

District Ethics Manual

District of Columbia Board of Ethics and Government Accountability

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Ten Principles of Ethical Conduct

District of Columbia government employees are subject to many specific ethics standards from multiple sources. This brief summary provides a useful digest of those restrictions, identifying ten principles that can explain nearly all of those ethics standards.

1. **Public office is a public trust.**

A government employee is given access to governmental power and resources for one purpose: so that the employee may use them to serve the government and the broader public interest. If the employee uses the government's power and resources for a private (rather than public) purpose, the employee violates the public's trust and undermines the public's confidence in its government.

2. **Avoid financial conflicts of interest.**

A government employee shall not participate in government action that could affect his or her own financial interests or that of another person or organization with which the employee is affiliated.¹

3. **Avoid representational conflicts of interest.**

A government employee shall not represent a non-government party in a matter before the District government or that involves the District government.²

4. **Avoid gifts and payments from interested parties.**

A government employee shall not solicit or accept anything of value from those who are regulated by or are doing business with the government.³

5. **Avoid outside payment for government work.**

A government employee shall not solicit or accept anything of value for doing his or her government work.⁴

6. **Act impartially.**

A government employee must act impartially and avoid giving preferential treatment to anyone.⁵

7. **Safeguard government resources.**

A government employee shall not use government letterhead, personnel, equipment, supplies, or other resources for a non-government purpose, nor engage in personal or private activities during times when he or she is required to perform work for the government.⁶

¹ See, e.g., 18 U.S.C. § 208, D.C. Code § 1-1106.01, D.C. MUN. REGS. tit. 6 § 1805 (hereinafter the District Personnel Manual or DPM)

² See, e.g., 18 U.S.C. §§ 203, 205.

³ See, e.g., DPM § 1803.2.

⁴ See, e.g., 18 U.S.C. §§ 201, 209.

⁵ See, e.g., DPM § 1803.1(a)(2).

⁶ See, e.g., DPM §§ 1803.1(a)(1), 1804.1(b), 1806.1.

8. Safeguard confidential non-public information.

A current or former government employee shall not reveal or use for a non-government purpose confidential nonpublic information.⁷

9. Disclose waste or illegal conduct by government officials to the appropriate authorities.

Government employees are often in the best position to detect waste or illegal conduct by other government officials. In order to ensure that such malfeasance is properly addressed, employees must notify the appropriate authorities.⁸

10. Abide by revolving door restrictions.

The government has put in place certain rules restricting former government officials' ability to represent non-government parties. These restrictions are aimed in part at preventing former officials from exploiting their knowledge of particular matters or of their former agency.⁹

⁷ See, e.g., DPM 1803.8

⁸ See, e.g., DPM 1803.8, 1803.9.

⁹ See, e.g., 18 U.S.C. § 207(a), DPM 1805.

The Board of Ethics and Government Accountability and the Scope of the Ethics Manual

The Board of Ethics and Government Accountability (“BEGA”) came into existence when the Council enacted, and the Mayor signed into law, 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.), also known as the Ethics Act. The Ethics Act is an attempt to move most government ethics matters to a single entity for advice-giving, enforcement and financial reporting. The BEGA is made up of (3) three part-time Board members chosen from outside of the government. These members are nominated by the Mayor and confirmed by the Council, but are otherwise independent. The three members serve varying terms from (2) two years to (6) years. Together, they oversee the Office of Government Ethics (OGE), which is staffed with a Director and several attorneys and investigators, among other support staff.

The BEGA, acting through the OGE, enforces the Code of Conduct, a set of District statutes and regulations that apply to all District government employees¹⁰ – an expansive definition that includes elected public officials, employees, members of Boards and Commissions (whether or not such individuals are compensated) including Advisory Neighborhood Commissioners.¹¹ The BEGA has substantial authority to conduct investigations into allegations of ethical misconduct, including subpoena authority. It also has the ability to issue fines where violations have occurred. The BEGA, however, also has the authority to provide ethics advice to officials and employees, who may then rely upon that advice. Part of that advice-giving function includes production of this Ethics Manual.

This Manual is a “plain English” guide to the ethics standards that apply to most District of Columbia government employees as that term is defined in the Ethics Act.

The Ethics Manual describes in a general way these ethics standards and highlights issues that often arise. It does not describe all of the ethics statutes and regulations that apply, and it does not cover every situation that can arise. This Manual is not intended to replace the advice of Agency Ethics Counselors, the D.C. Ethics Counselor or the BEGA. It is intended to give a basic framework and help in your everyday ethics questions.

If you have an ethics question, you should contact your Agency Ethics Counselor, the D.C. Ethics Counselor (the Attorney General), or the BEGA before taking action.

Finally, special acknowledgements go to the Attorney General for producing the initial Ethics Manual from which this version has been adopted.

¹⁰ D.C. Official Code § 1-1161.01(7).

¹¹ D.C. Official Code § 1-1161.01(18).

General Ethics Standards

There are dozens of *specific* ethics standards that apply to District employees, such as restrictions on gifts and outside activities. In addition to the specific standards, the District also imposes some *general* standards on its employees.

To figure out whether particular conduct is permissible (such as whether you can accept a particular gift), you need to consider both the *specific* ethics standards that apply and the *general* standards.

The general standards include the following:

Public office is a public trust. Any effort to obtain personal gain through official conduct violates that trust.¹²

A District employee must maintain a high level of ethical conduct. She must not take, order, or participate in any official action that would adversely affect the public's confidence in the integrity of government.¹³

A District employee must not:

- (1) use public office for private gain;
- (2) give preferential treatment;
- (3) impede government efficiency or economy;
- (4) lose complete independence or impartiality;
- (5) make a government decision outside official channels; or
- (6) affect adversely the public's confidence in the integrity of government.¹⁴

¹² DPM 1800.

¹³ DPM § 1800.1.

¹⁴ DPM § 1803.1(a).

Gifts to Employees

As a general rule, a District employee may not solicit or accept a *gift* from:

- a “*prohibited source*”¹⁵ or
- another District employee with a lower salary.¹⁶

Also, a District employee may not solicit or accept a gift given to influence or reward government action.¹⁷

What counts as a *gift*?

A gift is a tip, favor, loan (except a bank loan given at the bank’s usual rate), entertainment, present, or anything else of value received from someone else.¹⁸

Who is a *prohibited source*?

A “prohibited source” is anyone who is regulated by the District government, or anyone who does, or is seeking to do, business with the District government through a contract, grant or other financial arrangement.¹⁹

Exceptions to the prohibited source rule

Does the gift restriction mean a District employee can't accept a present from his or her grandmother who lives in the District? **No**. As long as the gift fits one of the exceptions, you can accept it. There are exceptions for gifts:

1. from people with whom the employee has a "bona fide personal relationship" (like a grandmother),²⁰
2. worth less than \$10 for special occasions that do not happen every year (such as marriage or retirement but not a birthday);²¹
3. promotional materials (such as pens, note pads, or calendars) worth less than \$10;²²
4. food and drinks of nominal value at a lunch or dinner meeting, or at an event sponsored by a non-District organization *if* the employee’s supervisor gives permission.²³

¹⁵ D.C. Official Code § 1-1161.01(46) and DPM §1803.2.

¹⁶ DPM §1803.4.

¹⁷ 18 U.S.C. §§ 201(b)(2), 201(c)(1)(B).

¹⁸ DPM §§ 1803.2(b), 1803.3(c).

¹⁹ D.C. Official Code § 1-1161.01(46) and DPM § 1803.2(b).

²⁰ DPM § 1803.3(a).

²¹ DPM § 1803.3(e).

²² DPM § 1803.3(d).

²³ DPM § 1803.3(b).

What an employee should do if the employee receives a prohibited gift

If a prohibited source gives an employee a gift that does not fit into an exception, the employee has three options. First, the employee can return it.²⁴ Second, the employee can pay the donor the value of the gift.²⁵ Finally, if the gift is perishable and the employee cannot return it, the employee can share it with the office staff, donate it to charity, or destroy it.²⁶

Restriction on gifts between employees

In general, an employee cannot accept a gift from another District employee who has a lower salary; make a donation to a superior; or ask another employee to donate cash for a superior. But an exception does allow an employee to give and accept gifts worth less than \$10 for special occasions that don't happen every year.²⁷

Restriction on gifts given to influence or reward government action

An employee must not solicit or accept a gift in return for being influenced in her government work (also known as a bribe), or to reward the employee for government action.²⁸ An employee also cannot accept any gifts or payments from a non-District government source for work as a District employee (also known as "salary supplementation").²⁹

Q & A: Gifts

Q: My boss is having a baby. Am I allowed to get her a gift to congratulate her?

A: Yes, you can give a gift to a superior if it is for a special, infrequent occasion, like a baby shower.³⁰ So long as the gift you give, or the amount of money from any person you collect in order to buy the gift, is not more than \$10, you can give your boss a baby shower present.³¹

Q: Can I collect money for a large present for my boss's baby shower, like a crib?

A: Yes. In order to buy a present for a superior to celebrate a special, infrequent occasion, you may invite donations of up to \$10 from another employee.³² It must be clear, though, that

²⁴ DPM § 1803.2(c)(1).

²⁵ Id.

²⁶ Id. at § 1803.2(c)(2).

²⁷ Id. at §§ 1803.4, 1803.5.

²⁸ 5 U.S.C. §§ 201(b)(2), (c)(1)(B).

²⁹ DPM § 1803.7.

³⁰ DPM § 1803.4.

³¹ Id.; DPM §1803.5.

these donations are voluntary.³³ Through such voluntary donations you can collect money to buy a larger present.

Q: It is my boss's birthday. Am I allowed to get her a gift?

A: No. While you can give a superior a gift for a special, infrequent occasion, a birthday is not one of these occasions because it happens every year.³⁴

Q: As part of my District job, I collaborated with a non-profit organization on a new initiative for safety in public schools. The District has adopted those new standards, and the leaders of the non-profit want to treat me to a nice (and expensive) lunch to express their gratitude for my hard work. My collaboration with them has ended. May they treat me to lunch?

A: No. A federal criminal statute prohibits you from accepting anything of value "because of" an official act you took as a District employee.³⁵ In addition, the non-profit organization is a "prohibited source" under the District's gift regulation, so you may not accept anything of value from it.³⁶ You may join them for lunch, but you will have to pay for your lunch yourself.

³² DPM §§ 1803.4, 1803.5.

³³ DPM § 1803.4.

³⁴ Id. at § 1803.3(e).

³⁵ 18 U.S.C. § 209; DPM § 1803.7.

³⁶ DPM § 1803.2.

Donations to and Volunteers for the District Government

A previous page described the restrictions on gifts *to District employees*. This page addresses two related topics: donations *to the District government* and volunteers for a District agency.

There are specific procedural requirements that must be followed for donations of goods and services to the District and for volunteering with a District agency.

Donations of Goods and Services

Individuals and organizations may donate goods and services to the District if that donation will assist the District in performing a government function.³⁷ For example, a business with excess office furniture could donate that furniture to a District agency that needed furniture for its own offices.

The Office of Partnerships and Grant Services has created a special process for accepting donations. Agencies must fill out an on-line application process before soliciting or accepting a donation.³⁸ There are specific ethics-related restrictions on donations. For example, the District should not accept a donation that would create a conflict of interest (unless the Attorney General agrees to waive the conflict for good cause shown), and donations must not imply the endorsement of products.³⁹

Volunteering for the District

Individuals who volunteer their services for the District are subject to the same standards of conduct as regular employees, including conflicts of interest.⁴⁰ The volunteer must sign a volunteer agreement,⁴¹ must be assigned an agency employee to supervise the volunteer,⁴² and must be informed of the scope of the services to be performed.⁴³

Q & A: Volunteering for the District

Q: A retired business consultant wants to volunteer to assist an agency become more efficient. If he volunteers for the District, will he be able to continue his other activities?

³⁷ Mayor's Memorandum 2012-3.

³⁸ Office of Partnerships and Grants Donation Agreement, *available at* <http://www.opgd.dc.gov/opgd/cwp/view,a,1316,q,649330.asp>.

³⁹ *Id.*

⁴⁰ DPM § 4000.6.

⁴¹ DPM § 4000.25.

⁴² DPM § 4000.14.

⁴³ DPM § 4000.25(a).

A. As a volunteer for the District, he will be subject to the same ethics standards as District employees, including restrictions on outside activities.⁴⁴

⁴⁴ DPM § 4000.6.

Financial Conflicts of Interest

District employees are subject to several different conflict of interest standards. The most important of these standards is a criminal statute that prohibits an employee from participating in a matter that could affect his or her own financial interests or those of his or her spouse, minor children, affiliated organizations or those with whom they may have future employment.⁴⁵

The Federal Criminal Conflict of Interest Statute:⁴⁶

An employee must not “*participate personally and substantially*” in a “*particular matter*” that could affect his or her own financial interests, or the financial interest of:

- his/her spouse,
- his/her minor children,
- any organization in which the employee serves as officer, director, trustee, general partner or employee, or
- anyone with whom the employee is negotiating or has any arrangement concerning prospective employment.⁴⁷

What is a “*particular matter*?”

A “*particular matter*” includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.⁴⁸ Legislation and policy-making that are general in nature are not “*particular matters*,” but if it is narrowly focused upon the interests of a specific industry, profession or class, then it is a “*particular matter*.”⁴⁹ If you have a question about whether something is a “*particular matter*,” ask your Agency Ethics Counselor for advice.

What counts as “*participation*?”

An employee *participates* in a matter when she takes action on it.⁵⁰ Examples of participation include making a recommendation or decision, giving advice, or investigating, and the active supervision of a subordinate who is taking action.⁵¹ On the other hand, simply knowing about the government’s action in a matter does not constitute “*participation*.”⁵²

⁴⁵ 18 U.S.C. § 208(a).

⁴⁶ 18 U.S.C. § 208(a).

⁴⁷ *Id.*

⁴⁸ 5 C.F.R. § 2640.103(a)(1).

⁴⁹ 5 C.F.R. § 2640.103(a)(1).

⁵⁰ 5 C.F.R. § 2635.402(b)(4).

⁵¹ *Id.*

⁵² *Id.*

It's not just your own financial interests that matter.

It is important to remember that an employee may need to avoid participating in a matter even if her own financial interests would not be affected. The federal statute prohibits an employee from participating if the matter could affect the financial interests of her spouse, her minor children, any organization with which she is affiliated as employee, board member, etc. (whether or not she receives compensation from that organization), and anyone with whom she is negotiating for future employment or has an arrangement regarding future employment.⁵³

District Conflict of Interest Regulations:

In addition to this federal standard, there are several District regulations that also impose conflict of interest restrictions. They are summarized below.

An employee must not work on matters that involve a nongovernmental organization in which the employee or a family member (including parents, siblings, adult children and their spouses or domestic partners) has a financial interest.⁵⁴

If there is a reasonable likelihood that an outside entity would be involved in the employee's District's work, then she may not have a financial interest in it and may not serve as an officer or director of it.⁵⁵

An employee must not perform an official duty if she or a member of her household (her minor children, spouse and blood relations who live with her) has real property, stocks, bonds, commodities or other property that could "unduly influence or give the appearance of unduly influencing" her in that duty.⁵⁶

An employee and members of her household must not operate or acquire an interest in a business that is related to her duties or to any governmental matter that she could influence.⁵⁷

Example: Financial Conflict of Interest

*An employee of the Department of General Services has just been asked to serve on the technical evaluation panel to review proposals for a new maintenance contract. Clean Corporation, a closely held company in which his wife owns most of the stock, has submitted a proposal. Because the decision whether to award the contract to Clean Corporation will have a direct and predictable effect on his wife's financial interests, the employee cannot participate on the technical evaluation team.*⁵⁸

⁵³ Id.

⁵⁴ D.C. Official Code § 1-1162.23; DPM § 1805.3.

⁵⁵ DPM § 1804.1(d).

⁵⁶ DPM § 1805.1.

⁵⁷ DPM § 1805.2.

⁵⁸ D.C. Official Code § 1-1162.23(a); 18 U.S.C. § 208(a).

Use of Public Office for Private Gain

No employee may use his or her official position or title and may not personally and substantially participate in any particular matter that the employee knows is likely to have a direct and predictable effect on the employee's own financial interests or *those of a person closely affiliated with the employee*.⁵⁹

Who counts as “a person closely affiliated with the employee?”

“*person closely affiliated with the employee*” means an employee's

- spouse
- dependent child
- general partner
- a member of the employee's household; or
- an affiliated organization.⁶⁰

What counts as an “affiliated organization?”

An individual is considered “affiliated” with an organization if

- the employee or a member of the employee's household serves as a
 - director
 - officer
 - trustee
 - general partner
 - owner
 - stockholder with at least \$1,000 worth of its stock, or
- the business is a client of the employee
- the employee is negotiating for or has an arrangement concerning prospective employment with the entity.⁶¹

⁵⁹ D.C. Official Code § 1-1162.23(a).

⁶⁰ Id. at § 1-1161.01(43).

⁶¹ Id. at § 1-1161.01(3).

Use of Nonpublic Information

In addition, a District employee must not use information that is not available to the public for personal benefit or any other non-governmental purpose.⁶² The employee also must not permit others to use nonpublic information for such purposes.⁶³

Use of Government Property

Government property should only be used for government rather than any private purpose.⁶⁴

In general, a District employee must not use – or allow others to use – District property for anything other than “officially approved purposes.”⁶⁵ But the government has adopted four exceptions to this general rule.

- (a) If the District is distributing a material or service freely to DC residents or visitors, then a District employee may accept that material or service.
- (b) Recognized employee groups may use District facilities for authorized off-duty meetings or training.
- (c) District property may be used for non-government purposes if that use will not increase the maintenance cost of that property. (For example, a District employee may use library materials and other government-purchased books.)
- (d) A District employee may borrow office equipment if the employee:
 - 1) substantiates the need for it in writing;
 - 2) obtains prior approval from his/her supervisor;
 - 3) uses the property in his/her residence in a way that will benefit the District government; and
 - 4) duly notes this loan on the agency’s personal property records.⁶⁶

Gambling

In general, District employees must not gamble while they are on duty and while they are on government-owned or leased property.⁶⁷

The government has adopted two exceptions to this restriction on gambling. This restriction does not apply if an employee:

⁶² DPM § 1804.1(f).

⁶³ Id.

⁶⁴ DPM § 1806.1.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ DPM § 1808.1.

1. must engage in gambling as part of agency-approved law-enforcement duties, or
2. is engaging in lawful activities sponsored by the DC Lottery and Charitable Games Control Board.⁶⁸

⁶⁸ Id.

Nepotism: Helping Relatives Obtain District Jobs

It is important that the government makes decisions about whom to hire and whom to promote on the merits rather than on the basis of family connections. Therefore, a District employee should not take any action to influence a hiring or promotion decision that could benefit a relative. A federal statute specifically prohibits a District employee from hiring, promoting or influencing a decision to hire or promote the hiring or promotion of a relative.⁶⁹

According to the Comprehensive Merit Personnel Act:

A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control, any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency and is a relative of the individual. (D.C. Official Code § 1-618.04(a)).⁷⁰

Who counts as a “relative?”

A “relative” is a:

parent	child	sibling	uncle
aunt	first cousin	nephew	niece
spouse	father-in-law	mother-in-law	brother-in-law
sister-in-law	stepparent	stepchild	stepsibling or
half-sibling. ⁷¹			

What happens if a District employee violates this statute?

If a District employee violates the federal anti-nepotism statute, then the employee may be disciplined. If the employee relative is hired or promoted in violation of this statute, then that relative is not entitled to be paid.⁷²

⁶⁹ 5 U.S.C. § 3110.

⁷⁰ 5 U.S.C. § 3110(b) provides that a District employee must not appoint, employ, promote or advance any “relative” to a position in the District government. In addition, an employee may not advocate for a relative to be appointed, employed, promoted, or advanced in the District government.

⁷¹ This is a summary. For specific definitions of “relative, see D.C. Official Code § 1-618.04(d)(2) and 5 U.S.C. § 3110(a)(3).

⁷² See, D.C. Official Code § 1-618.04(b)(1) and 5 U.S.C. § 3110(c).

What about a “Significant Other” or Same-Gender Spouse?

This anti-nepotism statute reaches a spouse who is recognized by the federal government. In an August 19, 2013, Legal Advisory Opinion⁷³ citing *United States v. Windsor*,⁷⁴ the United States Office of Government Ethics gave guidance clarifying that federal ethics rules now apply to federal employees in same-sex marriages. Therefore, the terms “marriage,” “spouse,” and “relative” include same-sex marriages and same-sex spouses wherever those terms appear. The District adopts this clarification. Accordingly, wherever the terms “marriage,” “spouse,” and “relative” appear in the Code of Conduct, they now apply to same-sex marriages and same-sex spouses.

⁷³ Legal Advisory LA-13-10, dated August 19, 2013, <http://www.oge.gov/OGE-Advisories/Legal-Advisories/LA-13-10--Effect-of-the-Supreme-Court-s-Decision-in-United-States-v--Windsor-on-the-Executive-Branch-Ethics-Program/>.

⁷⁴ *United States v. Windsor*, 133 S. Ct. 2675 (U.S. 2013).

Fundraising for Non-Governmental Organizations

In general, a District employee may raise funds for a private organization on her own time and while she is away from the office.⁷⁵ But District employees must not use government time or property (including the District's email system) to raise money for a private cause, even for a worthy nonprofit organization.⁷⁶ It is also essential that District employees not feel pressured or coerced into contributing to such a cause. These limits on fundraising reflect the more general principle that public office should not be used for private gain.⁷⁷

In addition, District employees are not permitted to solicit, accept, or receive donations for political candidates in District regulated elections, whether on-duty or off-duty, unless the employee has filed as a candidate for political office. See "Restrictions on Political Activities."

The District does support an organized combined effort to raise money for non-profit organizations, DC One Fund, which permits employees to have donations to these organizations deducted directly from their paychecks.⁷⁸

Example

If you are raising money for your child's school by selling candy or seeking donations, you should not personally solicit other District employees at the office or use your District e-mail to ask them to purchase candy or donate money.⁷⁹ On the other hand, if your agency has a break room with a place for community announcements (such as a bulletin board), you could post a fundraising notice or catalog there.⁸⁰ That way, you can let your co-workers know about the cause, but they are unlikely to feel any pressure to assist in your fundraising.

⁷⁵ Administrative Memorandum No. 2006-1.

⁷⁶ DPM § 1804.1(b).

⁷⁷ DPM § 1803.1(1).

⁷⁸ Administrative Memorandum No. 2006-1.

⁷⁹ Id.

⁸⁰ Id.

Restrictions on Political Activities

Both federal and District law limit political activity by D.C. government employees. Effective January 28, 2013, the federal law (“federal Hatch Act”) was amended substantially, reducing the application and impact of the federal Hatch Act on District government employees.⁸¹ In its place, on February 19, 2013, the D.C. Council enacted a statute (the “Local Hatch Act”⁸²) to govern the political activities of D.C. government employees. The Local Hatch Act became effective on March 7, 2013. It is important to note, however, that the political activity of District employees is restricted by the Local Hatch Act and the Ethics Act.⁸³ In addition, the federal Hatch Act contains some restrictions that apply to District employee’s whose salary is paid in whole or in part with federal funds (i.e., a federal loan or grant to the District). These restrictions have been in effect for many years and were not repealed when Congress amended the federal Hatch Act. The following summarizes the current limitations and prohibitions for all District employees and for those who are also covered by the federal Hatch Act:

1. District law prohibits ALL government employees from working on any political campaign or engaging in any other type of political activity while at work or otherwise on duty.
2. District law prohibits the use of government resources for political campaigns.
3. The Local Hatch Act prohibits D.C. government employees from engaging in political activity, in a D.C. government building or vehicle, or while in their uniform or official insignia.
4. The federal Hatch Act prohibits those D.C. government employees covered by it from participating in certain political activities.

Employees who violate these provisions may be subject to discipline (including termination), administrative fines, or criminal prosecution. A more detailed description of these restrictions and information about the penalties for violations is set out below.

1. Prohibition Against Engaging in Political Activity during Work Hours or While on Duty⁸⁴

No D.C. government employee may work on any political activity during work hours.

Political activity includes supporting or opposing any:

- candidate (partisan or nonpartisan)
- initiative

⁸¹ Public Law No. 112-230, “Hatch Act Modernization Act of 2012.”

⁸² “Prohibition on Government Employee Engagement in Political Activity Act of 2010”, effective March 31, 2011 (D.C. Law 18-335; 58 DCR 599), as amended by the “Prohibition on Government Employee Engagement in Political Activity Temporary Amendment Act of 2010” (D.C. Law 20-4, effective May 18, 2013) (the “Local Hatch Act”).

⁸³ Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 (2012 Supp.)).

⁸⁴ D.C. Official Code § 1-1163.36 and the Local Hatch Act, § 4.

- referendum or
- recall measure

2. Prohibition Against Using Government Resources for Political Campaigns

Government resources may not be used during or outside of work hours for any of the political activities listed above.⁸⁵

Government resources include:

- Funds
- Personal services of employees during their hours of work
- Supplies
- Materials
- Equipment (including computers, and the use of email and the Internet)
- Office space
- Facilities
- Telephones and utilities (including use of government telephones for calls, texting, or any other information gathering or message sending capability, even if done using a personal account)

3. District Restrictions on Political Activity (Local Hatch Act)

The Local Hatch Act, which became effective on March 7, 2013, establishes restrictions on political activity similar to those previously provided by the federal Hatch Act. The Local Hatch Act defines a D.C. government “employee” as any individual paid by the D.C. government from grant or appropriated funds for his or her services or holding office in D.C., a member of a board or commission who is nominated for a position pursuant to § 2(e) of the Confirmation Act of 1978⁸⁶, or a member of a board or commission who is nominated pursuant to § 2(f) of the Confirmation Act of 1978⁸⁷ when the member is engaged in political activity that relates to the subject matter that the member’s board or commission regulates.⁸⁸

If not otherwise employed by the District, the Local Hatch Act *does not* include the following as D.C. government employees:

- Employees of the courts of the District of Columbia;
- The Mayor, the Attorney General (after January 1, 2014)⁸⁹;
- The members of the Council;
- Advisory Neighborhood Commissioners;

⁸⁵ D.C. Official Code § 1-1163.36.

⁸⁶ D.C. Official Code § 1-523.01(e).

⁸⁷ D.C. Official Code § 1-523.01(f).

⁸⁸ D.C. Law 18-355, Sec. 2. (3).

⁸⁹ Pursuant to the “Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013,” effective October 22, 2013, Attorney General will not be an elected office until 2018.

- Members of the State Board of Education; or
- Members of the District of Columbia Statehood Delegation.⁹⁰

Political activities *prohibited* by the Local Hatch Act

The Local Hatch Act defines “political activity” as any activity that is regulated by the District and directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.⁹¹

When engaging in “political activity” that is regulated by the District, as defined above, D.C. government employees cannot:

- Use their official authority or influence for the purpose of interfering with or affecting the result of an election; or
- Knowingly solicit, accept, or receive a political contribution from any person (except if the employee has filed as a candidate for political office); or
- Knowingly direct, or authorize anyone else to direct, that any subordinate employee participate in an election campaign or request a subordinate to make a political contribution.⁹²

D.C. government employees engaged in political activity that is not regulated by the District are permitted to solicit, accept, or receive political contributions from any person. That said, they are prohibited from doing so while:

- On duty;
- In any room or building occupied in the discharge of official duties in the D.C. government, including any agency or instrumentality thereof;
- Wearing a uniform or official insignia identifying the office or position of the employee;
- Using any vehicle owned or leased by the District, including an agency or instrumentality thereof.

D.C. government employees who *are* District residents cannot:

- File as a candidate for election to a partisan political office.⁹³

This means that D.C. government employees who *are not* District residents may file as a candidate to a partisan political office in their local, non-District elections without restriction by the Local Hatch Act, while D.C. government employees who *are* District residents may file as candidates for District office as long as it is a **non-partisan District office**.

⁹⁰ D.C. Law 18-355, Sec. 2. (3)(A)(i-vii).

⁹¹ D.C. Law 18-355, Sec. 2. (8)(A).

⁹² D.C. Law 18-355, Sec. 3. (a)(1), (2), and (4).

⁹³ D.C. Law 18-355, Sec. 3. (a)(3).

D.C. government employees are prohibited from engaging in *ALL* political activity, regardless of whether the political activity is regulated by the District – while:

- On duty;
- In any room or building occupied in the discharge of official duties in the D.C. government, including any agency or instrumentality thereof;
- Wearing a uniform or official insignia identifying the office or position of the employee;
- Using any vehicle owned or leased by the District, including an agency or instrumentality thereof.⁹⁴

In addition, a D.C. government employee may not knowingly request, or authorize anyone else to request, that any subordinate employee engage in political activity or use his/her official authority or influence for the purpose of interfering with or affecting the result of an election.⁹⁵

Political activities *permitted* by the Local Hatch Act

The Local Hatch Act permits D.C. government employees to take an active part in political management or in political campaigns.⁹⁶ This means that D.C. government employees who *are* District residents now are permitted to file as candidates for **non-partisan** political office in the District. The Local Hatch Act defines “partisan political office” as any office in the District government for which any candidate is nominated or elected as representing a party, any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude an office or position within a political party or affiliated organization.⁹⁷ Simply put, D.C. government employees who *are* District residents now may file as candidates for District office as long it is a **non-partisan District office**. D.C. government employees who *are not* District residents may participate in their local, non-District elections without restriction by the Local Hatch Act.

In addition to these permitted activities, the Mayor and each member of the Council may designate one D.C. government employee *while on leave* to knowingly solicit, accept, or receive political contributions. The designated D.C. government employee may not perform this function while on duty or in any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof. The designation must be made in writing and filed with the Board of Ethics and Government Accountability.

Enforcement of the District’s laws

Enforcement authority for violations of the prohibitions against engaging in political activity during work hours, the prohibitions against using government resources for political campaigns, and the Local Hatch Act rests with BEGA. Violations constitute a violation of the Code of Conduct as set forth in the Ethics Act.⁹⁸ Violations shall be enforceable by BEGA in

⁹⁴ D.C. Law 18-355, Sec. 4. (a)(1-4).

⁹⁵ D.C. Law 18-355, Sec. 4. (b).

⁹⁶ D.C. Law 18-355, Sec. 3. (a).

⁹⁷ D.C. Law 18-355, Sec. 2. (7).

⁹⁸ D.C. Official Code § 1-1161.01(7).

accordance with the Ethics Act. These include a civil penalty of not more than \$5,000 per violation, or 3 times the amount of an unlawful contribution, expenditure, gift, honorarium, or receipt of outside income for each violation. Each occurrence of a violation and each day of noncompliance shall constitute a separate offense. Additionally, a violation of the Code of Conduct that substantially threatens the public trust shall be fined not more than \$25,000.

If you have questions about the District's laws, you may contact BEGA. Inquiries may be made in writing, by telephone, or by email to:

Board of Ethics and Government Accountability
One Judiciary Square
441 4th Street NW, 830 South, Washington, DC 20001
Phone: (202) 481-3411
Email: bega@dc.gov

4. Federal Restrictions on Political Activity (the Hatch Act)

The federal Hatch Act was amended in 2012 to remove many restrictions on the political activity of D.C. government employees.⁹⁹ This amendment allowed for creation of the Local Hatch Act, which now governs the political activity of all D.C. government employees.

Although all D.C. government employees are now covered by the Local Hatch Act, those employees whose salaries are paid in whole or in part with federal funds ("covered District employees") are also covered by specific provisions in the federal Hatch Act.¹⁰⁰ Your agency head is required to inform you if you are a covered District employee.

A covered District employee may not:

- (1) use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- (2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or
- (3) if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency, be a candidate for elective office.¹⁰¹

Covered District employees must comply with the federal Hatch Act, the Local Hatch Act, and the Ethics Act.

Enforcement of the federal Hatch Act

The federal Hatch Act is enforced by a federal agency: the U.S. Office of Special Counsel (OSC). OSC initiates investigations and, if the allegation has merit, can bring an

⁹⁹ Public Law No. 112-230, "Hatch Act Modernization Act of 2012."

¹⁰⁰ 5 U.S.C. § 1501(4) (defining who is covered).

¹⁰¹ 5 U.S.C. § 1502).

enforcement action with the U. S. Merit Systems Protection Board (MSPB).¹⁰² This enforcement action may lead to an employee being terminated.¹⁰³ Enforcement may also lead to reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.¹⁰⁴ A violation of the federal Hatch Act may also be a violation of the District’s personnel laws and regulations, which include the District’s Code of Conduct. Violation of these laws and regulations, could result in disciplinary action against an employee (including termination),¹⁰⁵ or enforcement action (including fines) brought by BEGA in the case of a violation of the Code of Conduct.

If you have questions about the federal Hatch Act specifically, you may contact the Hatch Act Unit of the federal government’s Office of Special Counsel (OSC). Inquiries about the federal Hatch Act may be made in writing or by telephone to:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Tel: (800) 85-HATCH or (800) 854-2824
(202) 254-3650
Fax: (202) 254-3700

Requests for federal Hatch Act advisory opinions (only) may be made by e-mail to:
hatchact@osc.gov

Q & A: Restrictions on Political Activities

Q: What governed the political activity of D.C. government employees during the period between January 28, 2013, when the federal Hatch Act Modernization Act became effective, and March 7, 2013, when the Local Hatch Act became effective?

A: Section 8(b) of the Local Hatch states that –

“For an offense committed between January 29, 2013, and the effective date of the Prohibition on Government Employee Engagement in Political Activity Emergency Amendment of 2013, passed on an emergency basis on February 19, 2013 (Enrolled version of Bill 20-137)(“Emergency Act”), this shall not be construed to prohibit any conduct that was proscribed under the Federal Hatch Act, 5 U.S.C. § 7321 *et seq.*, or this act, or authorize any penalties that were not available before the effective date of the Emergency Act.”

¹⁰² 5 USC § 1504.

¹⁰³ 5 USC § 1505.

¹⁰⁴ 5 USC § 7326.

¹⁰⁵ 6 DCMR § 1619.

This means that for activity between January 28, 2013 and March 7, 2013, political activity was governed by the Local Hatch Act, but that enforcement will not be retroactive.

Q: As a D.C. government employee, can I knowingly solicit, accept, or receive political contributions?

A: No, you are not permitted to solicit, accept or receive political contributions for a political activity that is regulated by the District, unless you have filed as a candidate for political office.

Q: What if the political activity is not regulated by the District, i.e. in Maryland or Virginia?

A: In the case of a political activity that is not regulated by the District, a D.C. government employee is permitted to solicit, accept or receive political contributions. That said, they are prohibited from doing so while:

- On duty;
- In any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof;
- While wearing a uniform or official insignia identifying the office or position of the employee; or
- Using any vehicle owned or leased by the District of Columbia, including any agency or instrumentality thereof.

Q: As a D.C. government employee, can I file as a candidate for election to a partisan political office that is regulated by the District?

A: No, you are prohibited from filing as a candidate for election to a partisan political office that is regulated by the District. That said, the Local Hatch Act defines a partisan political office as:

“an office in the District government for which any candidate is nominated or elected as representing a party, any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization.”

This means that, although as a D.C. government employee you are prohibited from filing as a candidate for election to a partisan political office that is regulated by the District (as defined by the statute: Democratic Party, Republican Party, Libertarian Party, or Green Party), you are permitted to file as a candidate for a non-partisan District office.

Q: What if the partisan political office is not regulated by the District, i.e. in Maryland or Virginia?

A: In the case of a partisan political office that is not regulated by the District, a D.C. government employee is permitted to file as a partisan candidate.

Q: Who enforces the Local Hatch Act?

A: The Local Hatch Act is enforced by the Board of Ethics and Government Accountability. BEGA can be reached by writing, by telephone, or by email at:

Board of Ethics and Government Accountability
One Judiciary Square
441 4th Street NW, 830 South, Washington, DC 20001
Phone: (202) 481-3411
Email: beqa@dc.gov

Q: How do I know if I am a “covered District employee” for purposes of the Federal Hatch Act?

A: Your agency head is required to inform you if your salary is paid in whole or in part by the federal government.

Q: If my salary is paid in whole by the federal government, can I be a candidate for elective office?

A: No, if your salary is paid in whole by the federal government, you are prohibited from being a candidate for elective office, regardless of whether the office is partisan or non-partisan.

Q: Who enforces the federal Hatch Act?

A: The federal Hatch Act is enforced by the federal government’s Office of Special Counsel. OSC can be reached by writing or by telephone at:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Tel: (800) 85-HATCH or (800) 854-2824
(202) 254-3650
Fax: (202) 254-3700

Requests for federal Hatch Act advisory opinions (only) may be made by e-mail to:
hatchact@osc.gov

Outside Activities & Jobs

All District employees engage in outside activities of one sort or another, and some District employees also have outside paid employment. In general, a District employee is prohibited from any outside activity or job that would:

- conflict with the “fair, impartial, and objective” performance of the employee’s District job,¹⁰⁶
- interfere with the employee’s ability to do his/her District job,¹⁰⁷
- interfere with the employee’s regular working hours,¹⁰⁸
- interfere with the efficient operation of the District,¹⁰⁹ or
- allow anyone to benefit from the employee’s official title or District job.¹¹⁰

The information below summarizes the restrictions on outside activities and outside jobs. To help you figure out whether a particular outside activity or outside job is permitted, you should answer the questions in the Worksheet re: Outside Activities and Outside Employment found in the Appendix and consult your agency’s Ethics Counselor.

Prohibited outside activities

Some outside activities are strictly prohibited, regardless of whether the employee is paid for them. An employee may not serve as a representative, agent or lawyer for a private party in any matter in front of the District government or a DC court.¹¹¹ An employee is also prohibited from serving as an officer or director of an outside organization if there is a reasonable likelihood that the organization could be involved in action that the employee would take or recommend as a District employee.¹¹²

Rules to follow when engaging in outside activities

There are certain rules that apply to outside activities. An employee may not use working hours, government resources or other government employees for outside activities.¹¹³ The employee must not reveal nonpublic government information, or allow others to use that information for any purpose.¹¹⁴ Finally, if an employee is an officer, director, trustee, partner or employee of an outside organization, then the employee must not participate as a District

¹⁰⁶ DPM § 1800.3.

¹⁰⁷ Id. at § 1804.1(a).

¹⁰⁸ Id. at § 1804.1(b).

¹⁰⁹ Id. at § 1804.1(a).

¹¹⁰ Id. at § 1804.1(e).

¹¹¹ Id. at § 1804.1(h).

¹¹² Id. at § 1804.1(d).

¹¹³ Id. at §§ 1804.1(b), (c).

¹¹⁴ Id. at § 1804.1(f).

employee in any particular matter (such as a judicial proceeding, investigation, contract or grant) that could have a financial effect on that organization.¹¹⁵

Outside Employment

In general, a District employee is allowed to have an outside job. But an employee may not receive pay from two or more federal or District government positions for more than 40 hours in any work week. (If the District pays an employee for 40 hours in a week, then the employee may not also accept compensation from the federal government on an hourly basis for that week.)¹¹⁶ An employee may not receive a share of the money from a lawsuit against the District, and may not receive money for representing a person or entity if the District has a substantial interest in the matter or is a party to a lawsuit.¹¹⁷ Finally, a District employee must not be paid by a non-District source for work performed as a District employee.¹¹⁸

Outside Expressive Activities

In general, District employees are allowed to engage in outside activities that involve expression, such as writing, teaching, speaking, or working as a consultant. But the employee must do this outside of regular working hours, or while on annual leave or on leave without pay.¹¹⁹ An employee may not use nonpublic government information unless the agency head gives permission.¹²⁰ If an employee is paid for outside expressive activity, then the subject matter must not be substantially about the employee's official duties, the responsibilities and operations of her agency, or information received in her District job.¹²¹

Q & A: Outside Jobs

Q: A Department of Consumer and Regulatory Affairs (DCRA) housing inspector wants to start up his own business to work on evenings and weekends advising landlords on how they can pass housing inspections. Can this employee accept payment from landlords for advice about DCRA housing inspections?

A: No. The DCRA inspector may not accept payment from landlords for advice about how to pass DCRA inspections. The advice would relate substantially to his official duties, so he may not accept compensation for providing such advice.¹²²

¹¹⁵ 18 U.S.C. § 208(a).

¹¹⁶ Mayor's Memorandum 2003-6.

¹¹⁷ 18 U.S.C. § 205(b).

¹¹⁸ Id. at § 209(a).

¹¹⁹ DPM § 1804.3.

¹²⁰ DPM § 1804.4.

¹²¹ DPM § 1804.5.

¹²² DPM §§ 1804.3, 1804.5.

Serving on the Board of a Non-Governmental Organization

Non-governmental organizations play important roles in our community and many District employees serve on the boards of these organizations. This kind of community service and leadership should be encouraged, but at times this service can conflict with an employee's obligations as a District employee. Therefore a District employee who is considering serving on the board needs to understand that there are specific government ethics standards that apply to an employee's service on an outside board.

An employee must not serve as an officer or director of an outside organization if there is a reasonable likelihood that the organization will be involved in action that the employee would take or recommend as a District employee.¹²³

An employee must not participate personally and substantially on a matter that could affect the financial interests of an organization on which she serve as an officer, director, trustee, general partner or employee.¹²⁴

Example

*An employee of the Mayor's Office serves without compensation on the board of directors of Magic Theater, a nonprofit corporation that produces theatrical events for the community. Even though the employee's personal financial interests will not be affected, the employee must disqualify him or herself from participating in the review of a grant application submitted by Magic Theater. Award or denial of the grant will affect the financial interests of Magic Theater and its financial interests are imputed to the employee as a member of its board of directors.*¹²⁵

¹²³ DPM 1804.1(d).

¹²⁴ 18 U.S.C. § 208(a).

¹²⁵ Id.

Seeking Outside or Future Employment

If an employee begins negotiating for prospective employment with a person or organization, then the employee must not “*participate personally and substantially*” in any “*particular matter*” that could affect the financial interests of that person or organization.¹²⁶ This is a criminal statute, and the federal government has prosecuted employees for negotiating for prospective employment with those with a financial interest in the employee’s work.¹²⁷

What is a “*particular matter*?”

A “*particular matter*” includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest.¹²⁸ Legislation and policy-making that are general in nature are not “*particular matters*,” but if it is narrowly focused upon the interests of a specific industry, profession or class, then it is a “*particular matter*.”¹²⁹ If you have a question about whether something is a “*particular matter*,” ask your Agency Ethics Counselor for advice.

What does it mean to “*participate*?”

An employee *participates* in a matter when he/she takes action on it.¹³⁰ Examples of participation include making a recommendation or decision, giving advice, or investigating, and the active supervision of a subordinate who is taking action.¹³¹ On the other hand, simply knowing about the government’s action in a matter does not constitute “*participation*.”¹³²

¹²⁶ 18 U.S.C. § 208(a).

¹²⁷ See e.g. *United States v. Biaggi*, 909 F.2d 662 (2d. Cir. 1999).

¹²⁸ 5 C.F.R. § 2640.103(a)(1).

¹²⁹ *Id.*

¹³⁰ 5 C.F.R. § 2635.402(b)(4).

¹³¹ *Id.*

¹³² *Id.*

Post-Employment “Revolving Door” Restrictions

Even after an employee no longer works for the District, the employee is still subject to two restrictions on your conduct:

- A lifetime ban on taking certain actions in connection with a “*particular matter*” involving a specific party or parties you personally and substantially worked on while a District employee.¹³³
- A two year ban on taking certain actions in connection with a “*particular matter*” involving a specific party or parties that was “under your responsibility” during the last year you worked for the District.¹³⁴

What Is A “*Particular Matter*?”

A “particular matter” includes a judicial proceeding, contract, or investigation.¹³⁵ It involves establishing the interests of individuals or entities through a determination, decision, or action.¹³⁶ It can even include legislation or policy-making if it is narrowly focused on a specific and identifiable group or entity.¹³⁷

What is the Former District Government Employee Prohibited From Doing?

If one of the two restrictions listed above are triggered, then the former employee is prohibited from communicating with or appearing before a District employee, agency, or court to influence that entity in connection with the matter.¹³⁸

What Triggers the Lifetime Ban?

After an employee leaves the District government, the employee is banned from communicating with or appearing before the District in connection with any “particular matter involving a specific party or parties” in which the employee participated “personally and substantially” while a District employee.¹³⁹ Participating “personally and substantially” means that the employee took action in the matter, such as deciding, approving, recommending, giving advice, or investigating the matter; merely knowing about a matter does not constitute personal and substantial participation.¹⁴⁰

¹³³ 18 U.S.C. § 207(a)(1).

¹³⁴ *Id.* at § 207(a)(2).

¹³⁵ 5 C.F.R. § 2640.103(a)(1).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at §§ 207(a)(1), (a)(2).

¹³⁹ *Id.* at § 207(a)(1).

¹⁴⁰ 5 C.F.R. § 2635.402(b)(4).

What Triggers the Two-Year Ban?

Even if an employee did not personally and substantially participate in a matter, the employee is still barred from communicating with or appearing before the District for two years in connection with a particular matter involving a specific party or parties that was under the employee's responsibility in the last year the employee worked for the District.¹⁴¹ A matter was under the employee's responsibility if he or she had authority to approve or disapprove it, or could otherwise direct the District to take action on the matter, either personally or through those the employee supervised.¹⁴²

Restriction on District Employees' Obtaining a Contract with the District

In general, a District employee is not allowed to be a party to a contract with the District government.¹⁴³ An employee may not contract directly with the District, and may not do so indirectly through an organization that the employee controls or substantially owns.¹⁴⁴

There are two exceptions to this general rule against contracts with District employees.

First, if there is a compelling reason for such a contract (e.g., if the government's needs cannot reasonably be met otherwise), then an agency head may make a written determination of that compelling reason and proceed with the contract.¹⁴⁵

Second, if the employee is a "*Special Government Employee*" (SGE), then the District may contract with the employee as long as:

- the contract did not arise directly out of the SGE's work;
- the SGE was not in a position to influence the award of the contract; and
- no other conflict of interest exists.¹⁴⁶

Who is a "*Special Government Employee*?"

A *Special Government Employee* is an employee who works on a temporary or intermittent basis -- with or without compensation -- for up to 130 days in a 365-day period.¹⁴⁷

¹⁴¹ Id. at § 207(a)(2).

¹⁴² Id. at § 202(b).

¹⁴³ DPM § 1816.1.

¹⁴⁴ DPM § 1816.1.

¹⁴⁵ DPM § 1816.1.

¹⁴⁶ DPM § 1816.3.

¹⁴⁷ DPM § 1814.1.

Financial Disclosure Requirements

Pursuant to the Ethics Act, thousands of officials are required to file a Public Disclosure of Financial Interest with the Board of Ethics and Government Accountability (BEGA) or a Confidential Disclosure of Financial Interest with the employee's agency head.¹⁴⁸

Public Financial Disclosure Statements Filed with the Board of Ethics and Government Accountability (BEGA)

By May 15th of each year, public officials (except for Advisory Neighborhood Commissioners) must file a **Public Financial Disclosure Statement (PFDS)**¹⁴⁹ for the previous calendar year with the BEGA. The PFDS replaces OCF Form 62, which is no longer required. A Public Official is defined as:

- (a) a candidate for nomination for election, or election, to public office;
- (b) the Mayor, Chairman, and each member of the Council;
- (c) the Attorney General;
- (d) a District elected Representative or Senator;
- (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 D.C. Official Code § 1-523.01(e); and
- (h) Excepted Service employees (level 9 or higher) 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 the appearance of a conflict.

Confidential Financial Disclosure Statements for Advisory Neighborhood Commissioners

Advisory Neighborhood Commissioners previously had not been required to file Financial Disclosure Statements. However, the Ethics Act now requires **all** ANC Commissioners to file the **Confidential Financial Disclosure Statement (CFDS)** forms on or before May 15th of each year for the previous calendar year.¹⁵⁰ These forms are to be filed directly with the BEGA.

Confidential Financial Disclosure Statements for Designated Employees

By April 15th of every year, each Agency Head must identify those agency employees who will be required to file a **CFDS** form.¹⁵¹ The CFDS replaces Form 35, which is no longer

¹⁴⁸ D.C. Official Code § 1-1162.24; § 1-1162.25.

¹⁴⁹ D.C. Official Code 1-1162.24.

¹⁵⁰ D.C. Official Code § 1-1162.25(a).

¹⁵¹ D.C. Official Code § 1-1162.25.

required.¹⁵² Designation is based upon whether an employee, other than a public official, 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.¹⁵³ The CFDS must be filed with the designated employee's agency head by May 15th of each year for the previous calendar year, and a list of those employees must be forwarded to both the BEGA and the D.C. Ethics Counselor by May 15th of each year.¹⁵⁴

Whether the individual must file a PFDS or a CFDS, the reported items are the same. They include the following:

- the name of each business entity in which the individual or his or her spouse, domestic partner, or dependent children has an interest including as a stockholder, a recipient of honoraria, serves as an officer, director, partner, employee, consultant, contractor, volunteer, or in any other formal capacity, or has an agreement for future employment or a continuation of payment by a former employer;
- outstanding liabilities in excess of \$1000 for borrowing by the individual, spouse, domestic partner, or dependent children from anyone other than a federal or state insured or regulated financial institution, or a member of the individual's immediate family;
- all real property located in the District except for property used as a personal residence;
- 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;
- all gifts received from a prohibited source in an aggregate value of \$100 in a calendar year.¹⁵⁵

The reporting individual must also file an affidavit with various certifications that they have not engaged in any improper activity.¹⁵⁶

Electronic filing is available to **Public and ANC Confidential filers** at BEGA's website.¹⁵⁷ The website also provides general information and Frequently Asked Questions (FAQs).

¹⁵² The District's personnel regulations are currently being revised to reflect the changes in financial reporting law required by the Ethics Act. DCHR is aware that, under the current DPM, the requirement is still in effect. However, DCHR is not requiring submission of the Form 35 because it is anticipated that the revised DPM Chapter 18, which eliminates the Form 35 requirement, will be in effect by May 15, 2013.

¹⁵³ D.C. Official Code § 1-1162.25(a).

¹⁵⁴ D.C. Official Code § 1-1162.25(c).

¹⁵⁵ D.C. Official Code § 1-1162.24(a)(1)(A)-(G).

¹⁵⁶ Id.

¹⁵⁷ <http://bega.dc.gov/page/financial-disclosure-filing-public-officials-and-district-employees>.

Reporting Crime, Corruption, Conflicts of Interest, and Misconduct

Mandatory Reporting Requirements

Information about certain types of misconduct must be reported to an agency head and to the Inspector General. If a District employee has information that he or she “knows or reasonably should know” involves:

- a conflict of interest,
- corruption or
- criminal activity

by a District employee or someone dealing with the District government (such as a contractor or grantee), then the employee must “directly and without undue delay” report that information to both the employee’s agency head and the Inspector General (IG).¹⁵⁸ The agency head must then “immediately report such information to” the IG.¹⁵⁹ Failure to report may result in employment discipline.¹⁶⁰

Whistleblower Statute

In addition, the D.C. Council has declared that District employees must be free to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety without fear of retaliation or reprisal.¹⁶¹

What types of misconduct are employees encouraged to report to a “public body?”

All employees have the right to freely disclose to their supervisor or to a “public body:”

- violations of federal, state, or local law, rule, or regulation, or a contract term which is not of a merely technical or minimal nature
- misuse of government resources
- gross mismanagement;
- gross misuse or waste of public resources or funds;
- abuse of authority in connection with the administration of a public program or the execution of a public contract; and
- a substantial and specific danger to the public health and safety.¹⁶²

¹⁵⁸ DPM § 1803.8.

¹⁵⁹ Id. at § 1803.9.

¹⁶⁰ D.C. Official Code §§ 1-615.58(7), (11).

¹⁶¹ D.C. Official Code § 1-615.51.

¹⁶² Id. at § 1-615.52(a)(6).

What counts as a “*public body*?”

A “*public body*” is any member or employee of:

- the Office of the Inspector General;
- the Office of the District of Columbia Auditor;
- the Council;
- any federal, District of Columbia, state, or local regulatory, administrative, or public agency or authority or instrumentality
- any federal, District of Columbia, state, or local law enforcement agency, prosecutorial office, or police or peace officer;
- any federal, District of Columbia, state, or local department of an executive branch of government;
- Congress;
- any state legislature;
- any federal, District of Columbia, state, or local judiciary; or
- any grand or petit jury.¹⁶³

Who counts as a “*supervisor*?”

A “*supervisor*” is:

- an agency head,
- a department director,
- a manager,¹⁶⁴ or
- any employee who has the:
- responsibility to direct employees, evaluate their performance, or adjust their grievances;
- authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; or¹⁶⁵
- authority to “effectively recommend remedial or corrective action” for the violation of misuse of government resources.¹⁶⁶

What reporting obligations do *supervisors* have?

As soon as a *supervisor* becomes aware of a violation of federal, state or local law, rule or regulation or of a contract term (not of a merely technical or minimal nature), she must report the

¹⁶³ Id. at § 1-615.52(a)(7).

¹⁶⁴ Id. at § 1-615.52(a)(8).

¹⁶⁵ Id. at § 1-617.01(d).

¹⁶⁶ Id. at § 1-615.52(a)(8).

violation to a public body.¹⁶⁷ Failure to make such a disclosure can result in employment discipline or dismissal.¹⁶⁸

Prohibitions on retaliation

District officials are prohibited from coercing, harassing or retaliating against an employee who acts “in good faith” in reporting misconduct to her agency head or the IG.¹⁶⁹ In addition, they may not retaliate against an employee who reasonably believes there has been a violation or misuse of resources and discloses that to a *supervisor* or a *public body*.¹⁷⁰

¹⁶⁷ Id. at § 1-615.58(8).

¹⁶⁸ Id. at. §§ 1-615.58(8), (9). (11).

¹⁶⁹ DPM § 1803.11.

¹⁷⁰ D.C. Official Code § 1-615.53(a).

Investigations and Enforcement

Responsibility for investigating alleged unethical conduct by District employees is distributed among many different government agencies. Two of these agencies are federal: the U.S. Attorney’s Office and the Office of Special Counsel. The rest are part of the District government. Some of these agencies are directly tasked with investigating ethics allegations. Others are tasked with investigating other types of allegations that often have ethics implications.

The following offices have direct responsibility for investigating allegations that District employees engaged in unethical conduct:

Agencies with Direct Responsibility for Ethics Investigations

Agency	Investigates allegations of:
District:	
Board of Ethics and Government Accountability (BEGA)	ethics violations by high level officials as well as employees ¹⁷¹
Agency Heads	Employee disciplinary matters and matters that must be reported to the IG
Inspector General’s Office	<ul style="list-style-type: none"> • a conflict of interest, • corruption or • criminal activity
Federal:	
US Office of Special Counsel	Hatch Act violations (partisan political activities) ¹⁷²
US Attorney’s Office & FBI	criminal violations ¹⁷³

In addition, three other offices conduct investigations that sometimes implicate ethics allegations: the Inspector General (IG), the Office of the Attorney General (OAG) and the Auditor.

Board of Ethics and Government Accountability (BEGA)

The Board of Ethics and Government Accountability (BEGA) is responsible for investigating allegations of unethical conduct against all public officials and employees by enforcing the District’s Code of Conduct¹⁷⁴. It can initiate ethics-related investigations on its own, by a media report or anonymous tip. By statute, a Formal Investigation can be initiated upon the filing of a written complaint, verified under oath.¹⁷⁵ (This approach contrasts with that

¹⁷¹ D.C. Official Code § 1-1161.01 *et seq.*

¹⁷² 5 C.F.R. §§ 734.102(a)

¹⁷³ D.C. Official Code § 23-101

¹⁷⁴ D.C. Official Code § 1-1162.02(a)(1).

¹⁷⁵ *Id.* at § 3701.2.

of the Inspector General, which has an anonymous hotline as well, but does not require a verified complaint for those who do not wish to remain anonymous.)¹⁷⁶

Agency Heads

Each Agency Head is responsible for investigating allegations of unethical conduct against agency employees. If the Agency Head finds that the allegation is true, this can result in employment discipline.¹⁷⁷

Ethics Counselor

By regulation, the District's Ethics Counselor can investigate allegations that former employees have violated post-employment restrictions and undertake an administrative enforcement action.¹⁷⁸

U.S. Attorney's Office

The U.S. Attorney's Office investigates alleged violations of District and federal criminal law, including the federal criminal conflict of interest statutes that apply to D.C. employees.¹⁷⁹ It can initiate investigations on its own, and it receives referrals for criminal investigation from District agencies, such as OCF (through BOEE), the Ethics Counselor, the Inspector General, and the Office of the Attorney General.

U.S. Office of Special Counsel

The U.S. Office of Special Counsel investigates alleged violations of the Hatch Act by District employees.¹⁸⁰

Inspector General (IG)

The IG conducts audits and investigations of government programs.¹⁸¹ Its primary focus is not ethics enforcement, but some of its investigations relate to ethics concerns. For example, OIG refers alleged criminal violations to the U.S. Attorney's Office for criminal prosecution; refers other alleged ethics violations to Agency Heads for employment discipline; and alleged Hatch Act violations to the Office of Special Counsel.¹⁸²

¹⁷⁶ <http://oig.dc.gov/services/suggest.shtm>

¹⁷⁷ DPM § 1801.2.

¹⁷⁸ DPM § 1814.3.

¹⁷⁹ D.C. Code § 23-101

¹⁸⁰ 5 C.F.R. §§ 734.102(a)

¹⁸¹ D.C. Code § 1-301.115(a)(3)(D).

¹⁸² Id. at § 1-301.115(a)(3)(F)(i).

Office of the Attorney General (OAG)

Outside the post-employment sphere, OAG does not have direct responsibility for enforcing District ethics standards that occur outside of OAG. But OAG can bring suit to recover funds taken by officials or employees in violation of DC laws, and can bring injunctive actions, in appropriate circumstances, to enjoin on-going conduct that may violate D.C. laws.¹⁸³

Auditor

The auditor is a legislative office that supports the Council by auditing and evaluating District programs.¹⁸⁴ Its focus is not employee ethics, but its investigations occasionally implicate concerns about unethical conduct by District employees.¹⁸⁵

Sources of Ethics Advice

If you need advice about an ethics issue or are unsure whether particular conduct is permitted, you should seek advice from one or more of the following:

- your supervisor
- your agency’s Ethics Counselor
A list of Agency Ethics Counselors may be found on the BEGA website at www.bega.dc.gov. The list is updated from time to time.
- the District of Columbia’s Ethics Counselor, the Attorney General
Contact his executive assistant:
Valerie Scott
202-724-1301
Valerie.scott@dc.gov
- the Board of Ethics and Government Accountability (BEGA)
Contact BEGA’s Director
Darrin P. Sobin
202-481-3411
bega@dc.gov
bega.dc.gov
- the U.S. Office of Special Counsel (OSC) (federal Hatch Act)
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

¹⁸³ D.C. Official Code § 1-301.81(a)(1).

¹⁸⁴ *Id.* at § 1-204.55(b).

¹⁸⁵ *See e.g.* DCA09209, Letter Report: Audit of Advisory Neighborhood Commission 7A for Fiscal Years 2005 Through 2008, as of March 31, 2008 (finding that the Treasurer of ANC 7A misappropriated funds).

800-854-2824 (800-85-Hatch)
202-254-3650
hatchact@osc.gov
www.osc.gov/hatchact.htm

- the U.S. Office of Government Ethics (OGE) (federal statutes)
1201 New York Avenue, NW Suite 500
Washington, DC 20005
202-482-9300
www.usoge.gov

List of Ethics Standards that Apply to District of Columbia Employees

District of Columbia employees are subject to ethics standards from multiple legal sources: federal statutes and regulations, the DC Code, District regulations, Mayor's Orders and Mayor's Memoranda. Below you'll find a list of these ethics standards.

Applicable Federal Statutes

- 5 U.S.C. § 3110 (nepotism)
- 5 U.S.C. § 4111 (acceptance of training, travel reimbursement from non-profits)
- 5 U.S.C. §§ 5531-38 (dual pay – federal & District governments)
- 5 U.S.C. §§ 1501-05, 7321-26 (Hatch Act – political activities)
- 5 U.S.C. § 7342 (Foreign Gifts)
- 18 U.S.C. § 2 (aiding and abetting)
- 18 U.S.C. 201 (bribes, illegal gratuities)
- 18 U.S.C. 202 (definitions)
- 18 U.S.C. 203 (compensation for representation in claims against the government)
- 18 U.S.C. 205 (serving as agent / attorney in claims against the government)
- 18 U.S.C. 207(a), (j)(6) (post employment)
- 18 U.S.C. 208 (financial conflicts of interest)
- 18 U.S.C. 209 (post-employment)
- 18 U.S.C. 216 (civil & criminal penalties)
 - 18 U.S.C. § 219 (foreign agents)
- 18 U.S.C. § 601 (deprivation of employment)
- 18 U.S.C. § 602 (solicitation of political contributions)
- 18 U.S.C. § 610 (coerced political activity)
- 18 U.S.C. § 1913 (lobbying)

Applicable Federal Regulations

- 5 CFR Part 734 (general Hatch Act regulations)
- 5 CFR Part 733 (Hatch Act regulations for residents of specially designated communities)

D.C. Code Provisions

- 1-319.01-.05 (Governmental Volunteers)
- 1-329 (Acceptance of gifts & donations)
- 1-603.01 (Definitions)
- 1-608.01 (nepotism in Career Service)
- 1-1162.01 *et seq.* (Ethics Act)
- 1-1162.27 (Lobbying)
- 1-1162.23 (Conflicts of Interest)
- 1-1162.24 thru 26 (Financial Disclosure)
- 1-1106.51 (Use of Government Resources for Campaigns)

2-354.01 (Government Contracts - influencing source selection)
2-354.16 (Government Contracts –contingent fees)

D.C. Municipal Regulations

Title 3, Chapter 2 – Ethical Conduct of BOEE Members & Employees
Title 3, Chapter 32 – OCF Financial Disclosures
Title 3, Chapter 33 – Conflicts of Interest
Title 3, Chapter 99 – Definitions
Title 6B, Chapter 18 – Employee Conduct
Title 6B, Chapter 35, Part I – Voluntary Services

Orders & Memoranda

Mayor’s Order 1982-136a (Ethics Counselor)
Mayor’s Order 2010-167 (Oct. 15, 2010) (donations)

Mayor’s Memorandum 2003-06 (Outside Employment)
Mayor’s Memorandum 2012-3 (May 16, 2012) (donations)

OAG Administrative Memorandum 2006-1 (Fundraising in Office)
OAG Office Order 2006-27 (Outside Employment)
