



THE PRINCE GEORGE'S COUNTY GOVERNMENT BOARD OF ETHICS

Rushern L. Baker
County Executive

Robin Barnes-Shell
Executive Director

The Honorable Covette Rooney, Chair
Cassandra Burckhalter, Member
Anne Magner, Esq., Member
Addie Martin, Member
Norris Sydnor, Member

BOARD FINANCIAL DISCLOSURE STATEMENT WAIVER DECISION

August 28, 2014

[REDACTED]
Prince George's County
Financial Services Corporation
[REDACTED]

Re: Case Number: 15-2013(4)

Dear [REDACTED],

The Board of Ethics (the "Board") has reviewed the request made by the Prince George's Financial Services Corporation, trading as FSC First ("FSC"), dated July 9, 2014, seeking an exemption from the filing of financial disclosure statements required by Executive Order No. 13-2014. FSC is one of 48 organizations listed in Executive Order No. 13-2014, which became effective on April 23, 2014. For the following reasons, FSC should not be required to file financial disclosure statements:

Section 2-294(a)(34) of the Code requires officials, employees, and/or appointees of the County government whom the County Executive designates by Executive Order to file financial disclosure statements as provided in the Section. Officials subject to this disclosure requirement must be directly responsible for making governmental decisions, policy or taking governmental action pursuant to any such decision or policy or recommending any such decision, policy or action with regard to: procurement or contracting; planning and zoning; inspecting, licensing, regulating, or auditing any nongovernmental enterprise; and other activities where the decision, action or policy might have significant economic impact on the interests of any nongovernmental enterprise.

Section 2-294(a)(34) applies to officials, employees, and/or appointees of the County government. The Code defines an "employee" as an individual who is employed by the County.¹ The word "official" is defined as an elected official, an employee of the County, or a person

¹ See Prince George's County Code § 2-291(a)(4.2)

appointed to or employed by the County or any County agency, board, commission, or similar entity whether or not paid in whole or in part with County funds and whether or not compensated.²

As stated in FSC's request for waiver, FSC is an independently operating entity, not established by County Code or Charter nor considered a part of County government. According to FSC, none of its members are appointed by the County Executive or County Council. One officer serves in the County Council administration but was not appointed to FSC by the Council.³

FSC was founded in 1978 as a 501(c)(3) nonprofit corporation, and was designated by the United States Small Business Administration ("SBA") as a certified development corporation in 1982. It is responsible for promoting the availability of SBA and non-SBA economic development financing programs and providing access to conventional financing to support the growth of small and minority-owned businesses in Prince George's County and surrounding Maryland jurisdictions.

FSC states that pursuant to the SBA Final Rule which became effective April 24, 2014, the CDC board of directors is responsible and accountable for the day-to-day governance of the organization, without external influence or control. In addition, FSC states that because it is also a certified Community Development Financial Institution ("CDFI"), in order for it to maintain its CDFI status, it must 'be a non-government entity and not be under control of any government entity.' Therefore, its filing of financial disclosure statements would jeopardize its status as both a certified CDC and a CDFI institution.

In conclusion, because Section 2-294(a)(34) sets forth the classes of persons who are required to file financial disclosure statements, and according to FSC, none of the positions set forth therein applies to the management and board of directors of FSC, members of FSC are not officials, employees, and/or appointees of the County government as defined in the Code. As such, FSC members are not required to file financial disclosure statements with the County as the Code does not currently apply to them.⁴

In reaching this decision, the Board has relied upon the facts as presented by FSC.

² See Prince George's County Code § 2-291(a)(10).

³ It may be advisable for the County Council staff member who serves as an officer at FSC, to seek an advisory opinion from the Board regarding safeguards to ensure his duties in his County position do not conflict with his responsibilities with FSC.

⁴ We note that, as of the time of this opinion, a review of records from the Maryland State Department and Assessments and Taxation indicate Prince George's Financial Services Corporation is "not in good standing" with the State of Maryland. (*emphasis added*). "Not in Good Standing" means an entity has not filed the current year's Annual Report/Personal Property Return or it owes a late filing penalty. If Prince George's Financial Services Corporation has not already done so, and it wishes to continue to do business in the State, and in particular, with Prince George's County, Maryland, it should endeavor to correct the "Not in Good Standing" status as soon as possible.

Sincerely,

Covette Rooney
Board Chair