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# Local Finance Notice

Chris Christie  
Governor

Kim Guadagno  
Lt. Governor

Richard E. Constable, III  
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/](http://www.nj.gov/dca/divisions/dlgs/)

**E-mail:** [dlgs@dca.state.nj.us](mailto:dlgs@dca.state.nj.us)

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## Local Government Ethics Law 2013 Financial Disclosure Statements Important Update 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 designees who have responsibilities concerning financial disclosure statements. A separate Local Finance Notice (LFN 2013-14) containing detailed step-by-step filing instructions for local government officers will be released within the next 7-10 days.

### Contents of this Local Finance Notice

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The following abbreviations are used throughout this notice:

LGOs = local government officer(s)  
FDS = financial disclosure statement(s)  
LGAs = local government agency(ies)  
LFB = Local Finance Board  
LFN = Local Finance Notice  
DLGS = Division of Local Government Services

Also, "local government designee" is intended herein to mean the municipal clerk, county clerk, or other person who has responsibilities on behalf of local governments or LGAs regarding financial disclosure statements.

### **I. Background**

Prior to 2012 the FDS distribution and filing process relied upon a traditional paper based system. Last year, 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 designees 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 designees 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 a robust online filing system that requires all FDS forms to be submitted electronically and posted online at the DLGS web site. This will result 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. The public will be able to retrieve FDS forms by using basic search tools available on the DLGS web site.

**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 PROCESS DISCUSSED IN THIS NOTICE AND LFN 2013-14.**

### **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 designees who have responsibilities concerning the FDS distribution and 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 designees 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 2013-14 (when it is released), understand the new 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 have been filing for many years. The LFB has not adopted the 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 designee as appropriate to the circumstances.

This requirement is satisfied when the LGO submits the FDS using the online procedure and thereafter delivers a copy of the filing receipt containing the LGO's original signature (see Section III, Step 6 below) to the municipal clerk, county clerk, or other local government designee. 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 completes the online FDS form and submits the form electronically. The completed FDS form will be uploaded to the DLGS web site and will be accepted as the Board's copy. However, the FDS will not be deemed FILED unless the signed filing receipt is delivered by the LGO to the municipal clerk, county clerk, or other local government designee.

### **III. Role of Municipal Clerks, County Clerks, and Other Local Government Designees Regarding Financial Disclosure Statements**

The following steps pertain only to municipal clerks, county clerks, and other local government designees who have responsibilities concerning financial disclosure statements. Local government officers should follow the steps that will be outlined for them in LFN 2013-14 (when it is released).

- STEP 1: Carefully review this Local Finance Notice and LFN No. 2013-14;
- STEP 2: Develop your list of LGOs who must file an FDS;
- STEP 3: Determine a local government e-mail address that you will provide to LGOs. The LGO will insert the e-mail address in a field contained in the FDS. See Step 5 below for more information concerning the local government e-mail address.
- STEP 4: Distribute LFN 2013-14 to your LGOs. If you distribute the notice via e-mail you should include the local government e-mail address in a conspicuous location such as in the body of the transmittal e-mail. If you distribute paper copies of LFN 2013-14 you should include the local government e-mail address either on the notice (e.g., on a label affixed to the notice) or in a transmittal memorandum.
- STEP 5: As each LGO submits his or her FDS form online you will receive an electronic report from DLGS directed to the inbox of the local government e-mail address that was provided. This is an initial confirmation of submission so that you can maintain a *general awareness* that your LGOs are successfully using the online process to submit their FDS forms. However, receipt of this initial report is not a substitute for the filing receipt that the LGO must deliver to you (see Step 6 below).
- STEP 6: The LGO will print a filing receipt containing a unique authentication code (receipt number) that is generated randomly by DLGS once the LGO submits the FDS online. The LGO must deliver to you a paper copy of the filing receipt containing the authentication code and the LGO's original signature.
- STEP 7: Add each LGO's authentication code to your roster.
- STEP 8: Maintain the filing receipts in a folder for at least five years (the records retention period that is applicable to FDS forms). Local Finance Board staff may seek to review filing receipts, especially if an ethics complaint is filed against one of your LGOs.

- STEP 9: Electronically file your roster with the LFB before June 28th. This will be accomplished using an online form. Filing instructions will be issued in a supplemental local finance notice in April. Do not e-mail rosters to DLGS. Please await further instructions from DLGS.
- STEP 10: The FDS forms will be uploaded regularly to the DLGS web site so that the public can download or view them directly.

#### IV. Rosters

After the April 30<sup>th</sup> filing deadline has passed, a roster must be submitted to the LFB containing the following information:

- Name of each person deemed to be a local government officer;
- Name of the local government agency served;
- Title/position of each local government officer;
- Authentication code of each LGO as indicated in the LGO's signed filing receipt;

This information is vital to the LFB's effective administration of the Local Government Ethics Law. Failure to file an FDS, whether due to neglect or refusal, is a violation of the law, and the LFB is prepared to take necessary action against LGOs in order to ensure compliance with the statute.

Furthermore, inserting the authentication code of each LGO in the roster is critical to maintaining the integrity of the online submission process. An FDS is not deemed FILED until the LGO delivers to you a copy of the filing receipt containing the LGO's original signature. Therefore, even if an FDS appears on the DLGS web site and purports to be the FDS of one of your LGOs, the FDS is not deemed FILED unless you receive the LGO's filing receipt.

Municipal clerks, county clerks, and other local government designees are responsible for completing and certifying the roster, and submitting same to the LFB. The certification will confirm that you have reviewed the filing requirement of each position listed on the roster and that you distributed LFN 2013-14 to each person included on the roster.

For your convenience, DLGS will create the roster to simplify data entry. The roster form will be an online form and you will be able to select either Excel or Word. Submission of the roster form electronically will enable the roster to be searchable and downloadable similar to FDS forms. As noted above in Section III, Step 9, **filing instructions will be issued in a supplemental local finance notice in April. Do not e-mail rosters to DLGS. Please await further instructions from DLGS.**

#### V. 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 designee carefully review their 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/revise the 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: 9-22.3g 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 at the Division of Local Government Services' website: <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 designees 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 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 or positions they have deemed to be local government officers. Please review your 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

### **VI. Distribution of LFN 2013-14**

Municipal and county clerks are responsible for transmitting LFN 2013-14 (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, 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 LFN 2013-14 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 designees: county colleges (e.g., office of the president), regional authorities, joint insurance funds, and health insurance funds should designate somebody internally to transmit LFN 2013-14 to their respective LGOs in accordance with N.J.S.A. 40A: 9-22.6 and to be responsible for submitting rosters.

### **VII. Identification of Local Government Agencies**

The Division of Local Government Services requests that municipal clerks and county clerks please advise us of all local ethics boards, independent authorities, joint meetings, regional authorities, JIFs, and HIFs (excluding school boards and entities that serve in a purely advisory capacity). 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.

The information you provide DLGS will be used internally to update our records so that all local government agencies falling within the jurisdiction of N.J.S.A. 40A:9-22.1, et seq. are satisfying the annual filing requirement. Please e-mail the information to [dlgs@dca.state.nj.us](mailto:dlgs@dca.state.nj.us).