



Board of Ethics and Government Accountability

ETHICS COUNSELOR FINANCIAL DISCLOSURE

PROCEDURAL TRAINING

Updated February 2022



AGENDA

- ▶ FDS Overview
- ▶ PART 1: Annual FDS Season Timeline
- ▶ PART 2: Internal Duties of BEGA and Ethics Counselors
 - Financial Disclosure Breakdown
 - Filer Designation Process
 - Designation Appeals
- ▶ PART 3: General Best Practices and Tips for Agencies and Ethics Counselors
- ▶ PART 4: BEGA CONTACTS



FDS Overview

- ▶ BEGA administers the Districts financial disclosure program
- ▶ Every year we begin the FDS season by sending the Agency Head Memo to each agency's Ethics Counselor
- ▶ The Agency Head Memo is our official request to each agency and office to submit its list of financial disclosure statement filers



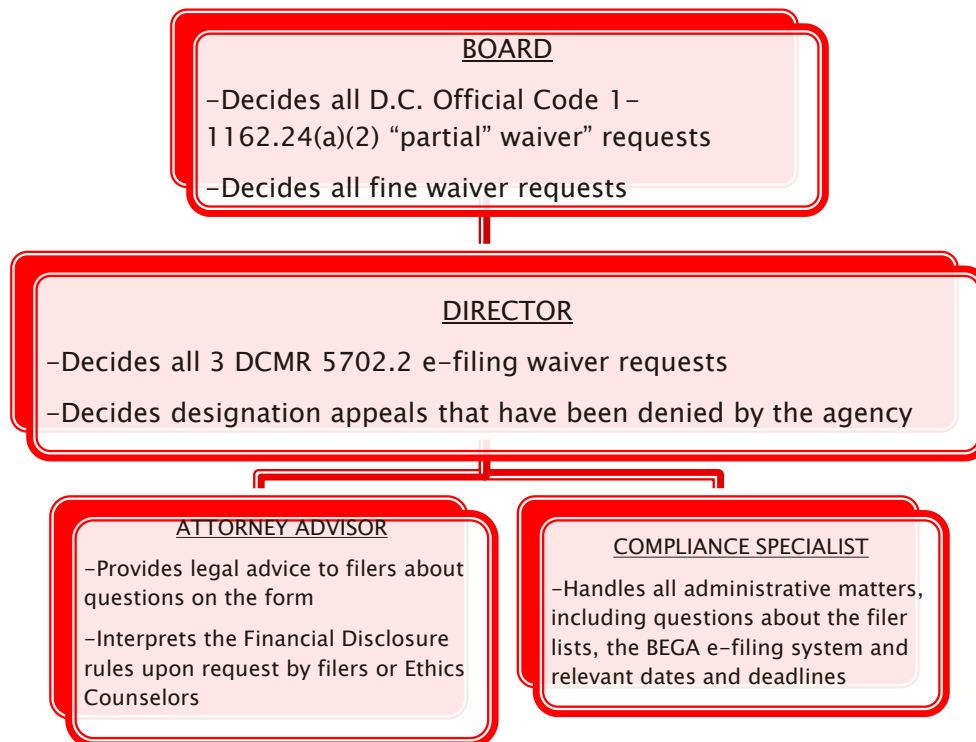
FDS Overview

- ▶ This year we combined the public filer list template and the confidential filer list template
- ▶ We are welcoming a new attorney to the FDS team!



FDS Overview

The structure of the FDS program within BEGA:





PART 1: ANNUAL FDS SEASON TIMELINE





PART 1: ANNUAL FDS SEASON TIMELINE

YEAR
ROUND

- Ethics Counselors obtain updated contact information for separating employees

BETWEEN
JANUARY AND
FEBRUARY

- BEGA contacts each agency to update Ethics Counselor contact information

FEBRUARY
1ST

- BEGA sends out the annual Agency Head Memo to all Ethics Counselors and Agency Heads



PART 1: ANNUAL FDS SEASON TIMELINE – Cont'd

MARCH 1ST

- Ethics Counselors submit their agency's list of public and confidential filers

APRIL 15TH

- Ethics Counselors send BEGA any final amendments to lists
- BEGA sends out filer notices to all Public Financial Disclosure Statement filers
- Ethics Counselors send out filer notices to all their agency's Confidential Financial Disclosure Statement filers

APRIL 20TH

OR FIVE (5) DAYS AFTER THE
DATE OF NOTIFICATION,
EXCLUDING WEEKENDS AND
HOLIDAYS

- Employees submit all Designation Appeals



PART 1: ANNUAL FDS SEASON TIMELINE– Cont'd

MAY 15TH

- Both Public and Confidential Financial Disclosure Statements are due
 - -PFDS filers **MUST** file their forms via BEGA's online e-filing system
 - -CFDS filers must file their form with their agency per the instructions given by the agency in the April 15th designation notification

JUNE 1ST

- Ethics Counselors submit their agency's Financial Disclosure Review Report to BEGA by attaching a copy of the report to an email addressed to the BEGA FDS Inbox (bega-fds@dc.gov)
- Ethics Counselors submit amendments to FDRRs in the same manner as they submit amendments to filer lists



PART 1: ANNUAL FDS SEASON TIMELINE– Cont'd

June 15th

- BEGA is required to submit a list to the DC Register of filers who:
 - (1) Filed a FDS;
 - (2) Sought and received an extension of the filing deadline and the reason for the extension; and
 - (3) Did not file a report and the reason for not filing, if known.
- D.C. Official Code § 1-1162.24(c-1)

June 15th

- BEGA begins coordinating the fine and enforcement process

Between
July and
September

- Incentives disbursed



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS

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"It's a brand new position, and we're still figuring out your duties. So I won't be able to tell you how you're doing it wrong for a few weeks."



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS: Responsibilities Breakdown

- BEGA

- Provide Ethics Counselors with Agency Head Memo and FDS season materials
- Notify all PUBLIC filers of their designation
- Make a final decision on employee designation appeals *IF* employee disagrees with agency decision
- Enter agency public filer list into FDS E-filing system
- Notify all non-compliant PFDS non-filers of their filing requirement and ask them to file
- Collect fines from and bring enforcement actions against non-compliant filers

- Agency

- Notify all CONFIDENTIAL filers of their designation
 - We also strongly encourage you to send CFDS filers at least one reminder notice before the filing deadline
- Process and decide on all initial employee designation appeals
- Compile and send to BEGA a list of all PFDS filers and CFDS filers
- Review Confidential Financial Disclosure Statements and submit a *complete* and *true* Financial Disclosure Review Report (previously known as the Confidential Filer Review Report) to BEGA
- Contact CFDS non-filers at least once to inform them of non-compliance and ask them to file (retain record of contact!)



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS: Responsibilities Breakdown

- ▶ What should be included in a Confidential Filer Notice?
 - A brief explanation as to why the filer has been designated
Statutory definition
 - The filing deadline
 - Instructions on how to file
 - A reminder that filers are required to take ethics training annually
 - A reminder that separating employees must file an FDS within 90 days of separation
 - A filers right to appeal their designation and instructions on how to do so
 - Language explicitly stressing that the FDS is a *requirement*
 - A brief description of the consequences of not filing
Fines between \$300 and \$5,000, a BEGA investigation, a full and adversarial hearing before the BEGA Board



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS: Responsibilities Breakdown

► What should be included in a Confidential Filer Notice?

[AGENCY LETTERHEAD]

[Date]

Dear [Employee Name]

You are receiving this letter because you have been designated by this agency as a Confidential Financial Disclosure Statement Filer. This means that for thirty (30) days or more in the previous calendar year you were a:

- A District of Columbia employee with a salary under Excepted Service 9 for 2020 and who made decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acted in areas of responsibility that may produce a conflict of interest or appearance of a conflict of interest.

Given this designation, you are required to file a **Confidential Financial Disclosure Statement** for the previous calendar year with our agency, by Monday, May 17, 2021.¹ See D.C. Official Code §1-1162.25.

How to File

[A hard copy of the Financial Disclosure form can be found by in the Financial Disclosure Statement section of the BEGA website.]

[Provide agency specific instructions on who should receive the employee's completed CFDS form.]

Annual Ethics Training Requirement

Because you are a Financial Disclosure Statement filer you are required to take annual ethics training. Contact BEGA for information on their monthly ethics training schedule.

Filing Extensions



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS: Responsibilities Breakdown

► What should be included in a Confidential Filer Notice?

training. Contact BEGA for information on their monthly ethics training schedule.

Filing Extensions

Requests to extend the financial disclosure filing deadline should be sent to the Director of Government Ethics. Extension requests must be made in writing and should be made *before* the filing deadline. Filing extensions may not exceed thirty (30) days. See [3 DCMR § 5702.4](#). The Director may extend the deadline for submission of the FDS for good cause shown. See [3 DCMR § 5702.5](#).

E-filing Waivers

¹ Late filed forms may result in fines imposed by the Board of Ethics and Government Accountability.

A public filer may request a waiver of the e-filing requirement but should do so on or before May 5th each year. See [3 DCMR § 5702.2\(a\)-\(c\)](#). All e-filing waiver requests should include the requester's full name (as it appears on the annual Filer Designation Notification), home address, email address, phone number; the body of the request should layout the requester's reasons for requesting a waiver. If the waiver is granted, the FDS shall be filed in hard copy, in person or by first class mail. The FDS shall be deemed timely filed if received in the Office of Government



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS: Responsibilities Breakdown

► What should be included in a Confidential Filer Notice?

email address, phone number; the body of the request should layout the requester's reasons for requesting a waiver. If the waiver is granted, the FDS shall be filed in hard copy, in person or by first class mail. The FDS shall be deemed timely filed if received in the Office of Government Ethics no later than 5:00 pm on May 15th. A denial of the waiver of the requirement to file electronically is appealable to the Board. An appeal is timely filed if submitted to the Board Chairperson and the Director, in writing, in hard copy or electronically, no later than two (2) business days after the date of the Director's decision. The decision of the Board is final and shall be provided in writing to the requestor.

A pending e-filing waiver does not relieve a filer from the requirement to timely file a FDS form, unless explicitly stated by BEGA staff or the Director of Government Ethics. If a filer believes that the pending waiver request will delay their filing beyond the May 15th deadline they should submit a request for an extension of the filing deadline with the waiver request.

Filing After Separation from District Employment

Because the Financial Disclosure Statement requires information from the previous year, your obligation to file a final FDS form for the previous year does not end when you separate from District employment. District employees who separate from District employment before the annual May 15th deadline but who are designated to file *must* file an FDS within 90 days of separation from employment with the District or face the same penalties for non-compliance as a current employee. See [D.C. Official Code 1-1162.24\(c\)\(1\)](#). Please contact BEGA at bega-fds@dc.gov for questions, concerns or assistance.

Designation Appeal Process:

- You can appeal your designation as a Confidential Financial Disclosure Statement filer.
- First you must submit a written request to **[insert name of agency head/or designee]** within five (5) days of this written notification of your designation (DPM § 1810.7(a)).
- **[agency head/designee]** will then make a redetermination, in writing, within five (5) days of receiving your request. (DPM § 1810.7(b)).



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS: Responsibilities Breakdown

► What should be included in a Confidential Filer Notice?

within five (5) days of this written notification of your designation (DPM § 1810.7(a)).

- [agency head/designee] will then make a redetermination, in writing, within five (5) days of receiving your request. (DPM § 1810.7(b)).
- If [agency head/designee] denies your requested relief (that you should not be designated as a Confidential Filer), that denial is appealable, in writing, within five (5) days of the time the employee receives the notice of denial.
- Specifically, you may appeal this denial to the Director of Government Ethics, Brent Wolfingbarger. (DPM § 1810.7(c)).

- The decision of the Director of Government Ethics, with respect to the designation, must be issued within five (5) days of his receipt of the appeal, and is final. (DPM § 1810.8).

Failure to Timely File

→ It is important to remember that the FDS filing requirement is mandatory and that BEGA will take enforcement action against all designated FDS filers who do not comply. Late-filed forms will result in a fine of \$10 per day for each day the form is not submitted after the May 15th deadline. After 30 days of non-compliance, BEGA will accelerate our attempts to bring non-



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS: Responsibilities Breakdown

► What should be included in a Confidential Filer Notice?

take enforcement action against all designated FDS filers who do not comply. Late-filed forms will result in a fine of \$10 per day for each day the form is not submitted after the May 15th deadline. After 30 days of non-compliance, BEGA will accelerate our attempts to bring non-filers into compliance in one of three ways:

- 1) Requiring the non-compliant filer to appear before the Director of Government Ethics for a hearing to show good cause why additional fines should not be imposed against the non-compliant filer.
 - The show cause hearing may result in the imposition of ministerial fines between \$100 and \$1,000, above and beyond the \$10 per day late-filing penalties.
- 2) Offering the non-compliant filer the opportunity to reach a Negotiated Disposition.
- 3) Initiating a full, adversarial hearing before the Board regarding the filer's non-compliance.

Fines may increase with continued non-compliance. Willful failure to file may ultimately result in fines of up to \$5,000. BEGA will not discontinue attempts to compel a non-compliant filer to file even after the filer has paid a fine. A designated filer may not pay a fine to avoid his or her filing requirement. BEGA is also required to publish a list of PFDS non-filers in the DC Register by June 15th each year.

BEGA generally gives non-compliant filers a brief grace period within which they may voluntarily pay any fine levied against them by our agency. Once the grace period has lapsed, BEGA will initiate a garnishment process to collect payment of the fine by submitting a garnishment memo to the Office of Pay and Retirement Services (OPRS).

BEGA will forward all unsatisfied fines of non-employees to the DC Office of the Attorney General for collection. BEGA may also report unpaid fines to the three federally recognized credit bureaus.

An FDS filer who has incurred a late-filing fee or other fine from BEGA resulting from the filer's non-compliance with the FDS rules may request a waiver of the fine. Persons seeking a waiver should submit the request to Rashee Raj, General Counsel (ashley.cooks@dc.gov) and include their full name (as it appears on the filer designation notice), the date, a contact email



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS: Responsibilities Breakdown

► What should be included in a Confidential Filer Notice?

filer's non-compliance with the FDS rules may request a waiver of the fine. Persons seeking a waiver should submit the request to Rashee Raj, General Counsel (rashee.raj1@dc.gov) and include their full name (as it appears on the filer designation notice), the date, a contact email address, employment status (e.g., current employee, on extended leave, separated from District employment, etc.), an explanation for non-compliance or reasons why the fine should not be enforced, and any previous history of timely compliance. Fine waiver requesters should carbon copy the BEGA FDS Inbox (bega-fds@dc.gov) on the request.

All fine waiver requests are decided by our Board at its monthly board meetings. A fine waiver requester may attend the Board meeting at which their fine waiver request will be considered. Our Board is not likely to grant an otherwise meritorious fine waiver request until the requester has come into compliance by filing his or her FDS form. A fine waiver requester who is adversely affected by the Board's decision may appeal that decision to the DC Superior Court within 20 days of the Board's decision.

Fine waiver requests will not be considered after Wednesday, June 30, 2021.



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS:

Filer Designation Process

- District employees are designated as financial disclosure filers by their respective agencies
 - BEGA has no part in the initial designation
- Designation determinations are made by reviewing an employee's job duties and salary
 - Public Financial Disclosure Statement Filer:** all public officials and certain board members and commission members
 - Public Financial Disclosure Statement Filer:**
 1. any employee who, as a part of his or her job duties, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or **acts in areas of responsibility that may create a conflict of interest or the appearance of a conflict of interest**

AND

 2. Who is paid at a rate of Excepted Service 9 or above



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS:

Filer Designation Process – Cont'd

- Confidential Financial Disclosure Statement Filer
 1. Any employee who, as a part of his or her job duties, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or the appearance of a conflict of interest

AND

2. Who is paid at a rate below Excepted Service 9



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS

COUNSELORS: **Filer Designation Process – COUNCIL**

- ▶ **Council***members* are required to file semi-annual PFDS forms on May 15th and November 15th
- ▶ Whether a **Council** *employee* is a “public official” and, thus a public filer under the Ethics Act, turns on whether that employee is paid at a rate equal to or above the midpoint rate for Excepted Service 9 (this is the only test).
- ▶ The employee must have met that criteria for at least thirty (30) days in the calendar year on which they will be reporting. If the employee did not meet the test for at least one month in the previous year, the employee should not be required to file in the current season and should be required to file in the next season.



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS:

Filer Designation Process

- Filers have **5 (FIVE) days** from the date of their filer notification to appeal their designation as a FDS filer

BEGA

- The staff at BEGA is available to answer Ethics Counselors questions and interpret the FDS rules as they decide on filer designation appeals

AGENCY

- The agency should consider a filer's job duties, salary, start date, any points raised by the filer and any other relevant facts when deciding on designation appeals
- A District employee should only be designated to file a financial disclosure statement if that employee held, for more than thirty (30) days within the prior calendar year, a position that made them eligible for designation
 - Because the financial disclosure form is like taxes, in that it inquires about information from the previous year, a new employee should not be designated to file (for the current year) even if that employee's job duties align with filer job duties
 - Any new employee who qualifies for designation but did not work 30 days in the reporting year can be designated in the following year



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS

(Cont'd):

Designation Appeals

BEGA

- BEGA does NOT decide initial designation appeals
- The Director of BEGA considers the filer's job duties, salary, start date, any points raised by the filer in the designation appeal, the agency's initial designation appeal decision and any other relevant facts when deciding on designation appeals that have been moved up to our agency for reconsideration

AGENCY

- The agency should be sure to include the filers' appeal rights and clear instructions on filing designation appeals in the April 15th CFDS notice
- If the filer does not agree with the agency's decision and would like to move their appeal up to BEGA, the filer should provide BEGA with all relevant documentation, including the initial appeal, the filer's job description, the agency's written explanation for its decision and any other relevant documents
- If the agency forwards the appeal to BEGA on behalf of the filer the Ethics Counselor should forward the relevant documents to BEGA, notify the filer and keep him or her in the loop



PART 2: INTERNAL DUTIES OF BEGA AND ETHICS COUNSELORS (Cont'd):

Where can ECs go for help?

- ▶ Refer to the Agency Head Memo and materials
- ▶ Refer to the Ethics Counselor FDS Manual
 - https://bega.dc.gov/sites/bega/files/publication/attachments/Ethics%20Counselor%20Financial%20Disclosure%20Manual_0_0.pdf
 - Contact us
 - Asia handles the legal stuff
 - Stan handles everything else
 - Feel free to copy one of us when you reach out to the other



PART 3: GENERAL BEST PRACTICES AND TIPS FOR AGENCIES AND ETHICS COUNSELORS





PART 3: GENERAL BEST PRACTICES AND TIPS FOR AGENCIES AND ETHICS COUNSELORS

1. Stay in contact with BEGA and make us aware of any Ethics Counselor changes in your office
 - If you leave the Ethics Counselor post, send us a farewell email (bega@dc.gov or bega-fds@dc.gov) with the new Ethics Counselor's contact information
2. Clarify (with BEGA and your agency's employees) the Ethics and FDS structures within your agency
 - General counsel not the ethics counselor?
 - Different POC for general ethics and financial disclosure?
 - Two ethics counselors?
3. Maintain rolling filer lists year round
4. Update the filers contact information EVERY YEAR just before FDS season



PART 3: GENERAL BEST PRACTICES AND TIPS FOR AGENCIES AND ETHICS COUNSELORS

5. BEGA must collect fines from and bring enforcement actions against all FDS late and non-filers even if they no longer work for the District
 - Collect contact information from separating employees and include it in filer lists whenever possible
6. BEGA uses the Financial Disclosure filer lists for several different things and the lists may be used by several different people in our office
 - Please ONLY use the list template provided to you by BEGA, do not remove or alter the columns, fill in all columns for each filer and avoid putting security features on the list, such as passwords
7. Submit amendments to filer lists in the following manner:
 - Caption the email with the year, name of the agency and the word “Amendment”, for example, “2022 ABRA PFDS Filer List – Amendment”
 - In the body of the email note the changes made to the list
 - Attach the updated list (do not attach the old list)
 - Mark the email “High Importance” and request a receipt
 - Do your best to submit all amendments to PFDS lists by April 15th so that we can make sure all filers are accurately noticed of the filing requirement



PART 3: GENERAL BEST PRACTICES AND TIPS FOR AGENCIES AND ETHICS COUNSELORS

8. BEGA does NOT accept hard copy financial disclosure forms from public filers or confidential filers
 - Exception:
 - A. A filer who have received an e-filing waiver pursuant to 3 DCMR §5702.2
9. Advise separating employees that they must file a final Financial Disclosure Statement within 90 days of separation (D.C. Official Code §1-1162.24(c)(1)) and encourage them to file it before leaving
10. Make note of separating filers who give you FDS forms before leaving
 - For CFDS filers, make a written record of the filing, list the filer on your CFDS list (for the upcoming season) and note on the list that the filer filed within 90 days of separation and the actual date of filing



PART 3: GENERAL BEST PRACTICES AND TIPS FOR AGENCIES AND ETHICS COUNSELORS

11. We would prefer it if filers contacted us directly with questions and requests
 - We organize filer correspondence in a very specific manner, and we would be better able to maintain our records if the filers contacted us directly instead of the Ethics Counselors contacting us on behalf of the filer
12. BEGA encourages those who are having filing issues to submit an IT help ticket on our website
 - We use the system to verify that filers tried to file if they incur fines
13. Periodically remind all designated filers that they are required to take one full ethics training annually
14. Be sure to instruct FDS filers to provide their name as you reported it on the filer list on all correspondence with BEGA
15. If your agency has a board or commission over it, include the members on your list or check-in with the administrative staff assigned to the board or commission to make sure that a list of members is submitted to BEGA
16. Include BEGA in your April filer notification email
17. If you leave the EC post, train your successor and leave them your FDS documents
 - FDS documents must be retained for six years



PART 4: BEGA CONTACTS

Where can ECs go for help?

ASIA STEWART-MITCHELL

Attorney who handles the legal aspects of the Financial Disclosure Program

- ▶ Email: asia.stewart-mitchell@dc.gov
(Please send general inquiries to bega-fds@dc.gov)
- ▶ Work cell: (202) 379-6020
 - The number to our main line is (202) 481-3411
- ▶ Location:
One Judiciary Square
441 4th Street, Rm. 830 S
Washington, DC 20001



PART 4: BEGA CONTACTS (Cont'd):

Where can ECs go for help?

STAN KOSICK

Program Specialist who handles the administrative aspects of the Financial Disclosure Program

- ▶ Email: stanley.kosick@dc.gov
(Please send general inquiries to bega-fds@dc.gov)
- ▶ Work cell: (202) 295-7386
 - The number to our main line is (202) 481-3411
- ▶ Location:
One Judiciary Square
441 4th Street, Rm. 830 S
Washington, DC 20001



Thank you for listening

Questions??

