

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

NOTICE OF PROPOSED RULEMAKING

The Board of Ethics and Government Accountability (Board), pursuant to the authority set forth in section 209 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*)(2012 Supp.), hereby gives notice of a proposed rulemaking to add new chapters 57 and 58 (Financial Disclosure and Lobbying), of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (“DCMR”).

The proposed rulemaking will establish procedures for the filing of financial disclosure statements and lobbyist registration requirements.

The emergency rulemaking action is necessary to protect and promote the public welfare by creating procedures the Board will immediately apply to statutorily mandated filing requirements for lobbyists and financial disclosure statements by government officials and employees. Without the procedures established by these emergency rules, members of the public, as well as District employees, will not have the necessary guidance with which to comply with the law.

This emergency rulemaking was adopted on December 20, 2012, and became effective immediately. This emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the effective date, or April 19, 2013, unless earlier superseded by a notice of final rulemaking.

The Board authorized the promulgation of this emergency and proposed rulemaking at its meeting on December 20, 2012. The Board hereby gives notice of its intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

Title 3, ELECTIONS AND ETHICS, of the DCMR is amended by adding new chapters 57 and 58 to read as follows:

CHAPTER 57 FINANCIAL DISCLOSURES AND HONORARIA

5700 APPLICABILITY

5700.1 The provisions of this chapter shall establish the procedures for filing financial disclosure forms and the limitations on honoraria pursuant to the authority set forth in the Subtitle D of the Government Ethics Act of 2011 (Act), Title II of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*)(2012 Supp.),

5700.2 The Financial Disclosure Statement (FDS) form, prescribed by the Director of the Government Ethics (Director), shall be filed by the following public officials:

- (a) A candidate for nomination for election, or election, to public office;

- (b) The Mayor, Chairman, and each member of the Council of the District of Columbia holding office under the Home Rule Act;
- (c) The Attorney General;
- (d) A Representative or Senator elected pursuant to section 4 of the District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10, 1981 (D.C. Law 3-171; D.C. Official Code § 1-123)(2006 Repl.);
- (e) A member of the State Board of Education;
- (f) A person serving as a subordinate agency head in a position designated as within the Executive Service;
- (g) A member of a board or commission listed in section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code §1-523.01(e))(2006 Repl.); and
- (h) A District of Columbia Excepted Service employee 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 Ethics Board who make decisions or participate substantially in areas 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.

5701 DISCLOSURE REQUIREMENTS

5701.1 The public official shall list on the FDS the following:

- (a) The name of each business entity, including sole proprietorships, partnerships, trusts, nonprofit organizations, and corporations, whether or not transacting any business with the District of Columbia government, in or from which the public official or his or her spouse, domestic partner, or dependent children:
 - (i) Has a beneficial interest, including, whether held in such person's own name, in trust, or in the name of a nominee, securities, stocks, stock options, bonds, or trusts, exceeding in the aggregate \$1,000, or that produced income of \$200 in a calendar year;
 - (ii) Receives honoraria and income earned for services rendered in excess of \$200 during a calendar year, as well as the identity of any client for whom the official performed a service in connection

with the official's outside income if the client has a contract with the government of the District of Columbia or the client stands to gain a direct financial benefit from legislation that was pending before the Council during the calendar year. The report required by this subtitle shall include a narrative description of the nature of the service performed in connection with the official's outside income;

- (iii) Serves as an officer, director, partner, employee, consultant, contractor, volunteer, or in any other formal capacity or affiliation; or
 - (iv) Has an agreement or arrangement for a leave of absence, future employment, including date of agreement, or continuation of payment by a former employer;
- (b) Any outstanding individual liability in excess of \$1,000 for borrowing by the public official or his or her spouse, domestic partner, or dependent children from anyone other than a federal or state insured or regulated financial institution, including any revolving credit and installment accounts from any business enterprise regularly engaged in the business of providing revolving credit or installment accounts, or a member of the person's immediate family;
- (c) All real property located in the District (and its actual location) in which the public official or his or her spouse, domestic partner, or dependent children, has an interest with a fair market value in excess of \$1,000, or that produced income of \$200; provided, that this provision shall not apply to personal residences occupied by the public official, his or her spouse, or domestic partner;
- (d) All professional or occupational licenses issued by the District of Columbia government held by a public official or his or her spouse, domestic partner, or dependent children; and
- (e) All gifts received by a public official from a prohibited source in an aggregate value of \$100 in a calendar year. The term "prohibited source" shall have the meaning ascribed to it in section 101(46) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*)(2012 Supp.).

5701.2 The FDS shall include a signed affidavit from the public official stating that the public official has not caused title to property to be placed in another person or entity for the purposes of avoiding the disclosure requirements of the Act or these regulations.

5701.3 The FDS shall include a signed certification that the public official has:

- (a) Filed and paid his or her income and property taxes;

- (b) Diligently safeguarded the assets of the taxpayers and the District;
- (c) Reported known illegal activity, including attempted bribes, to the appropriate authorities;
- (d) Not been offered or accepted any bribes;
- (e) Not directly or indirectly received government funds through illegal or improper means;
- (f) Not raised or received funds in violation of federal or District law; and
- (g) Not received 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 judgment or vote would be influenced.
- (h) Complied with all conflict of interest recusal and reporting requirements as set forth in section 223 of the Ethics Act.

5701.4 Neither the Mayor, the Attorney General, the Chairman of the Council of the District of Columbia, any member of the Council, nor any member of the State Board of Education shall earn royalties in excess of ten thousand dollars (\$10,000) during the year in which the right to receive the royalty accrues, except that any amounts paid to a charitable organization, on behalf of the public official, shall not be calculated as part of the aggregate total.

5702 FILING AND PUBLICATION REQUIREMENTS

5702.1 The FDS shall be deemed timely filed in person or by first class mail if received in the office of the District of Columbia Board of Ethics and Accountability (Board) by no later than 5:30 p.m. on October 2nd of each year for the prior calendar year in which the public official served.

5702.2 The FDS may be filed electronically no later than 12:00 midnight on the filing deadline.

5702.3 A public official shall submit an amended FDS thirty (30) days after changes in any information represented on the FDS.

5702.4 A public official may request the Director, in writing, for an extension of up to thirty (30) days in which to submit the FDS.

5702.5 The Director may extend the period of time for submission of the FDS by a public official, for good cause shown.

5702.6 The Ethics Board shall publish, in the District of Columbia Register, before November 2nd each year, the name of each public official who has:

- (a) Filed a report under this section;

- (b) Sought and received an extension of the deadline filing requirement and the reason for the extension; and
- (c) Not filed a report and the reason for not filing, if known.

5703 EXEMPTION

5703.1 The Board may, on a case by case basis, exempt a public official from this requirement or some portion of this requirement for good cause shown.

5704 CONFIDENTIAL FINANCIAL DISCLOSURE FILINGS BY EMPLOYEES AND ADVISORY NEIGHBORHOOD COMMISSIONERS

5704.1 Any employee, other than a public official, 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 interests, as determined by the appropriate agency head, shall file, before May 15th of each year, with the agency head a report containing a full and complete statement of the information required by section 5701.

5704.2 On or before April 15th of each year, each agency head shall designate the persons in the agency required to submit a confidential report by name, position, and grade level, and shall supply this list to the Ethics Board and the D.C. Ethics Counselor on or before May 1st of each year. Notice to and designation of required FDS filing employees shall be done in a manner consistent with 6 DCMR § 1800.

5704.3 Upon review of the confidential report, an agency head shall immediately forward to the Ethics Board any violation of the Code of Conduct whenever there is reason to believe that such a violation has occurred.

5704.4 Advisory Neighborhood Commissioners shall file a Confidential report containing a full and complete statement of the information required by section 5701 before May 15th of each year, with the BEGA.

CHAPTER 58 REGISTRATION OF LOBBYISTS

5800 REGISTRATION REQUIREMENTS

5800.1 The provisions of this chapter shall establish the procedures for the filing of registration forms for lobbyists pursuant to the authority set forth in the Subtitle E of the Government Ethics Act of 2011 (Ethics Act), Title II of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*)(2012 Supp.).

5800.2 A person shall register as a lobbyist with the Director of Government Ethics (the Director) by filing the Lobbyist Registration Form if that person, under the following circumstances:

- (a) Receives compensation of two hundred fifty dollars (\$250) or more in any three (3) consecutive calendar month period for lobbying;
- (b) Receives compensation from more than one (1) source which totals two hundred fifty dollars (\$250) or more in any three (3) consecutive month period for lobbying; and
- (c) Expends funds of two hundred fifty dollars (\$250) or more in any three (3) consecutive calendar month period for lobbying.

5800.3 The registration for lobbyists shall be two hundred fifty dollars (\$250).

5800.4 The registration for lobbyists who lobby solely for nonprofit organizations shall be fifty dollars (\$50).

5800.5 The Lobbyist Registration Form shall include the following information:

- (a) Registrant's name, permanent address and temporary address, if any, while lobbying;
- (b) Name and address of each person designated to lobby on behalf of the registrant;
- (c) Name, address, and nature of the business of any person who compensates the registrant and the terms of the compensation;
- (d) Identification, by formal designation if known, of matters on which the registrant expects to lobby; and
- (e) Registrant's verification under oath of the required information; provided, that if the registrant is not an individual, an authorized officer or agent of the registrant (other than the lobbyist retained by contract to provide lobbying services) shall sign the form.

5800.6 A lobbyist shall file a separate registration form for each person from whom he or she receives compensation for lobbying.

5801 EXEMPTION FROM REGISTRATION REQUIREMENTS

5801.1 A person shall be exempt from the registration requirements of § 5800 if that person is any of the following:

- (a) A public official, or an employee of the United States acting in an official capacity;

- (b) A publisher or working member of the press, radio, or television who, in the ordinary course of business, disseminates news or editorial comment to the general public;
- (c) Any candidate, member or member-elect of an Advisory Neighborhood Commission; or
- (d) Any entity specified in D.C. Official Code § 47-1802.01(4) whose activities do not include lobbying, the result of which shall inure to the financial gain or benefit of the entity.

5801.2 Lobbying activities shall not include:

- (a) Appears or presents written testimony, on his or her own behalf, or is represented by an attorney, in an informal or formal rule-making, rate-making or adjudicatory hearing before an executive agency or the Tax Assessor;
- (b) Supplies information in response to written inquiries by an executive agency, the Council of the District of Columbia or any public official;
- (c) Inquires only as to the status of specific actions by an executive agency or the Council of the District of Columbia;
- (d) Testifies before, or submits written testimony to, a committee of the Council of the District of Columbia, or the Council, in a proceeding for which there is a public record or testimony submitted for inclusion in the public record;
- (e) Communicates through a newspaper, television, or radio of general circulation or a publication whose primary audience is the organization's membership; or
- (f) Conveys communications, indirectly or directly, by a bona fide political party, as defined in section 101 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*)(2012 Supp.).

5801.3 A person, who may be exempt from the registration requirements of this chapter, may be a registrant for other purposes pursuant to the Act; provided, that the activity of the person shall not constitute a conflict of interest as described in section 223 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.23)(2012 Supp.),

5802 ACTIVITY REPORTS

5802.1 Each registrant shall file an activity report, on a form prescribed by the Director, for each person from whom compensation is received during the reporting period.

5802.2 Each activity report shall include the following:

- (a) A complete and current statement of the information required to be supplied pursuant to § 5800;
- (b) Total expenditures on lobbying broken down into the following categories:
 - (i) Office expenses;
 - (ii) Advertising and publications;
 - (iii) Compensation to others;
 - (iv) Personal sustenance, lodging, and travel, if compensated; and
 - (v) Other expenses;
- (c) Each expenditure of \$50 or more shall also be itemized by the date, name, and address of the recipient, and the amount and purpose of the expenditure;
- (d) Each political expenditure, loan, gift, honorarium, or contribution of \$50 or more made by the registrant or anyone acting on behalf of the registrant to benefit an official in the legislative or executive branch, a member of his or her staff or household, or a campaign or testimonial committee established for the benefit of the official, shall be itemized by date, beneficiary, amount, and circumstances of the transaction, including the aggregate of all expenditures that are less than \$50;
- (e) Each official in the executive or legislative branch and any member of the official's staff, including personal and committee staff, who has a business relationship or a professional services relationship with the registrant shall be identified by name and the nature of the business relationship with the registrant;
- (f) Each official in the executive or legislative branch with whom the registrant has had written or oral communications during the reporting periods related to lobbying activities conducted by the registrant shall also be included in the report, identifying the official with whom the communication was made; and
- (g) Each person to whom the registrant has given compensation to lobby on his or her behalf shall also be listed in the report.

- 5802.3 Each registrant shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the activity reports required to be made pursuant to this section for 5 years from the date of filing of the report containing these items. These materials shall be made available for inspection upon requests by the Director after reasonable notice.
- 5802.4 Each registrant who does not file a report required by this section for a given period is presumed not to be receiving or expending funds that are required to be reported under this section.
- 5802.5 A registrant shall exclude from activity reports any transactions related to the registrant's exempt status, if any, under § 5801.
- 5802.6 No later than 10 days after a registrant files a registration form with the Director he or she shall publish on the Board's website a summary of all information required to be submitted under this section.

5803 FILING DEADLINES

- 5803.1 Each registrant shall file a Lobbyist Registration Form at the following times:
- (a) No later than fifteen (15) days after becoming a lobbyist; and
 - (b) On or before January 15th of each year thereafter.
- 5803.2 Each registrant shall file Lobbyist Activity Reports of the previous six (6) month period each year on the following dates:
- (a) January 10th, for the period covering July 1st through December 31st; and
 - (b) July 10th, for the period covering January 1st through June 30th.
- 5803.3 The Lobbyist Activity Report may be filed in an electronic format at the Board Website; provided, that the registrant verifies the electronically filed Report by submitting a digitized copy of the signed certification as a separate file in the electronic submission.

5804 LIMITATIONS ON LOBBYING AND PROHIBITED ACTIVITY

- 5804.1 No registrant or anyone acting on behalf of a registrant shall offer, give, or cause to be given a gift or service to an official in the legislative or executive branch or a member of his or her staff that exceeds \$100 in value in the aggregate in any calendar year. This limitation shall not be construed to restrict in any manner contributions authorized in sections 333, 334, and 338 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code §§ 1-1163.33, 1-1163.34 and 1-1163.38)(2012 Supp.),

- 5804.2 No official in the legislative or executive branch or a member of his or her staff shall solicit or accept anything of value in violation of subsection (a) of this section.
- 5804.3 No person shall knowingly or willfully make or cause to be made any false or misleading statement or misrepresentation of the facts relating to pending administrative decisions or legislative actions to any official in the legislative or executive branch;
- 5804.4 No person shall, knowing a document to contain a false statement relating to pending administrative decisions or legislative actions, cause a copy of the document to be transmitted to an official in the legislative or executive branch without notifying the official in writing of the truth.
- 5804.5 No information copied from registration forms and activity reports required by this title or from lists compiled from such forms and reports shall be sold or utilized by any person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or similar fundraising affair or for any commercial purpose.
- 5804.6 No public official shall be employed as a lobbyist while acting as a public official, except as provided in section 228 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.28)(2012 Supp.),
- 5804.7 No lobbyist or registrant or person acting on behalf of the lobbyist or registrant, shall provide legal representation, or other professional services, to an official in the legislative or executive branch, or to a member of his or her staff, at no cost or at a rate that is less than the lobbyist or registrant would routinely bill for the representation or service in the marketplace.
- 5804.8 Notwithstanding § 5804.7, a nonprofit organization that routinely provides legal representation or other services to clients at no cost may provide such representation or services to such client when doing so serves the purposes for which such services are routinely provided, and the representation and services are not provided by a lobbyist or registrant.

5805 FINES AND PENALTIES

- 5805.1 The Director of Government Ethics may refer to the United States Attorney for prosecution any person who willfully and knowingly violates subtitle E of the Ethics Act. Penalties for violations include a fine of not more than \$5,000, or imprisonment for not more than 12 months, or both.
- 5805.2 In addition to any penalty available under 5805.1, any person convicted of a violation under that subsection may, at the discretion of the Board, be prohibited from serving as a lobbyist for a period of three years from the date of the conviction.

5805.3 Any person who files a lobbyist report or registration form in an untimely manner shall be assessed a civil penalty of \$10 per day up to 30 days (excluding Saturdays, Sundays, and holidays) that the report or registration form is late. This civil penalty shall be imposed as a ministerial matter by the Director of Government Ethics. Upon petition, the Ethics Board may waive the penalty for good cause shown.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting the Board of Ethics and Government Accountability at bega@bega.dc.gov, or by visiting the Board Office located at 441 4th Street, N.W., Suite 830 South, Washington, D.C. 20001, or by visiting the Board website at bega.dc.gov. All persons desiring to file comments on the proposed rulemaking action should submit written comments via email to bega@dc.gov or by mail to the Board Office at the above address, to the attention of Darrin P. Sobin, Director of Government Ethics, no later than thirty (30) days after the publication of this notice in the *D.C. Register*.