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# Local Finance Notice

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## Local Government Ethics Law

### 2019 Financial Disclosure Statements For the 2019 Filing Year Local Government Entity (LGE) Roster Updates Due: March 29, 2019

#### Introduction

The Local Government Ethics Law (LGEL) requires local government officers to annually file a financial disclosure statement on or before April 30<sup>th</sup> of each year. This Local Finance Notice (LFN) outlines the 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 roster maintenance for financial disclosure statements. Local Finance Notice 2019-05 contains information for local government officers and will be issued in the coming weeks.

Please note that beginning with the 2017 filing year, the Division of Local Government Services adopted new Rules and Regulations determining positions specifically required to file under the managerial executive section of the LGEL. N.J.A.C. 5:35-2.1 is further discussed in Section 4 of this LFN.

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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

NJAC = New Jersey Administrative Code

DLGS = Division of Local Government Services

“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**

For the 2019 FDS, DLGS is using the online filing system that was established in 2014 and used in 2014, 2015, 2016, 2017, and 2018. The 2018 rosters will be carried over and LGE Representatives will be able to make necessary updates for 2019 without creating a new roster. Additionally, LGOs are able to save their FDS forms from year to year.

Prior to 2012, the FDS distribution and filing process relied upon a traditional paper based system. The decision to move to an electronic filing system was designed to eliminate the practice of annually printing 70,000 paper copies of the FDS form and mailing them to each LGE.

As the online system is going to be used again this year, 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 LFB’s online filing system found at: [www.fds.nj.gov](http://www.fds.nj.gov).**

### **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.” N.J.S.A. 40A:9-22.6.b provides 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.

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 personally to the penalties and disciplinary action provisions set forth in N.J.S.A. 40A:9-22.10 and 40A:9-22.11.

This means that each LGO has the personal duty, by virtue of the LGO’s public office, appointment, or employment, to carefully read LFN 2019-05 (to be issued in the coming weeks), understand the online filing procedure, and take necessary 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.” N.J.S.A. 40A:9-22.6.d further provides that “**the Division of Local**

**Government Services in the Department of Community Affairs may establish an electronic filing system for financial disclosure statements required to be filed pursuant to this section.”**

The online FDS form is substantively similar to the paper FDS form utilized 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** further 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.

**N.J.S.A. 40A:9-22.6.b** also 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 and Rosters**

The annual filing of an FDS starts with updating the local government entity roster. The following steps pertain only to municipal clerks, county clerks, and other local government entity representatives who have administrative responsibilities concerning managing the roster in connection with financial disclosure statements:

- STEP 1: Carefully review this Local Finance Notice.
- STEP 2: Visit the FDS website [www.fds.nj.gov](http://www.fds.nj.gov) for FDS instructions and other resources.
- STEP 3: To login, go to [www.fds.nj.gov](http://www.fds.nj.gov) and select “manage local government roster.” Login as the entity representative using the ID and password the entity used last year. Your login ID is an e-mail address. Please keep in mind that a different e-mail address must be used for you to personally file your FDS. If you are a new LGE Representative and do not have a login ID and password or if you need to change your e-mail address as the LGE Representative, please e-mail the Local Finance Board at [LFB\\_FDS@dca.nj.gov](mailto:LFB_FDS@dca.nj.gov).
- STEP 4: Using the “Manage LGO Roster” button, update the roster to add new 2019 LGOs; update existing LGO’s positions and information; or “In-Activate” those LGOs that are no longer serving the LGE. All LGO rosters must be completed no later than March 31, 2019 so that LGOs have sufficient time to complete and submit their FDS forms by Tuesday, April 30, 2019.

**Updating Existing LGO’S:**

All changes to an existing LGO can be done by clicking on the ‘EDIT’ button under the ‘Actions’ column to the far right in the roster listing.

-If an LGO is no longer serving in **any** of the positions listed in the FDS, then you must deactivate that LGO from the system by checking the box labeled “In-Active.”

-To delete one or more positions (but not all positions) for an LGO no longer serving in a certain position(s), click on the ‘Delete’ button for each position to be deleted.

-To **add a new position for an existing LGO**, complete the information in the “Add LGO position” box.

**-After making any changes, be sure to click the ‘SAVE’ button on the page.**

**Adding New LGO's:**

-To add a new LGO, click on the “Add LGO” button at the bottom of the Roster listing screen and complete the Local Government Officer information boxes.

**-After making any changes, be sure to click the ‘SAVE’ button on the page.**

- STEP 5: As you update the LGO roster, a PIN # will be generated for each **new** LGO. Distribute the PIN # along with a copy of Local Finance Notice 2019-05 (when issued) to each new LGO, keeping in mind that the login information is confidential and should be given only to the associated LGO. Inform any new LGO that this PIN # must be used to register, and that their FDS must be filed on or before April 30<sup>th</sup>.
- STEP 6: Inform LGOs who filed in 2018 that they must use the same Login ID (e-mail address) and password used to complete their previous FDS. Distribute to each LGO a copy of Local Finance Notice 2019-05 once it is available. Inform the LGOs that they must file their FDS on or before April 30<sup>th</sup>. The method by which you choose to distribute this information is a local decision.
- If an LGO forgets their login ID/e-mail, you may provide it to them from their e-mail shown on your roster.
  - If an LGO needs to change their e-mail address and/or password, you may do so for them under their profile. Click on “manage your roster,” then select “edit” under actions, then select “Edit Profile” for the LGO whose e-mail address or password you need to edit or change.
- STEP 7: View your roster and make sure the roster is up-to-date. To view the roster in its entirety, click on “Reports.” You can export your roster by selecting the “Export” button (it looks like a floppy disk.) You can then view your roster as a pdf or Excel document, which may make it easier to view and/or sort. You can also view your roster through the public search by going to [www.fds.nj.gov](http://www.fds.nj.gov), then clicking the “search” button, and then selecting the “search local government officer roster.”
- STEP 8: 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](http://www.fds.nj.gov).

**It is the LGE representative’s responsibility to ensure that the LGO roster is fully and accurately updated on or before March 31, 2019. Those LGE representatives who do not update the rosters may be subjecting some LGOs to possible violations of the filing requirement in the Local Government Ethics Law. For example, all LGOs who remain active on rosters will be required to submit a 2019 FDS. Those LGOs who are improperly retained on the roster, and as a result, fail to file an FDS, could be found in violation. Notices of violation for non-filing will be generated after the filing deadline from the roster created by the LGE representative. Similarly, new LGOs who are required to be listed on the roster, but whose names have not been added, will not receive a PIN # and, therefore, will not be able to file an FDS.**

**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. Individuals who are serving the local government on April 30, 2019 are considered local government officers or employees for purposes of the LGEL. **Individuals who are no longer in office or no longer employed by the local government on**

the filing deadline are **NOT** considered local government officers or employees under the LGEL. For example, an elected official whose term ended on December 31, 2018 and who is not currently serving the local government should not be on the 2019 roster. 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.

After the April 30th deadline, local government officers shall file a financial disclosure statement within 30 days of taking office.

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 may 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) **servng 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 employee of a local government agency,** as defined in rules and regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs pursuant to the “Administrative Procedure Act,” P.L. 1968, c. 410 (C.52:14B-1 et seq.), but shall not mean any employee of a school district or member of a school board.”

The Office of the Attorney General has issued [AO 91-0093](#) which helps clarify N.J.S.A. 40A: 9-22.3.g(1), (2), and (3). LGE Representatives should consult [AO 91-0093](#) when deciding if a title or position must file under N.J.S.A. 40A: 9-22.3.g(1), (2), and (3). For example, persons "elected to any office of a local government agency" include Fire District Commissioners. Local government agencies authorized to enact ordinances include local boards of health. Members of a municipal planning board, the board of adjustments or any other agency, such as a regional planning board, N.J.S.A. 40:55D-77 et seq., which exercises the authority to approve development applications under the Municipal Land Use Law would be deemed a "local government officer" and would have to file the FDS per N.J.S.A. 40A:9-22.3.g(2). Authorities that are considered as "local government agencies include, but are not limited to: Fire Districts, N.J.S.A. 40A:14-70; Local Housing Authorities, N.J.S.A. 55:14A-1 et seq.; Parking Authorities, N.J.S.A. 40:11A-1 et seq.; Redevelopment Agencies N.J.S.A. 40:55C-1 et seq.; and Sewerage Authorities, N.J.S.A. 40:14A-1 et seq.

N.J.S.A. 40A:9-22.3.g(4) of the LGEL concerning the definition of managerial executive was amended in August 2015. The DLGS has adopted [Rules and Regulations](#), effective March 6, 2017 and December 4, 2017, defining managerial executive employees for FDS filing purposes. **N.J.A.C. 5:35-2.1 states that (a) Individuals with the following titles or responsibilities equivalent to such titles shall**

be considered managerial executives under the definition of “local government officer” set forth in N.J.S.A. 40A:9-22.3.g:

**Positions Specifically Required to File an FDS per N.J.A.C. 5:35-2.1**

1. Chief of Staff;
2. Business administrator;
3. Municipal or county manager;
4. Chief financial officer;
5. Treasurer
6. Municipal clerk or clerk of governing body;
7. Department heads, including executive directors, division directors, deputy directors, and assistant directors;
8. Chief or acting chief of police, part-paid fire departments, and paid fire departments, or “officer in charge” in lieu of a chief or acting chief title;
9. Deputy chiefs and assistant chiefs of police, part-paid fire departments, and paid fire departments;
10. Chief or acting chief of a beach patrol;
11. Municipal and county engineer;
12. Health officer;
13. Municipal attorney and county counsel;
14. Planning board or zoning board of adjustment engineer;
15. Planning board or zoning board of adjustment attorney;
16. Local government agency engineer;
17. Local government agency attorney;
18. Municipal and county emergency management coordinators;
19. Trustees on a library board of trustees;
20. Municipal prosecutor;
21. County prosecutors;
22. County agriculture board members;
23. County college board of trustees;
24. Board of recreation commissioners;
25. Local ethics board members;
26. Rent leveling board members;
27. Special taxing district executive director/director and its commissioners;
28. Joint insurance fund executive director/director and its commissioners;

29. Local pension board commissioners;
30. Tax collector;
31. Qualified purchasing agent;
32. Construction official; and
33. Tax assessor.

Local governments are without statutory authority to expand the definition of local government officers; therefore, please do not include individuals on the roster who do not hold positions as defined in N.J.S.A. 40A:9-22.3.g or the adopted rules at N.J.A.C. 5:35-2.1. Please also note that with the 2015 Amendment to the LGEL, confidential employees are no longer considered LGOs and, therefore, are no longer required to file the FDS.

### **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.

Full text of the above listed Attorney General Opinions may be viewed at <http://www.nj.gov/dca/divisions/dlgs/programs/ethics.html>.

### **Appointment of Private Entity In Lieu of Licensed Chief Municipal Finance Officer**

On January 18, 2018, DLGS issued [LFN 2018-03](#) concerning the appointment of a private entity in lieu of licensed chief municipal finance officer. All private entity officers and employees temporarily fulfilling the duties of chief financial officer on behalf of a municipality are subject to the Local Government Ethics Law (N.J.S.A. 40A:9-22.1 et seq.). Any licensed municipal finance officer that is supervising the temporary fulfillment of chief financial officer duties for a municipality shall be considered a “chief financial officer” pursuant to N.J.A.C. 5:35-2.1, and thus required to complete and submit an annual financial disclosure statement pursuant to N.J.S.A. 40A:9-22.3. Please refer to [LFN 2018-03](#) for more information.

## Shared Services Agreement

If the position is a managerial executive position specifically required to file an FDS per N.J.A.C. 5:35-2.1, such as Tax Collector, the LGO is required to file the FDS for each local government entity. Both LGE Representatives should list the LGO on their respective rosters and inform the LGO of their requirement to file.

### V. Distribution of Local Finance Notice 2019-05

Municipal clerks, county clerks, and other local government entity representatives are responsible for transmitting LFN 2019-05 (when it is released) to LGOs. For purposes of N.J.S.A. 40:9-22.1 et seq., 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 2019-05 (when it is released) 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 up-to-date, 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 an individual internally to transmit LFN 2019-05 (when it is released) 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. LGE Representative Contact Information

It is important that the LGE contact information, which is the login information, is kept up-to-date with the Local Finance Board throughout the year. Please remember to contact the LFB by e-mail at [LFB\\_FDS@dca.nj.gov](mailto:LFB_FDS@dca.nj.gov) if you are changing e-mail addresses or if you are changing the LGE representation for your entity.

Beginning with the 2018 filing year, local government entities could add an additional LGE user to assist with managing the roster. This second user will have the same powers as the first LGE Representative and will be able to update or edit the roster as needed. To add a second user for the entity:

- STEP 1: Go to [www.fds.nj.gov](http://www.fds.nj.gov) and select "manage local government roster." Login as the entity representative with the login and password for the entity.
- STEP 2: Click on "Edit Local Government Entity Profile/Manage Users."
- STEP 3: Click on "Manage Users."
- STEP 4: Select "Add LGE Login."
- STEP 5: Fill in the Local Government Entity (LGE) User Information as prompted.
- STEP 6: If you need to deactivate the additional user for any reason, select "Edit Local Government Entity Profile/Manage Users," then select "Manage Users," then under "Actions" select the "Edit" function and check the "Disabled" box.

**VII. Best Practices Inventory**

The State's Fiscal Year 2018 Appropriations Act (P.L. 2017, c.99) requires DLGS to determine whether some portion of a municipality's Consolidated Municipal Property Tax Relief Aid and Energy Tax Receipts Property Tax Relief Aid will be withheld based on the results of a Best Practices Inventory to be completed by each municipality. See [LFN 2017-14](#) for a more detailed explanation. One of the questions on the Best Practices Inventory is whether all elected officials in the municipality have filed their FDS. Therefore, your municipality should be aware that elected officials who do not file a FDS can affect the amount of municipal aid received.

**VIII. Help System**

The following help resources have been developed for both LGEs and LGOs:

1. Webinar trainings will be available in March and will afterwards be uploaded to the [www.fds.nj.gov](http://www.fds.nj.gov) website.
2. Separate reference guides have been created for local government entity representatives and LGOs. These documents are available at [www.fds.nj.gov](http://www.fds.nj.gov).
3. A video training was specially created for LGOs and is available at [www.fds.nj.gov](http://www.fds.nj.gov).
4. A Frequently Asked Questions document that answers commonly asked questions is available at [www.fds.nj.gov](http://www.fds.nj.gov).

Questions should be directed to the Local Finance Board staff via e-mail at [LFB\\_FDS@dca.nj.gov](mailto:LFB_FDS@dca.nj.gov) or by phone at 609-292-4537.

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Approved: Melanie R. Walter, Director