

MARYLAND STATE ETHICS COMMISSION

Financial Disclosure Filer Identification Manual

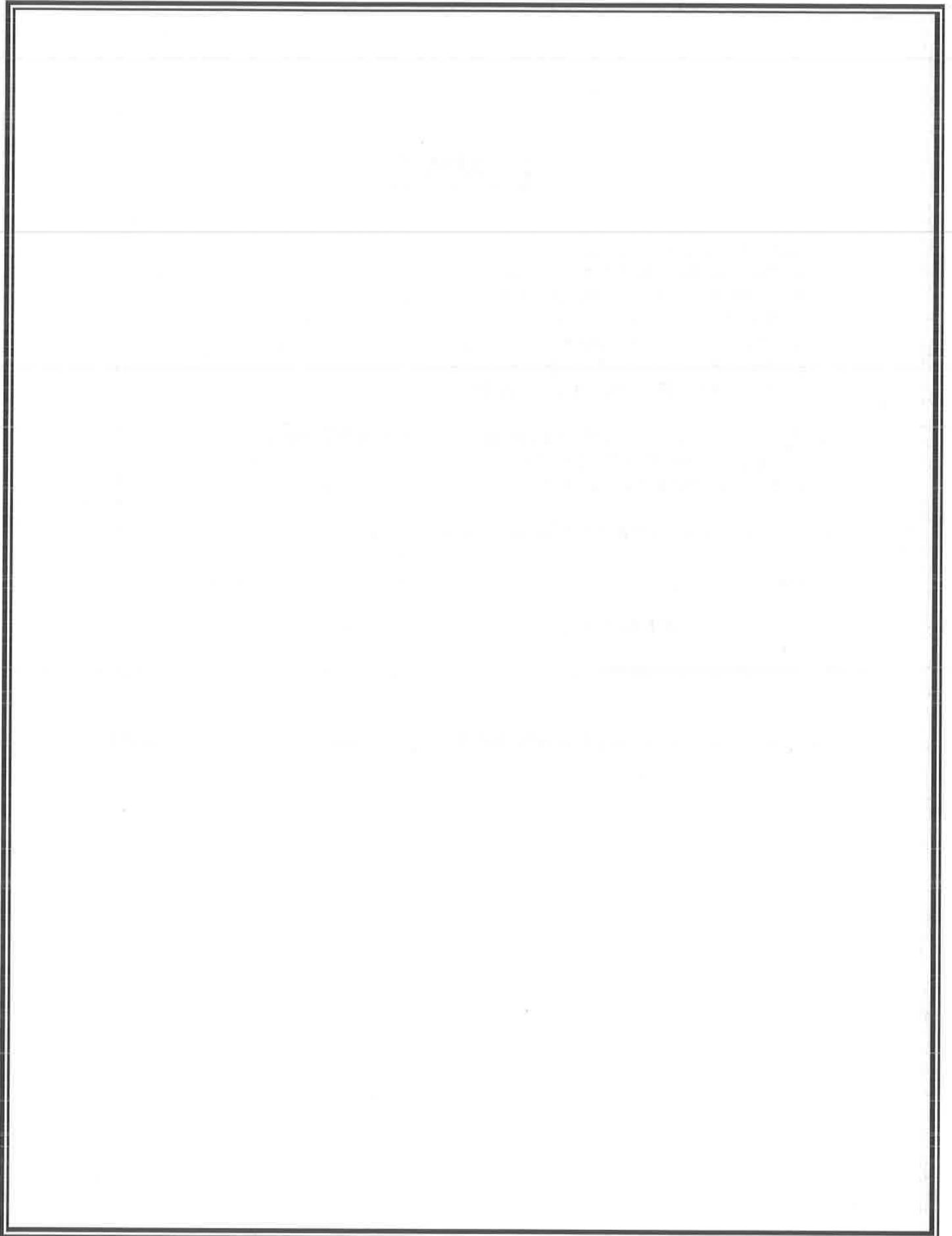
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INDEX

	<u>Page</u>
I. Filer Identification - Criteria.....	1
A. Position-Specific Filers	1
B. Compensation and Duties Criteria	2
C. Non-Salary Criteria	2
D. Faculty Disclosure Criteria	3
E. Judicial Officials and Employees Criteria	3
F. Members of Boards and Commissions	3
II. Filer Identification – The Process and Agency Responsibilities.....	4
A. Request to Add or Delete Positions.....	4
B. Request to Add or Delete Persons.....	5
III. The Forms and Where to File Them	5
IV. Timing of Filing.....	6
V. Enforcement For Late Filing	7
VI. Training Requirements	8
Samples of Forms for Adding or Deleting Persons or Positions.....	Appendix I



FINANCIAL DISCLOSURE **FILER IDENTIFICATION MANUAL**

The General Assembly enacted the Public Ethics Law in 1979 (Chapter 513, Acts of 1979). The purpose of the Law is to protect the public's confidence and trust in government by assuring the impartiality and independent judgment of State officials and employees. The Law defines minimum standards of conduct for State officials and employees. It also requires that certain government officials and employees disclose their financial affairs annually as a tool to guard against conflicts of interests and to assure the public that State business is being properly conducted.

While all State employees are subject to the conflict of interest provisions of the Law, only some officials and employees are required to file an annual financial disclosure statement. In administering the financial disclosure provisions of the Law, the State Ethics Commission initially relies on the employing State agency to identify the positions that meet the criteria for filing. The purpose of this manual is to assist agency personnel in identifying positions required to file and to set forth the procedures to be followed.

PART I.

FILER IDENTIFICATION – CRITERIA

The following paragraphs describe the ways in which various employees of the State can become financial disclosure filers.

A. Position-specific Filers

The Public Ethics Law identifies certain State positions as financial disclosure filers. Specifically, the Law requires all State officials and candidates for office as State officials to file financial disclosure statements. State officials, with the exception of State officials of the judicial branch, file with the State Ethics Commission. State officials of the judicial branch, a term which includes judges, masters, examiners, commissioners, auditors and referees of the judicial branch, file in the manner prescribed by the Court of Appeals.

The term "**State official**" includes members or members-elect of the General Assembly, state officials of the judicial branch as described above, and constitutional officers or officers-elect in the executive branch of the State government. State official also means a person holding office as a state's attorney, clerk of the circuit court, register of wills or sheriff.

B. Compensation and Duties Criteria

Unlike State officials, who are financial disclosure filers by virtue of the positions they occupy, there are other positions, referred to as public officials, who are generally designated by the Ethics Commission following recommendations from State agencies (note, however, that employees in the legislative branch of government are designated as public officials by the presiding officers of the General Assembly). These public officials are the focus of Part II of this Manual.

The term “**public official**” includes an individual employee who receives compensation at a rate of at least State **grade level 16** (or an equivalent rate for employees not on the State’s standard salary schedule) and whose duties satisfy certain criteria. Note that it is a two-part test, salary and duties. The Ethics Commission will conclude that an employee meeting the compensation requirements is a public official if it determines that the employee, acting alone or as a member of an executive unit, has discretionary or decision making authority or acts as a principal advisor to one with authority in making State policy in an executive unit or in exercising quasi-judicial, regulatory, licensing, inspecting or auditing functions and the individual’s duties are not essentially administrative and ministerial.

It is important to note here that in determining if a position satisfies the Law’s “duty” requirements, the Ethics Commission is guided by the Law’s direction to liberally construe it in such a way to accomplish its purposes. Since maximizing financial disclosure filing is in keeping with a liberal construction of the Law, in its review the Commission makes every effort to support an agency’s recommendation.

Public official also includes contractual employees who are employed full time for at least 6 months, are paid at a rate at least equivalent to State grade level 16, and who have decision making authority, act as principal advisor to an individual with decision making authority, or exercise quasi-judicial, regulatory, licensing, inspecting or auditing functions. An agency hiring a contractual employee who meets these criteria need not wait until the contract has been in effect for 6 months to recommend to the Ethics Commission that the individual be designated as a public official – the employee may (and should) be recommended at the commencement of the contract.

C. Non-Salary Criteria

1. The Ethics Law includes within the definition of public official a member, appointee, or employee of the Maryland Stadium Authority, the Canal Place Preservation and Development Authority, a member of the Emergency Medical Services Board, and (except in counties in which a county council or board of commissioners sits as a board of license commissioners or a liquor control board), a member or employee of a board of license commissioners or a liquor control board. All of the foregoing are public officials without regard to salary or duties.

2. The term public official also includes employees in an executive unit who, **regardless of compensation level**, are charged with decision making authority or act as a principal advisor to one with such authority in drafting specifications for negotiating or executing contracts which commit the State or any executive unit to expend in excess of \$10,000 for an individual contract. The \$10,000 per contract criterion also applies to those authorized to make corporate credit card purchases in excess of the \$10,000 amount.

D. Faculty Disclosure Criteria

Faculty members at a State institution of higher education are required to file financial disclosure only if 1) they are concurrently employed in another position that causes them to be designated as a public official, or, 2) they meet the compensation/duties criteria set forth in section B, above, and in addition to their teaching responsibilities, are involved either in direct procurement or in influencing procurements as described in the Commission's regulations (see COMAR 19A.03.02.01).

E. Judicial Officials and Employees Criteria

As noted above, State officials of the Judicial Branch file financial disclosure as required by the Court of Appeals. If you have any questions with regard to this category of filers, contact the Administrative Office of the Courts at 410-260-1295.

Other individuals employed in the Judicial Branch are required to file financial disclosure statements with the State Ethics Commission if they receive compensation at a rate equivalent to at least a State grade level 16. For the purposes of this Section, persons employed in the judicial branch include individuals who are:

1. employed in the office of clerk of court;
2. paid by a county to perform services in an orphans' court or circuit court;
3. employed by the Attorney Grievance Commission;
4. employed by the State Board of Law Examiners; or
5. employed by the Court of Appeals Standing Committee on Rules of Practice and Procedure.

Individuals meeting the above criteria are required to file financial disclosure with the State Ethics Commission. However, the Ethics Commission may exclude an individual from the filing requirement upon recommendation of the State Court Administrator and a determination by the Ethics Commission that the person's position does not have policy, policy advice, quasi-judicial or procurement functions. **Persons serving in contractual positions in the Judicial Branch are not required to file financial disclosure statements.**

F. Members of Boards and Commissions

Members of boards and commissions that have been determined by the Commission to be subject to the Public Ethics Law, whether or not compensated, must file a limited financial disclosure statement unless they are specifically exempted by the Commission from the filing requirement. The exemption is limited to members of boards and commissions having advisory responsibilities only. The State Ethics Commission may approve an exemption only in response to a written request (**Ethics Commission Form No. 10**) signed by the chair of the board or commission and the head of the agency having oversight responsibility for the board or commission.

PART II.
FILER IDENTIFICATION – THE PROCESS AND
AGENCY RESPONSIBILITIES

This part of the Manual addresses the process for State agencies to follow in identifying agency employees who satisfy the criteria discussed in Part I, Paragraphs B, C2, D or E, above. Please note that the Ethics Commission relies on each agency to initially identify positions the agency believes satisfy the criteria in the Law to be designated as public officials (i.e. financial disclosure filers).

A. REQUEST TO ADD OR DELETE POSITIONS REQUIRED TO FILE FINANCIAL DISCLOSURE

The Public Ethics Law establishes the decision-making process for the State Ethics Commission, with advice from the Secretary of Budget and Management, regarding positions to be included in the financial disclosure filing program. **NOTE:** This process applies to positions, regardless of whether or not the position is filled. In order to carry out the purpose of the Law, it is critical that the appropriate staff (usually personnel or human resources) of the department or independent agency be directly involved in the process. Agency staff must be alert to the need for additions and deletions and to make recommended changes as new positions or position adjustments occur during the year by applying the statutory criteria to each of the positions in the department or agency. The process works as follows:

1. For a position meeting the filing criteria and not already on the filing list, the staff forwards to the State Ethics Commission a request to add that position to the financial disclosure list using the Commission's **Form No. 9**. It is very important to include **the job description for the position**, as the form requests, and, if procurement is part of the justification for filing, the amount of the contract authority residing in the position. For positions included in the State Personnel System ("SPS"), the PIN number must be included as this is the number used to identify the position's filing status. Financial disclosure statements should NOT be distributed to a person who fills a position recommended to be added to the list until the State Ethics Commission has approved the request.
2. The State Ethics Commission reviews the "Add Position" request and makes its decision.
3. The State Ethics Commission then requests advice from the Secretary of Budget & Management as required by the Ethics Law. Upon obtaining concurrence from the Secretary of Budget and Management (or after considering a non-concurring opinion, the Commission still determines the position should be added), the Commission will send a letter to the agency advising of its decision concerning the position.
4. If the Commission adds the position to the financial disclosure filing program, and the position is filled, the personnel or human resources staff should notify the employee filling the position of his/her financial disclosure filing requirement. The employee has thirty days (30) to file a financial disclosure statement with State Ethics Commission.

The procedure for deleting a position from the financial disclosure list is essentially the same as the process for adding a position to the list, with the exception that Ethics Commission **Form No. 8** and **the position description** are used for this process. Deletions of positions required to file financial disclosure

can occur due to changes in programs, staff reorganization, or revisions in job duties. Changes also occur when a position (often a vacant position) is reclassified to a lower level. As when considering a request to add a position to the financial disclosure filing program, the Ethics Commission is guided by the Law's direction to liberally construe the Law to accomplish its purposes, and maximizing financial disclosure is viewed as keeping with a liberal construction of the Law (see the discussion in Part I, Paragraph B). Consequently, every request to delete a position will be carefully scrutinized to ensure it no longer satisfies the filing criteria.

B. REQUEST TO ADD OR DELETE A PERSON FROM THE FINANCIAL DISCLOSURE FILING MASTER LIST

The procedures described in Part II. A. apply to requests to add a position to or delete a position from the financial disclosure filing list and require a determination by the Ethics Commission. The addition or deletion of positions, however, is different from the process of tracking the identities of the persons who occupy those positions, which involves a simple administrative process initiated by the department or agency. If a person leaves a position requiring filing and/or a new person fills a position requiring filing, agency/department staff should notify the Commission immediately by submitting a **“Request to Add/Delete a Person” (Form 9A/8A)**. Both the person leaving the position and the person filling that position can be included in the spreadsheet. Please be sure to provide the email address for a person to be added. These requests are immediately processed and do not require Commission approval. Consequently, when a request is submitted, both filers (the added filer and the deleted filer) should be notified by the agency to submit the appropriate financial disclosure statement (within 30 days of being added) or financial disclosure termination statement (within 60 days of being terminated) to the Commission.

As a result of the financial disclosure addition and deletion process, the Commission is able to maintain a current list of filers. It is important that all information on these forms be filled out completely and transmitted to the Commission immediately when changes occur. In January or February of each year, the Commission will send to each agency a copy of its portion of the financial disclosure filing list in preparation for the April 30th annual filing deadline.

Part III.

THE FORMS AND WHERE TO FILE THEM

Persons identified as financial disclosure filers are required to file the following forms, which **MUST** be submitted electronically (no exceptions):

Legislators file Form 19 with the State Ethics Commission. The Law also requires an original of this form to be filed with the Joint Committee on Legislative Ethics. An electronically filed submission of the form addresses this by automatically providing a copy to each entity.

Members of State boards and commissions file Form 2 with the State Ethics Commission.

State officials of the judicial branch (which includes judges, masters, examiners, commissioners, auditors and referees of the judicial branch) file forms prescribed by the Court of Appeals with the Administrative Office of the Courts.

All other filers file Form 1 with the State Ethics Commission.

The various forms are the result of the Law's requirement for different levels of disclosure depending upon the filing category. Contact the Commission's office if you require further information. The various financial disclosure forms are available to be filed electronically at <https://efds.ethics.state.md.us>, or can be accessed through the Commission's website at <http://ethics.maryland.gov>.

Part IV.

TIMING OF FILING FINANCIAL DISCLOSURE STATEMENTS

With the exception of candidates for State office, all filers are required to submit financial disclosure forms on three distinct occasions as discussed below. As a rule, financial disclosure statements cover the calendar year that precedes the date of filing. For example, if a statement from a newly designated employee or board member is due by October 1, 2017, it should cover the 2016 calendar year, even though the filer did not hold his/her position during that calendar year. The occasions when financial disclosure statements must be filed are as follows:

A. New filers, whether elected to office, appointed to a filing position or appointed to a board or commission, are required to file financial disclosure statements within thirty days of appointment to the position.

B. After the initial filing, **all persons in positions requiring financial disclosure** must file annually by April 30th, which covers the previous calendar year (but see candidates for State office, below).

C. Persons leaving State service (including those completing service on a State board or commission), or transferring into positions that do not require financial disclosure, must file a financial disclosure termination statement covering the time period from the last statement filed through the date of termination within sixty days of terminating service. For example, an individual who terminates State service on February 15, 2017 and who has not yet filed his/her calendar year 2016 statement (due by April 30, 2017) can file one statement for the previous calendar year and the current year through the date of termination (February 15, 2017) which will cover both the 2016 annual requirement and the 2017 termination statement requirement. If an individual terminates State service on December 1, 2016 (and presuming the individual timely filed an annual statement covering calendar year 2015) he/she must file a termination statement covering the period January 1, 2016 through the date of termination (12/1/16).

D. Candidates for State office must initially file a financial disclosure statement with the appropriate Board of Supervisors of Elections at the time they file for office, unless they already have on file with the State Ethics Commission a full statement, form No. 1 or 19 (for an incumbent legislator), covering the relevant period. Candidates are thereafter required to file a subsequent statement in the year of the election, by the earlier of April 30th or the last day for the withdrawal of a candidacy.

Part V.
ENFORCEMENT FOR LATE FILING

In enacting the Public Ethics Law, the Maryland Legislature stated the purpose of the law as follows:

For the purpose of guarding against improper influence, the General Assembly enacts this Maryland Public Ethics Law to require certain government officials and employees to disclose their financial affairs and to set minimum ethical standards for the conduct of State and local business.

The legislature added that, with the exception of its provisions for criminal sanctions, the Law is to “be liberally construed to accomplish this purpose”.

The Law gives the State Ethics Commission authority to enforce the filing requirement through an administrative complaint process. Failure to file, incomplete filing, and late filing may result in a Commission initiated enforcement action. The enforcement process follows a progression of correspondence sent to the non-compliant filer, resulting in the issuance of a complaint if the filer still fails to comply. In view of the State Ethics Law’s focus on public disclosure, once a complaint is initiated, it is not likely that the Commission will accept a submission of a late statement as a total settlement (or cure) of a violation.

If the Commission conducts a hearing on a complaint in accordance with the provisions of Public Ethics Law § 5-404 and Code of Maryland Regulations (“COMAR”) 19A.01.03, the late filer may be represented by counsel and present evidence. The evidence may relate to compliance with the law, mitigating circumstances, and other relevant information. If, after the hearing, the Commission finds that the late filer has violated the financial disclosure provisions of the Law, the matter will become public and the Commission will notify his or her agency department head and the head of the branch of government involved. Additionally, in accordance with Public Ethics Law § 5-405, the Commission may:

1. Issue a reprimand.
2. Levy late fees of \$5 per day up to a maximum of \$500 for each delinquent or late statement.
3. Petition a court to levy a fine of up to \$5,000 per violation, with each day that the violation occurs being considered a separate violation.
4. Recommend to the delinquent filer’s agency other appropriate discipline, including censure or removal, if that discipline is authorized by law.
5. Order the delinquent filer’s salary be suspended pending compliance with the Commission’s order.

Part VI.

TRAINING REQUIREMENTS

Section 5-205(d) of the State Ethics Law requires new financial disclosure filers to receive two (2) hours of Ethics training within six (6) months of being required to file. The training covers all areas of the Ethics Law but focuses on conflicts of interest. This requirement does not apply to individuals who are public officials only as members of boards or commissions, or to those who have previously completed a training course while serving in another public official position. Training is available in a live classroom setting three to four times per year. Training dates and registration forms can be found on the Commission's website.

Training is also available in an electronic format. Financial disclosure filers can access the training link by signing into their electronic accounts at <https://efds.ethics.state.md.us>. This is the same account used to file the financial disclosure forms. The training link is located in the upper left-hand side of the screen. The training does not have to be completed in one sitting. The individual can stop the training at the END of any chapter and return to the point where training stopped to proceed with the remaining chapters. The training should take at least 1½ to 2 hours to complete.

The training is a one-time requirement. Once an individual has taken the training, he/she is not required to take the training again.

HELP!

Do not hesitate to call the staff at the State Ethics Commission with any questions you may have. Thank you for your assistance in this effort.

Contact Information: 410-260-7770 or 1-877-669-6085

Forms referenced in this manual may be found on the Commission's website at <http://ethics.maryland.gov/employeeofficials/forms/>.

APPENDIX I

**Samples of Forms For
Adding or Deleting
Persons or Positions**

STATE ETHICS COMMISSION
45 CALVERT STREET, 3RD FLOOR
ANNAPOLIS MD, 21401
410-260-7770
Email: Young.Smith@maryland.gov

REQUEST TO DELETE POSITION FROM FINANCIAL DISCLOSURE LIST (Form No. 8)

Use this form to request the deletion of a position (job) from the financial disclosure list applicable to your Department or agency. To request the deletion of a person, rather than the position, from the list, use Form No. 8A.

Name of Department or Agency: _____
Agency Code: _____
Name of Person in Position to be Deleted: _____
Person's E-mail Address: _____
Position or Job Title: _____
PIN Number: _____
Salary Grade: _____
(Or compensation if not State graded)

REASON OR REASONS FOR DELETION FROM LIST - CHECK ALL THAT APPLY

- Salary and Duties Not Applicable (See Informational Memo #9)
- Duties Relating to Contracts Not Applicable (See Informational Memo #10)

In the space below briefly explain the reasons why the duties of a position no longer require the filing of a financial disclosure statement. Consult applicable Commission memos or regulations explaining who must file financial disclosure before preparing this explanation. Clarify whether the duties are being changed or the position is being abolished. Also, attach a job description or describe in detail the current duties.

Signature of Department or Agency representative authorized to make this request. (The Head of the Department or Agency involved must authorize Persons making these requests.)

Signature

Date

Print Name

STATE ETHICS COMMISSION
45 CALVERT STREET, 3RD FLOOR
ANNAPOLIS MD, 21401
410-260-7770
Email: Young.Smith@maryland.gov

REQUEST TO ADD POSITION TO FINANCIAL DISCLOSURE LIST (Form No. 9)

Use this form when adding a position (job) to the financial disclosure list applicable to your Department or Agency. If a person is being added because he or she has assumed a position (job) already on the list, use Form No. 9A.

Name of Department or Agency: _____

Position's Agency Address: _____

Agency Code: _____

Name of Person To Be Added: _____

Person's E-mail Address: _____

Position or Job Title: _____

PIN Number: _____
(If in State Personnel System)

Salary Grade: _____
(Or compensation if not State graded)

REASON FOR ADDITION OF POSITION TO LIST – CHECK ALL APPLICABLE BOXES
READ APPLICABLE MEMOS CAREFULLY!

- SALARY AND DUTIES (See Information Memo #9)
- DUTIES RELATING TO CONTRACTS (See Information Memo#10)
- FACULTY MEMBER IMPACTING ON PROCUREMENT (See Information Memo #11)

Please attach an entire MS-22 or other position description.

Signature of Department or Agency representative authorized to make this request. (Persons making these requests must be authorized by the Head of the Department or Agency involved.)

Signature

Date

Print Name

