40A:9-22.11. Local government entity representatives are not held responsible for any LGO’s failure to comply with the statute.

This means that each LGO has the personal duty, by virtue of the LGO’s public office, appointment, or employment, to carefully read LFN 2014-7, understand the online filing procedure, and take appropriate steps to timely file the LGO’s FDS.

N.J.S.A. 40A:9-22.6(b.) provides that the “Local Finance Board shall prescribe a financial disclosure statement form for filing purposes.”

The online FDS form is substantively similar to the paper FDS form that LGOs filed for many years. The LFB has not adopted the more expansive ethics disclosure form utilized by the State Ethics Commission.

N.J.S.A. 40A:9-22.6(b.) provides that “the original statement shall be filed with” the municipal clerk, county clerk, or other local government entity representative as appropriate to the circumstances. This requirement is satisfied when the LGO submits the FDS using the online filing system. In contrast to the 2013 filing process, LGOs are not required to deliver a filing receipt. Likewise, LGOs should not file a paper copy of their completed FDS form.

N.J.S.A. 40A:9-22.6(b.) provides that “a copy of the statement shall be filed with the [Local Finance] board.” This requirement is satisfied when the LGO submits the FDS using the online filing system. The electronically submitted FDS forms will be accepted as the Board’s copy.

III. Role of Municipal Clerks, County Clerks, and Other Local Government Entity Representatives Regarding Financial Disclosure Statements

The following steps pertain only to municipal clerks, county clerks, and other local government entity representatives who have responsibilities concerning financial disclosure statements. Local government officers should follow the steps that will be outlined for them in LFN 2014-7.

- STEP 1: Carefully review this Local Finance Notice.
- STEP 2: Develop a *preliminary* LGO roster. (See Step 5)
- STEP 3: A login ID and temporary password will be e-mailed to you. If you do not receive your login ID and temporary password by close of business on Monday, April 28, 2014, please call the Local Finance Board at 609-292-4537.
- STEP 4: Visit the FDS website (www.fds.nj.gov) and click the “Manage” button. Login and proceed to edit your Local Government Entity profile. We strongly recommend that you change your password.
- STEP 5: Complete the LGO roster using the “Manage LGO Roster” tab. Once you complete the LGO roster the information will be available from year to year and should only require maintenance on your part (e.g., adding new LGOs, disabling former LGOs). All LGO rosters should be completed no later than Friday, May 16, 2014, so that LGOs have sufficient time to complete and submit their FDS forms by Friday, June 13, 2014.
- STEP 6: After you complete your LGO roster, distribute to each of your LGOs a copy of Local Finance Notice 2014-7 together with the LGO’s login ID and PIN #. The method by which you choose to distribute this information is a local decision. However, please be mindful that the login ID and PIN # are confidential and should only be distributed to the associated LGO. For example, you should not send login IDs and PIN#s to your entity’s LGOs via a group e-mail.
- STEP 7: If you receive technical questions from LGOs concerning how to validate their PIN #s or how to complete their FDS forms you can refer them to the help resources available at www.fds.nj.gov.

IV. Determining Local Government Officers Required to File

While the Local Government Ethics Law applies to all employees and officers of local governments, only “local government officers” are required to file an FDS. The LFB requests that each municipal clerk, county clerk, and other local government entity representative carefully review their LGO roster in consideration of the guidance provided in this section and in consultation with local 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 the LGO roster and notify those individuals of your determination. If the LFB receives a signed written complaint alleging that a person is

an LGO who did not file an FDS and that person is not included on the roster, the LFB will require the local government to explain how it determined that person not to be a LGO.

N.J.S.A. 40A:9-22.3(e) defines a local government agency as:

... any agency, board, governing body, including the chief executive officer, bureau, division, office, commission or other instrumentality within a county or municipality, and any independent local authority, including any entity created by more than one county or municipality, which performs functions other than of a purely advisory nature, but shall not include a school board.

N.J.S.A. 40A: 9-22.3(g) 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 at 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 LFB nor the Attorney General's Office can examine every local position or public body in the State that is created by ordinance and determine whether or not it is subject to the filing requirement. 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 municipal clerks, county clerks, and other local government entity representatives consult with your local counsel to make individual determinations.

To assist with such reviews, 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 and County Superintendents of Elections are not covered under the Local Government Ethics Law, they are covered by procedures adopted 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 Sergeant
Lifeguard Captain
Tax Assessor
Deputy Warden
Assistant Tax Collector

*Police Captain
Assistant Engineer
Zoning Officer
Library Director
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 or positions they have deemed to be local government officers. Please review your LGO Rosters against the various Attorney General Opinions to ensure that only those positions required to file are included in 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 LFB will not pursue "failure to file" complaints charging persons holding titles/positions that are not required to be filed even if the local government includes such a title/position on the roster. They include:

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

V. Distribution of LFN 2014-7

Municipal clerks, county clerks, and other local government entity representatives are responsible for transmitting LFN 2014-7 (when it is released) to LGOs, 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 determined that the term "independent authorities" encompasses most autonomous local authorities and special tax districts. This includes fire districts. Thus, municipal clerks and county clerks also make distribution to independent local authorities (including fire districts). Additionally, these LGOs should be included on the municipal or county LGO roster.

However, for a municipality or county that has established an ethics board, the local ethics boards are required to make LFN 2014-7 available to LGOs within their jurisdiction. Please forward this communication to representatives of your local ethics board for necessary action. The LFB does not have direct contact information for local ethics boards.

Other local government entity representatives: county colleges (e.g., Office of the President), regional authorities, joint insurance funds, health insurance funds, and joint meetings should designate somebody internally to transmit LFN 2014-7 to their respective LGOs in accordance with N.J.S.A. 40A: 9-22.6 and to be responsible for submitting the entity's LGO roster through the online filing system.

VI. Help System

Numerous help resources have been developed for you and LGOs. First, the webinar trainings were recorded and have been uploaded to a [YouTube](#) website. The full URL for the YouTube website is <http://www.youtube.com/playlist?list=PL1ZrHg25YW4sKS9IjkWMYED-vRwvZdZp5>

Second, separate reference guides have been created for local government entity representatives and LGOs. These documents will be available at www.fds.nj.gov.

Third, a video training was specially created for LGOs and will be available at www.fds.nj.gov when Local Finance Notice 2014-7 is released.

Lastly, DLGS and LFB staff developed a Frequently Asked Questions document that answers questions presented to us last year and during this year's webinar training sessions. The FAQ will be available at www.fds.nj.gov.

Questions should be directed to the Local Finance Board staff at 609-292-4537.

Approved: Thomas H. Neff, Director