

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



April 5, 2023

ADVISORY OPINION

Guidance on the Financial Disclosure Statement Filing Process

Pursuant to D.C. Official Code § 1–1162.19(a-1)(1), the Director of Government Ethics issues this advisory opinion, *sua sponte*, to provide guidance on the financial disclosure reporting system for District government employees and public officials. This advisory opinion explains the purpose of financial disclosure and an overview of how to file financial disclosure statements.

I. History and Purpose

Regular disclosure of financial interests by designated District government employees is a central component of the District’s ethics program. In establishing the Board of Ethics and Government Accountability (“BEGA”), the D.C. Council emphasized that one of BEGA’s primary purposes is to prohibit public officials from participating in matters in which they have a conflict of interest, to adopt rules clearly detailing recusal procedures, and to require greater disclosure of financial information from those filers.

The District’s financial disclosure reporting program provides the information necessary to screen for financial conflicts of interest. This is accomplished through the evaluation of financial disclosure statements filed by designated District government employees for real or potential conflicts of interests. Pursuant to the Ethics Act, employees are prohibited from using their official title or position or personally and substantially participating in, or attempting to influence matters they know will have a direct and predictable effect on their finances or the finances of a person closely affiliated with the employee.¹ The information sought by the District’s financial disclosure statement is designed to help BEGA and District agencies identify conflicts between the professional duties and personal financial interests of District employees.

The Ethics Act defines the individuals who are required to file financial disclosure statements and provides detailed instructions on the information required as part of the disclosure. Whether filed confidentially or publicly, financial disclosure statements are reviewed to identify and eliminate financial conflicts held by filers. The District’s financial disclosure program is an embodiment of the District Personnel Manual’s (“DPM”) first general ethics principle, that “[g]overnment service is a public trust, requiring employees to place loyalty to the laws and ethical principles above private gain.”

II. Who Files and How to File

¹ D.C. Code § 1-1162.23(a).

There are two categories of financial disclosure statement (“FDS”) filers clearly defined by the Ethics Act: Public Filers and Confidential Filers.

a. Public Filers

Due to the increased stake the community has in the integrity and transparency of its public officials, D.C.’s public officials are required to report their financial disclosure statements publicly. Agency heads are required to submit a list of all public officials within their agencies to BEGA by March 1st of each year.² Public Filers can be broken down into two categories: 1) automatic filers who are designated based on title alone; and, 2) filers who are designated based on their salary and duties.

1. Automatic Public Filers

The D.C. Code § 1-1162.24(a)(1) requires public officials (except Advisory Neighborhood Commissioners (“ANC”) and candidates for election to public office) to file their financial disclosure statements publicly. The following positions are public officials as defined by D.C. Code §1-1161.01, required to publicly file financial disclosure statements based on their title alone:

- a. The Mayor, Chairman and each member of the D.C. Council³
- b. The Attorney General
- c. A Representative or Senator⁴
- d. A member of the State Board of Education
- e. A person serving as a subordinate agency head in a position designated as within the Executive Service
- f. Members of the Washington Metropolitan Area Transit Authority Board of Directors
- g. A member or alternate member of the Washington Metrorail Safety Commission
- h. A member of a board or commission listed in [§ 1-523.01\(e\)](#);
- i. An employee of the Council paid at a rate equal to or above the midpoint rate of pay for Excepted Service 9.

2. Salary + Duty Public Filers

The second category of Public Filers can be identified based on their duties and their salary. The Ethics Act defines these Public Filers as: “[a] District of Columbia Excepted Service employee, except an employee of the Council, paid at a rate of Excepted Service 9 or above, or its equivalent, who 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 appearance of a conflict of interest; and any additional employees designated by rule by the Board of Ethics and Government Accountability who make decisions or participate substantially in areas

² DPM § 1810.4(a).

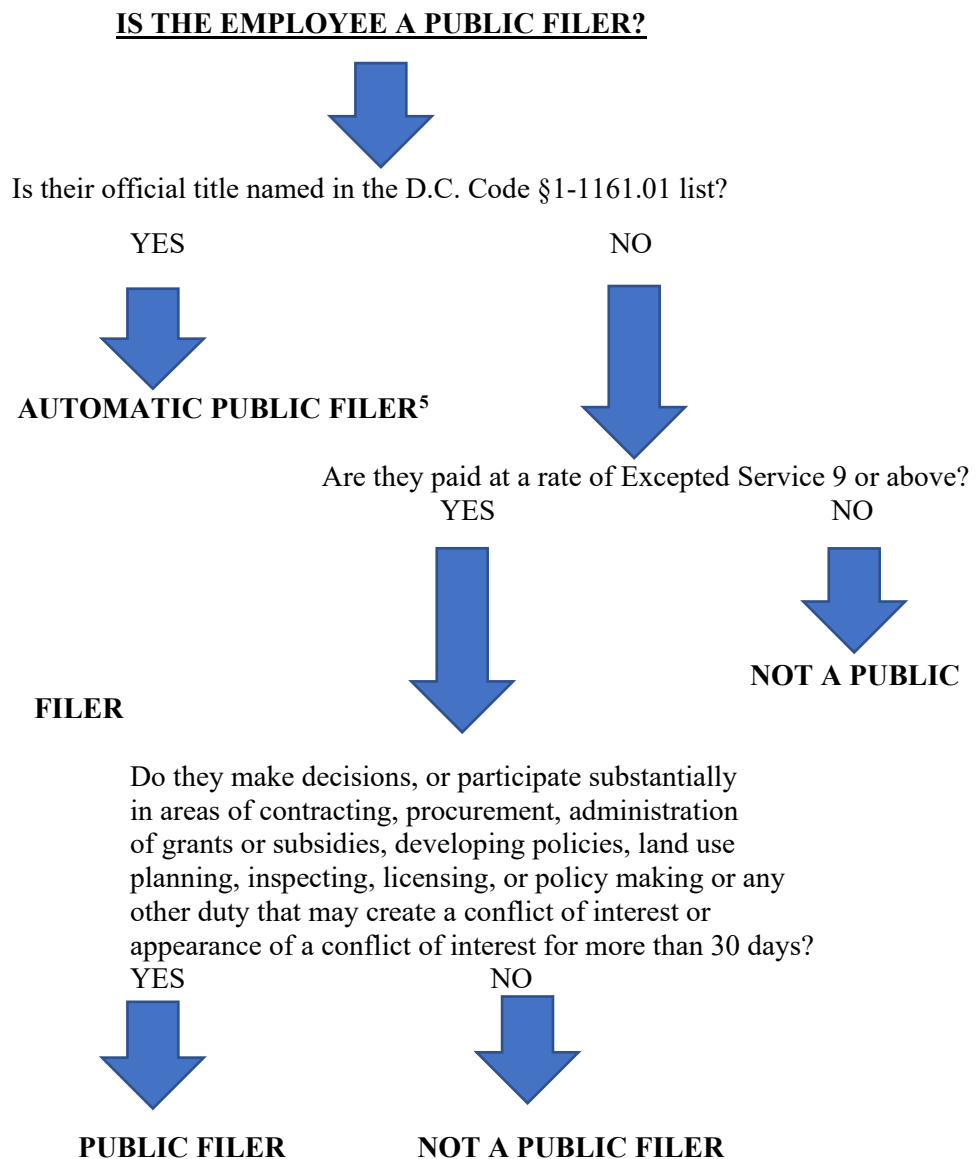
³ Councilmembers holding office under [Chapter 2 of this title](#).

⁴ Elected pursuant to D.C. Official Code [§ 1-123](#).

of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.”

Agency heads must identify whether an employee advises, makes decisions, or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, or policy making or any other duty that may create a conflict of interest or appearance of a conflict of interest. If the agency head determines that the employee performed any of those functions for more than 30 days in the previous calendar year, they must also determine if the employee’s salary was at or above Excepted Service 9 for the reporting year. If so, the employee is considered a Public Filer.

The chart below reflects how Public Filers are designated:



⁵ Except Advisory Neighborhood Commissioners and candidates for election to public office.

3. ANCs and Candidates for Office

Pursuant to D.C. Code § 1-1162.25(a)(3)(A) and (B), ANCs and candidates for election to public office who are not otherwise required to file financial disclosure statements, are required to file public certifications that they have: filed and paid their income and property taxes; diligently safeguarded the assets of the taxpayers and the District; reported known illegal activity, including attempted bribes to the appropriate authorities; not accepted any bribes; not directly or indirectly received government funds through illegal or improper means; not raised or received funds in violation of federal or District law; and, not receive or been given anything of value, including a gift, favor, service, loan, gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that the public official's official actions or judgement or vote would be influenced.

ANCs who are also District government employees may be required to file financial disclosure statements based on their duties as District employees. They are subject to the same analysis described above to determine whether they should be designated as either Public or Confidential Filers. If they are designated as a Public Filer, the ANC will only be required to submit one public FDS form for the filing year. This is because the public financial disclosure statement contains all of the public certifications that ANCs are required to make under the Ethics Act. Therefore, if an ANC files a public financial disclosure form, they will have also satisfied the certification requirements for ANCs. If an ANC is designated as a Confidential Filer, the ANC must file both a Confidential FDS form and the public certifications required under the Ethics Act.

4. Council Staff

An employee of the Council paid at a rate equal to or above the midpoint rate of pay for Excepted Service 9 will automatically be considered a Public Filer. Unlike employees in the executive branch and independent agencies, the salary threshold of the council staff is the only test, and an analysis of their duties is not required.

b. Confidential Filers

Confidential FDS Filers are designated by using the same analysis of duty and salary that is required for Public Filers who are not automatically required to file, except that a confidential filer's salary is below the rate of pay for Excepted Service 9. A Confidential Filer is defined by D.C. Code § 1-1162.25(a)(1) as an employee, "other than a public official or a Council employee, who advises, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land-use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by the appropriate agency head." Council employees who act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by that employee's personnel authority, are also confidential financial disclosure statement filers.⁶ These employees must submit their Confidential FDS forms to the General Counsel for the Council.⁷

⁶ D.C. Code § 1-1162.25(a)(2).

⁷ *Id.*

Agency heads are required to submit a list of all confidential filers within their agencies to BEGA by March 1st of each year.⁸ Confidential filers should be notified by their agency heads of their designation and obligation to file, on or before April 15 each year. If an employee's salary was below Excepted Service 9 for the reporting year and they performed the duties described above, they are considered a Confidential filer.

c. Designations

It is the responsibility of the individual Agency heads to designate Public and Confidential Filers within their respective agencies and offices and provide a list of all Public and Confidential Filers to BEGA by March 1st of each year. If an individual employee does not agree with their designation as a filer, the employee may submit a written request for review of their designation to their agency head within 5 days of being notified of their designation.⁹ The written request should contain information regarding why the employee disagrees with the designation. Upon receipt of an employee's written request for review of the designation, the agency head shall make a redetermination, in writing, within five days.¹⁰ If after review, the agency head still determines that the employee should be designated as a filer, the employee may file a written appeal of that determination to the Director of Government Ethics, explaining why they disagree with the designation. The appeal should be submitted to the Director of Government Ethics within 5 days of receipt of the redetermination.¹¹ The Director of Government Ethics' decision regarding the designation must be issued within 5 days of receiving the written appeal. The Director's decision is final and therefore not appealable.¹²

III. How to File

All Public Filers are required to file their financial disclosure statements electronically via BEGA's website by May 15th each year.¹³ Because Public Filers' statements are reviewed by BEGA staff, their submission of the financial disclosure statement through the e-filing system is sufficient to meet their filing obligation. After Public Filers submit their forms electronically, BEGA staff can access the filings, review, and publish them on BEGA's website for the public to view. Confidential Filers are required to submit their forms using BEGA's e-filing system then provide a copy of the form to their respective agency heads by May 15th each year. Those confidential forms will not be made available to the public.

Public and Confidential Filers complete the same set of questions regarding their finances. The contents of the financial disclosure statement can be separated into two parts: 1) a questionnaire composed of fifteen questions, and 2) nine certifications at the end of the statement. Filers are required to provide answers to every question. If a filer is unable to certify any of the given statements for any reason, he or she must provide an explanation. Both parts of the financial disclosure statement must be completed to successfully submit the statement.

⁸ 3 DCMR § 5704.2.

⁹ DPM § 1810.7(a).

¹⁰ DPM § 1810.7(b).

¹¹ DPM § 1810.7(c).

¹² DPM § 1810.8.

¹³ 3 DCMR § 5702.1.

The financial disclosure statement questions cover various categories of information including, the non-District employment and businesses of filers and their spouses, partners and children; the securities, holdings and investments of filers and their spouses, partners and children; participation in any District regulated profession by the filer or their spouse, partner and children; and any gifts received by filers. The questionnaire provides a text box for filers to write-in responses when they answer affirmatively to questions.

The answers to the questions within the statement should be based on the prior calendar year's finances, not the year the filer is completing the form. For example, if a filer is completing a financial disclosure statement in 2023, their answers should be based on their finances during the calendar year of 2022. Sometimes, it is appropriate for filers to attach documents to their filings to explain their answers. Finally, all financial disclosure statement filers are required to attend an ethics training annually and certify on their disclosure statement that they have met this requirement.¹⁴ The ethics training must be a course that is conducted by or has been approved by BEGA. Although individual agencies are permitted to create and conduct their own ethics trainings, agency heads should consult with BEGA regarding the contents of their training to ensure that it satisfies the training requirement for financial disclosure filers. Filers who are leaving District employment are required to submit an FDS for the current year within 90 days of their separation.¹⁵

Filers who fail to timely file true, accurate and completed reports will be subject to late fees at the rate of ten dollars (\$10.00) per day, excluding weekends and holidays up to a maximum of three hundred dollars (\$300.00).¹⁶ Additionally, before June 15th of each year, BEGA is required to publish in the D.C. register, the name of each public official who filed a statement or certification, requested an extension to file, and did not file a report and the reasons for not filing.¹⁷

IV. Review of Financial Disclosure Statements

May 15th is the deadline for all filers to submit their confidential and public financial disclosure statements.¹⁸ At or before that point, agency heads or their designees should begin reviewing confidential filings for potential conflicts of interests. Each confidential financial disclosure statement must be reviewed. This review is a critical step in the FDS process because it helps to achieve the objective of identifying financial conflicts of interest. Any violations of the Code of Conduct should be immediately reported to BEGA.¹⁹ An agency's review of confidential filings must be completed by June 1st.²⁰

BEGA provides agency heads with a Financial Disclosure Review Report ("FDRR") to enable them to report the results of their review of the FDS forms. Agency heads are required to submit this form to BEGA along with copies of any flagged confidential financial disclosure statements by June 1. The FDRR asks the agency heads various questions to confirm whether deadlines for

¹⁴ DPM § 1810.2(b).

¹⁵ As a best practice, BEGA encourages agency heads to include FDS designation and filing in the offboarding process whenever an employee separates from an agency to enable staff to meet the requirement to file within 90 days of separation.

¹⁶ 3 DCMR § 5704.5.

¹⁷ 3 DCMR § 5702.6.

¹⁸ DPM § 1810.4(e).

¹⁹ DPM § 1810.10.

²⁰ D.C. Code Official § 1-1162.25(b).

designating and notifying the filers were met, to inquire about whether any filers appealed their designations, failed to file, or failed to file timely, and whether any actual or potential violations were discovered. Upon receipt of FDRRs, BEGA will review the forms as well as any flagged filings to determine whether further investigation is required.

V. FDS Questions: Illustrative Examples

Example 1

A District government employee has been designated by their agency head as a Confidential Financial Disclosure Statement Filer. Last year, the employee inherited a large real estate portfolio, and some of the property is located within the District. The employee seeks to answer the question pertaining to real estate holdings on the FDS form, however, because they only recently inherited it, they do not have the information about the location and value of the property and the real estate is being held in a trust. What should this employee do?

If any information required to be included in a confidential FDS report is not known to the employee but is known to another person, the employee should request that information from the other person. In this example, the employee should get this information directly from the trustee.

Example 2

A District government employee has been designated by their agency head as a Confidential Financial Disclosure Statement Filer. Last year, she took an interest in investing and decided to begin investing in a mutual fund with the help of a financial advisor. The employee has bi-monthly meetings with her financial advisor to discuss her account, however, she leaves the investment strategy and decisions about the mutual fund, including which securities are bought and sold to the fund manager. She is happy with the mutual fund because she earned \$250 last year as a result of her investments. The employee seeks to answer the question about whether she held any security at the close of the prior year that exceeded \$1000 in the aggregate or that produced income of \$200.

This employee is not required to report her interests in the mutual fund because the fund is run by a fund manager who is making the decisions regarding which securities to buy and sell. Unless the employee herself is responsible for the selection of individual securities, the purchase and sale of the securities, the holdings do not need to be reported in response to this question.

Example 3

A District government employee has been designated by their agency head as a Public Financial Disclosure Statement Filer. Last year, his spouse started a consulting business that quickly took off, amassing dozens of clients. Although the employee has heard his spouse talk about some of her clients, he does not know the identity of all of her clients. The employee seeks to answer the question about whether the employee's spouse engaged in any business endeavors during the prior calendar year. Is he required to list his spouse's clients?

The filer is required to list their spouse's clients who does business with the District, may do business with the District within the next twelve months or did gain or stands to gain a direct financial benefit from legislation that was pending before the Council, during the previous calendar year.

Example 4

A Contract Specialist worked in their District government agency for 30 days last year prior to separating from the District to join a company in the private sector. The employee's primary job duties included reviewing contracts for the procurement of services, preparing bid documents, and monitoring the performance of various vendors under their respective contracts. The employee made \$165,000 annually in their District government position. On April 15th, the Ethics Counselor from the District agency sends the employee a letter notifying them that they have been designated as a Public Filer and need to submit an FDS by May 15th of that filing year. Should the ethics counselor have designated this employee as a Public Filer?

No. In order for an employee to qualify as a Public Filer, they must have met the definition of a filer for *more* than 30 days in a calendar year.²¹

Example 5

On April 15th, a District government employee receives a notice from her agency head designating her as a Confidential Filer. The employee has maintained the same position and job duties for 4 years and has also been designated as a Confidential Filer for the past 5 years. On May 15th, the employee fails to file an FDS. On June 17th, in response to fine-notice from BEGA, the employee states that she overlooked the filer designation notice in her inbox from her agency head. Is this employee subject to a fine? If so, how much?

Yes. Unfortunately, this employee would be subject to a fine from BEGA. She could be facing a fine of \$300 since her filing was over 30 days late. There are not many mitigating factors in this case to avoid a fine in light of the fact that this employee has been required to file every year for five years and received actual notice of her obligation to file in her email.



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²¹D.C. Code § 1-1162.24(f).