

STATE ETHICS COMMISSION

45 CALVERT STREET, 3RD FLOOR
ANNAPOLIS, MARYLAND 21401
410-260-7770 / 1-877-669-6085

INFORMATIONAL MEMORANDUM #9

January 11, 2016

Financial Disclosure - Application of Compensation & Duties Criteria

The Public Ethics Law requires all State officials and public officials to file financial disclosure statements. The statements must be filed electronically, subject to very limited exceptions. A filer must submit an initial disclosure statement within 30 days after appointment to a position or office covered by the Law and on or before April 30th each year thereafter. A filer must submit a termination statement within 60 days after leaving a position for which a statement is required.

The Public Ethics Law defines "State Official" to include:

- A member or member-elect of the General Assembly;
- A constitutional officer or officer-elect in the executive branch of the State government;
- A State's Attorney, Clerk of the Circuit Court, Register of Wills and Sheriff ; and
- A judge or judge-elect of a court created by Article IV, Section 1 of the Constitution and a judicial appointee as defined in Maryland Rule 16-814.

The Public Ethics Law defines "Public Official" to include:

- An individual who receives compensation at a rate equivalent to at least State grade level 16, or who is appointed to a board, if the Ethics Commission determines that the individual, acting alone or as a member of an executive unit, has 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;
- Any other individual in an executive unit, if the Ethics Commission determines that the individual, acting alone or as a member of the executive unit, has decision making authority or acts as a principal advisor to one with that authority in drafting specifications for, negotiating, or executing contracts that commit the State or an executive unit to spend more than \$10,000 in a year.
- A member, appointee, or employee of the Maryland Stadium Authority;
- A member, appointee, or employee of the Canal Place Preservation and Development Authority; and
- A member of the Emergency Medical Services Board.

Questions and Answers

1. **Are employees in grades lower than Grade 16 required to file if, because of their step level, they are currently compensated at a figure equal to or above a Grade 16 base?**

No. The legislation is directed toward people with certain duties or discretion. People in grades below 16 generally have less discretion, impact, and responsibility than those at Grade 16 although salaries in the higher steps of the lower grades tend to reflect seniority in a position rather than qualitatively different duties. Based on the Law and past practice, those in Grades 13, 14 and 15 are thus not included, even though they may be at a high step and actually receive more than the Grade 16 base salary. Individuals compensated at grade levels below a Grade 16 may be required to file if they meet the procurement criteria that apply regardless of salary.

2. **Do people who are not compensated according to the Standard Salary Schedule have to file?**

State employees who are compensated at a rate equal to or above the Grade 16 base salary, regardless of their salary system, must file financial disclosure statements if they perform the duties specified in the definition of public official. Full-time contractual employees who work for more than 6 months must also file if they satisfy the duty criteria. Please contact the State Ethics Commission with specific questions involving comparability of positions and pay.

3. **Must a part-time employee file a financial disclosure statement if the employee is compensated at a rate that would be at or above the Grade 16 base salary if the employee worked full-time?**

In general, part-time employees are subject to the same rules as regular full-time employees even if the amount they actually receive is less than a full year's pay. The Commission is guided by the pay rate or pay grade, not by the amount received. Please contact the State Ethics Commission with specific questions involving the applicability of the Public Ethics Law to part-time personnel.

4. **How does the Commission determine whether individuals involved in State contracts must file financial disclosure statements?**

The Commission follows written guidelines and considers opinions offered by the Department of Budget & Management.

5. **What "principal advisors" must file financial disclosure statements?**

The Ethics Law requires that individuals who serve as principal advisors to any of the following categories of people file financial disclosure statements:

- A person making State policy in an executive unit and
- A person exercising quasi-judicial, regulatory, licensing, inspecting, or auditing functions.

An individual is a public official under this provision if the individual meets the following standards:

- Meets the compensation requirements;
- Provides advice on a regular basis to the person with decision-making authority in making policy, or in exercising quasi-judicial, regulatory, licensing, inspecting or auditing functions;
- Has advisory duties that are significant, and involve discretion; and
- If the person is a full-time or part-time faculty member at a State institution of higher education, in addition to having decision making authority or being a principal advisor as outlined above, the person must also directly procure, directly influence, or otherwise directly affect the formation or execution of any State contract or sale as established by guidelines of the State Ethics Commission (see Question #6 below).

6. How will decisions be made regarding impact on procurement, contracts and sales by those faculty members who meet the salary and duties criteria discussed in Question #5?

Faculty members who meet the duties and salary criteria outlined in this memorandum must be further evaluated in accordance with the criteria in Commission Information Memorandum #11.

7. What should a person do if he or she has questions regarding financial disclosure or other provisions of the Public Ethics Law?

Further information about the Public Ethics Law and financial disclosure is available at the State Ethics Commission's website at <http://ethics.maryland.gov>. The Financial Disclosure Filer Identification Manual includes additional information. Finally, the staff of the State Ethics Commission is available to provide assistance at 410-260-7770.