

Board of Ethics and Government Accountability

Bill 22-136, the “Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2017”



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History

- District of Columbia Election Code of 1955 (established Board of Elections)
- District of Columbia Campaign Finance Reform and Conflict of Interest Act (1974; established Office of Campaign Finance within Board of Elections and Ethics)
- Merit Personnel Act (1979; authorized Mayor to promulgate personnel rules affecting District government employees)
- District Personnel Manual (rules to implement Chapter 18 (employee conduct) of MPA first promulgated in 1981; amended in 1986)
- BEGA Act (2012; intended to “clarify existing law by including all applicable ethics laws in one location”)
- DPM amended in 2014 by DCHR to “reflect changes resulting from” BEGA Act
- Comprehensive Code of Conduct and BEGA Amendment Act of 2014 (directed Ethics Board to submit “proposed legislation to consolidate the Code of Conduct”)

Overview of the Comprehensive Code

Section	Section Heading	Source
223a	Definitions	Twenty-two defined terms. All new except “affiliated organization”
223b	Applicability and standards of conduct	BEGA Act sections 201a and 221; Rule 202 of Council Rules; 6B DCMR §§ 1800 and 1801
223c	Conflicts of interest	BEGA Act section 223 and Rule I of the Council Code; reflects standards of 18 USC § 208
223d	Contingent fees	Section 416 of the Procurement Practices Reform Act of 2010
223e	Personal and financial interests and disclosures	6B DCMR § 1805
223f	Restrictions on hiring and employment (nepotism)	Section 1804 of the MPA and 6B DCMR § 1806; reflects standards of 5 USC § 3110
223g	Outside activities	Rule II of the Council Code; 6B DCMR § 1807 and 8-A DCMR § 208; reflects standards of 18 USC § 201
223h	Gifts from outside sources	Rule III of the Council Code and 6B DCMR § 1803
223i	Conferences, widely attended events, and training	Rule IV of the Council Code; 6B DCMR § 1803; 5 USC § 4111; 5 CFR § 410.503

Section	Section Heading	Source
223j	Gifts between covered individuals	Rule V of the Council Code; 6B DCMR § 1804; DoD Joint Ethics Regulation 2-203; 5 CFR § 950.102
223k	Use of government resources, prestige of office, and letters of recommendation	Rule VI of the Council Code; 6B DCMR §§ 1805 and 1808; section 336 of the Campaign Finance Act of 2011; reflects standards of 18 USC § 1913
223l	Use of privileged, confidential, protected, and non-public information	Rule VII of the Council Code
223m	Post-government conflicts of interest	Rule VIII of the Council Code and 6B DCMR § 1811; reflects standards of 18 USC § 207
223n	Political activities	Local Hatch Act
223o	Financial disclosures	BEGA Act sections 224 and 225
223p	Limitations on honoraria and royalties	BEGA Act section 226
223q	Ethics training and ethics counseling	BEGA Act section 219; Rule XI of the Council Code; section 1801 of the MPA
223r	Lobbyists	BEGA Act sections 227, 228, 229 and 221
223s	Additional agency standards	6B DCMR § 1809



Lobbyist Gift-Giving

- Prohibits any and all gifts to officials in the legislative and executive branches and their staffs
- The prohibition is read together with most of the exclusions and exceptions to the definition of “gift,” including the exception for pre-existing bona fide personal friendships
- Change from BEGA Act, which currently permits gifting from registrants up to a calendar year aggregate of \$100
- Similar ban in other jurisdictions (e.g., Arkansas, Colorado, Minnesota)



Lobbyist Registration

- New provision: Prohibits the filing of an annual lobbyist registration form if registrant owes the Ethics Board unpaid fines, penalties, or fees, or any past due activity reports
- Operates in similar fashion to the “clean hands” provision of D.C. Official Code § 47-2862, which prohibits the District from issuing licenses or permits to applicants who owes more than \$100 to the District for certain fines, penalties, and past due taxes



Public Officials as Lobbyists

- Authorizes a public official to lobby in his or her personal capacity while serving on a board or commission that does not regulate or license the activities of any person who employs the official to lobby
- Change from BEGA Act, which generally prohibits a public official from being employed as a lobbyist “while acting as a public official”
- Response to *Autor v. Pritzker*, which struck down the President’s ban on lobbyists serving on advisory committees
- Similar practice in other jurisdictions (e.g., NC, TN)

Gifts Between Covered Individuals

- Caps at \$20 the aggregate market value of gifts (other than cash) that a subordinate can occasionally give to an official superior
- Reasonable compromise between the \$10 limit in the DPM and the \$50 limit in Council Rule V
- Standardizes practice in the legislative and executive branches



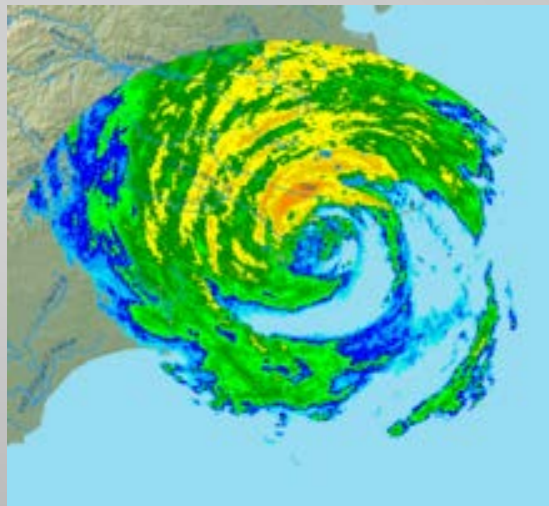


Gifts Between Covered Individuals (Continued)

- New provision: Caps at \$300 the aggregate market value of gifts that official superiors may receive from a group of subordinates regardless of the number of contributing individuals
- Applies to gifts appropriate to certain occasions, such as marriages and retirements
- Based on Department of Defense Joint Ethics Regulation 2-203(a) (November 17, 2011)

Emergency Relief

- New provision: Authorizes the Director of Government Ethics, upon written request, to allow covered individuals to solicit voluntary support for victims of emergencies and disasters
- Based on new regulations related to the federal CFC



Restrictions on Hiring and Employment (Nepotism)



- New provision: Nepotism prohibitions apply to both paid and unpaid positions in an agency in which the hiring official serves or exercises jurisdiction or control
- Hiring official's actions include interviewing, selecting, appointing, employing, evaluating, promoting, demoting, reassigning, advancing, disciplining, or separating, or otherwise advocating for or taking any personnel action
- Follows practice in Florida, which has a very similar statute



Definitions

- Definition of “gift”
- As amended, retains general meaning of “[anything] having monetary value,” but draws on a number of sources, including Council Rule III, to expand the list of those items, benefits, and services to be excluded
- One new exclusion, for elected officials, is for admission to and the cost of food and beverages consumed at events sponsored by a trade association or a civic, charitable, or community organization, provided that the invitation to the event is extended directly by the event sponsor

Definitions

- Definition of “personal interest”
- Central to conflicts of interest-related provisions
- Reflects Ethics Board’s opinion that the concept of conflict of interest should include non-financial considerations
- Former District law required recusal by a public official when faced with “a matter as to which he or she [had] a conflict situation created by a personal, family, or client interest”





Applicability of the Comprehensive Code

- Parallels section 201a of the BEGA Act to make the Comprehensive Code applicable to the ethical responsibilities of all employees and public officials serving the District
- Resolves any doubt about inclusion of ANCs and members of some boards and commissions, who currently are not subject to the DPM
- By amending definition of “public official,” extends applicability to members of other bodies, including the Not-for-Profit Hospital Board of Directors, the Real Property Tax Appeals Commission, the Retirement Board, etc.



Prestige of Office and Letters of Recommendation

- Authorizes the Mayor, Councilmembers, and the Attorney General to express support for or serve as the honorary chair or as an honorary member of a nonprofit entity's fundraising event
- The entity for which funds are raised must support a nongovernmental bona fide charitable activity, and the public official's name or title cannot be used in solicitations directly to individual contributors
- Continues the practice allowed under both the DPM and Council Rule VI
- Provides guidance on letters of recommendation, letters of reference, and letters of support



Fundraising

- Authorizes certain public/private partnerships
- An agency may promote, endorse, co-sponsor, and collaborate with charitable organizations whose sole mission is to support the agency
- An agency may participate with (but not promote or endorse) other charitable organizations to raise funds for programs that assist the agency constituents and that are consistent with the agency's mission

Fundraising (Continued)

- Covered individuals may organize and participate in the annual One Fund fundraising drive and related activities as authorized by the Mayor in consultation with the Director of Government Ethics

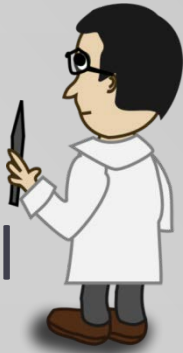


Widely Attended Gatherings

- All covered individuals are authorized to accept an unsolicited invitation of free attendance for an accompanying guest to participate in all or part of a conference or widely attended gathering
- Standardizes practice across the government
- Authorization may be granted only when others in attendance will generally be accompanied by a guest, and the invitation must be extended by the same person who invited the covered individual
- The market value of the gift of free attendance is capped at \$350 for both the covered individual and his or her guest



Outside Activities



- UDC David A. Clarke School of Law School clinical program faculty are excluded from no representation rule
- Clinical programs are part of the Law School's core curriculum
- Faculty members must abide by the District of Columbia Bar's Rules of Professional Conduct and applicable regulations, including a conflicts review before undertaking significant claims against the District



Post-Employment Cooling-Off Period

- One-year cooling-off period once again applies to senior employees only
- Longstanding practice changed by DCHR rulemaking in 2014 to make the cooling-off period applicable to all employees in the executive branch
- However, the prohibition on using personal influence based on past governmental affiliations applies more readily to former senior employees than to all employees generally

Post-Employment Cooling-Off Period

(Continued)

- The Comprehensive Code defines “senior employee” as “an individual required to file a public financial disclosure statement”
- In the legislative branch, the cooling-off period is expanded to apply to former senior Council employees who were employed by a Councilmember or a Council committee



Repealers

Chapter 18 (Employee conduct) of Title 6B of the DCMR (“DPM”)

- The DPM is part of the current Code of Conduct, but is not applicable to ANCs and members of some boards and commissions
- Many DPM provisions incorporated throughout the Comprehensive Code

Council Code of Official Conduct

- Many provisions incorporated throughout the Comprehensive Code

Local Hatch Act

- Provisions reenacted in amended fashion in new section 223n