



GUIDELINES AND PROCEDURES REGARDING POLICY-MAKING POSITIONS

The following guidelines are provided to assist appointing authorities in determining which individuals hold policy-making positions for the purposes of determining their obligations under Public Officers Law §§ 73, 73-a, and 74. Among other things, individuals designated as policy-makers must file annual statements of financial disclosure under Public Officers Law § 73-a and are not eligible to seek an exemption from such filing.

The procedures that follow the guidelines describe the certification process used to notify the Commission of those individuals designated as policy-makers and to provide notice to those individuals of their policy-making status.

Definitions

“Appointing authority” means an individual or body that has the authority by law, rule, or regulation to appoint a person to a policy-making position, or an individual or body to whom such authority may be properly delegated by law, rule, or regulation.

“Binding recommendation” means any finding, report, recommendation, resolution, or other determination that carries the force of law upon issuance or expiration of the time for the legislature to act on such finding, report, recommendation, resolution, or other determination.

“Commission” means the New York State Joint Commission on Public Ethics.

“State agency” has the same meaning as “state agency” in § 73(1)(g) of the Public Officers Law.

Guidelines regarding policy-making positions

Those officers and employees who, as a regular and significant part of their official duties, are involved in formulating or implementing the goals and policies of the state or a state agency may be policy-makers, regardless of their annual compensation or collective bargaining status. In determining whether an individual is a policy-maker, an appointing authority should consider whether such individual:

1. acts in the capacity of
 - head of a state agency, *e.g.*, commissioner, president, executive director, chair, or equivalent position;
 - general counsel, chief counsel, or equivalent position;
 - member of a board, commission, or the equivalent highest governing body for a state agency;
 - member, director, or equivalent position of a public authority, other than a multi-state authority; or
 - member of a board, commission, task force, or equivalent body empowered to issue binding recommendations to the legislature, governor, or a state agency;
2. is the head or deputy head of a field, branch, regional, or other office;
3. is the chair, dean, director, or otherwise head of an academic department, school, college, institute, or center, and exercises authority or discretion as set forth below in Paragraph 7;
4. has been designated as managerial pursuant to § 201(7) of the Civil Service Law because the individual formulates policy;
5. is in the non-competitive class pursuant to § 2.2 of the Rules for the Classified Service of the Department of Civil Service and, under Appendix 2 of the Rules and Regulations of the Department of Civil Service, holds a position designated by the symbol ϕ on the basis that it requires the performance of functions influencing policy;¹
6. has the authority to make final decisions affecting the individual's state agency, another state agency or entity, or the public; or

¹ Note: the symbol used in Appendix 2 may vary depending on the publisher.

7. exercises authority or discretion, other than authority or discretion that is ministerial in nature, in helping to formulate or implement the goals and policies of the state or a state agency, including, but not limited to:
 - a. researching, analyzing, developing, implementing, identifying the need for, and making recommendations as to policies, regulations, rules, practices, procedures, programs, guidance, manuals, initiatives, budget proposals, or legislative proposals;
 - b. developing plans or strategies to achieve the goals and policies of the state or a state agency;
 - c. determining appropriations and expenditures and making budget decisions; or
 - d. negotiating, authorizing, or approving contracts, permits, licenses, significant purchases, or the obtaining of grants of money or loans, with or from non-governmental entities.

Procedures regarding policy-making positions

1. Each appointing authority must file a certification with the Commission through the FDS Online Application **on or before the last day of February of each year** containing the name, title, and home address of each individual designated by the appointing authority as holding a policy-making position.
 - a. If any such individual has been designated as managerial pursuant to § 201(7) of the Civil Service Law because that individual formulates policy, the appointing authority must also file a copy of such designation along with its certification.
2. Each appointing authority must file an amended certification with the Commission through the FDS Online Application **within thirty (30) days** of designating as a policy-maker any individual whose name did not appear on the appointing authority's most recent certification filed with the Commission. The amended certification must contain the name, title, and home address of each such individual.
3. Each appointing authority must also, annually, provide written notice to each individual identified in the appointing authority's certification that such individual holds a policy-making position which subjects that person to all relevant applicable statutory and regulatory requirements.
4. To the extent reasonably possible, if an entity consists of appointees from more than one appointing authority, such appointing authorities should endeavor to reach a consensus as to whether such appointees are policy-makers.