

TO: Appointees to Maryland Boards and Commissions

**FROM: Suzanne S. Fox
Executive Director**

**SUBJECT: Appointee Exemption Disclosure Form /
Partial Ethics Law Exemptions**

The attached Appointee Exemption Disclosure form is used by individuals who are appointed to Executive Branch boards, commissions and similar bodies within the jurisdiction of the State Ethics Law (Md. Code Ann., State Gov't Article, Title 15 (Supp. 2001)). The Ethics Law addresses ownership interests, employment, receipt of gifts, misuse of confidential information, activities of former officials, representational activities, and misuse of position. The form is to be completed and filed with the appointing authority if, at the time of appointment, you are seeking a conflict of interest exemption. If a conflict of interest exemption is not applicable or is not needed, there is no requirement to file the form.

Section 15-502(b) of the Ethics Law prohibits board members and other employees and officials from holding employment with or having a financial interest (\$1,000 or more) in any entity subject to the authority of that official or employee or the government agency with which he or she is affiliated or any entity which is negotiating or has entered a contract with that government agency. This provision also prohibits holding any other employment relationships that would impair the official or employee's impartiality and the independence of judgment. Employment includes salaried, commission, or hourly employment, working at a business you own even if not salaried, or serving on the board of or as an officer of a profit, non-profit, or professional organizations even if not compensated.

Section 15-502(c) provides several **possible exemptions** to the prohibitions set forth in § 15-502(b), including two that are **applicable only to members of boards, commissions or similar bodies**.

- 1) **Section 15-502(c)(2)** provides an exemption for a public official who is appointed to a regulatory or licensing unit pursuant to a statutory requirement that entities subject to the jurisdiction of the unit be represented in appointments to it. These persons are exempted from §15-502(b) by operation of law and, therefore, do not need to request an exemption.
- 2) **Section 15-502(c)(3)** provides an exemption for an employee whose government duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest.
- 3) **Section 15-502(c)(4)** provides an exemption for a member of a board or commission who holds the employment or financial interest when appointed if the employment or financial interest is publicly disclosed to the appointing authority, the Ethics Commission, and, if applicable, the Senate of Maryland before Senate confirmation. Thus, a board or commission member may request exemption **at the time of the appointment** as to employment and financial interests that would lead to conflict at the time of appointment or re-appointment. If, after the required disclosure the appointment is made and confirmed, the exemption is granted.

The purpose of this section is to allow the appointing authority to find qualified people and make appointments with full knowledge of conflicting interests or employment and to prevent the need for newly appointed people who wish to serve to automatically divest themselves of certain interests or employment.

If an appointee wants to apply for an exemption in accordance with the above process, he or she should complete the attached form and send it to the appointing authority, the State Ethics Commission and, if applicable, the Senate of Maryland before Senate confirmation. This form is not a substitute for any disclosure that may be required under Subtitle 6 of the Ethics Law. If the member is appointed and the disclosure is accepted, the exemption will apply as follows:

- 1) The conflicting interest or employment that is disclosed at the time of appointment or re-appointment will be exempted as to that disclosure or as to subsequent identical or similar transactions, for the entire term of the appointment.
- 2) The **exemption will not apply to entirely new types of activities that arise out of the disclosed employment or interests.** For example, if an appointee discloses ownership of a food service company that does business with his or her agency at the time of appointment and, after the appointment, the business expands into janitorial services, the janitorial services would not be exempted from the provisions of §15-502(b). However, any identical or similar food service activity would be exempted, even if it involved a series of additional transactions. This provision also addresses employment or interests that existed in the past and are likely to recur in the future.
- 3) The exemption applies only to the specific prohibitions of §15-502(b). An appointee will not be exempted from the other conflict of interest provisions of the Ethics Law even if the conflict arises from the disclosed interests or employment. For example, in the above example, an appointee could continue his food service business; but in accordance with §15-501 he or she could not participate in board decisions involving the purchase of food services from his or her firm, and in accordance with §15-506 he or she could not use the prestige of his or her office to maintain or expand the business.
- 4) The exemption is not available to State employees who are appointed to various boards and commissions.

Appointees will be sent exemption forms by the appointing authority. Any appointee who needs additional information about the application for an exemption of the conflict of interest provisions may call this office for assistance. For more information about the appointment and processing of an exemption request, please contact the appointing authority. It is the appointing authority and the Senate, if confirmation by the Senate is required, who decide whether to grant the exemption, not the State Ethics Commission. The Ethics Commission's involvement is limited to resolving issues that may arise regarding the scope of the exemption or whether the exemption complies with the statutory requirements.