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

Office of Government Ethics

Ethics Manual

The Plain Language Guide to District Government Ethics

Darrin P. Sobin
Director of Government Ethics
Office of Government Ethics
Board of Ethics and Government Accountability
441 4th Street, N.W., Suite 830 South
Washington, D.C. 20001
(202) 481-3411

(Updated: 11/01/14)

Disclaimer: Reference to any commercial products or services in this presentation is not an endorsement or government sanction of those non-District government entities, services, or products.

Background

The Board of Ethics and Government Accountability ("BEGA") came into existence when the Council enacted, and the Mayor signed into law, the Ethics Act.[1] The Ethics Act moved most government ethics matters to a single entity for enforcement, advice-giving, training, and financial reporting. BEGA is made up of three part-time Board members who are nominated by the Mayor and confirmed by the Council, but are otherwise independent. The three members oversee the Office of Government Ethics (OGE), which is staffed with a Director, attorneys, investigators, and support staff.

BEGA enforces the Code of Conduct,[2] a set of District statutes and regulations that apply to all District government public officials, including elected public officials, and employees[3] in Executive and Legislative branch agencies and Independent agencies, and members of Boards and Commissions (both compensated and uncompensated), including Advisory Neighborhood Commissioners. BEGA has substantial authority to conduct investigations into allegations of ethical misconduct and to impose sanctions, including fines, where violations have occurred. BEGA also provides ethics advice to public officials and employees, who may then rely upon that advice. Part of that advice-giving function includes production of this Ethics Manual.

---

[1] 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 Code1-1161.01 *et seq.* (2014 Supp.).
[2] D.C. Official Code § 1-1161.01(7).
[3] D.C. Official Code § 1-1161.01(18).

Government Service is a Public Trust

Each District government employee has a responsibility to the District of Columbia and its citizens to place loyalty to the laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the District government, each employee shall respect and adhere to the principles of ethical conduct set forth in Chapter 18 of the District Personnel Manual (DPM).[4]

This Ethics Manual[5] is a "plain language" guide to the ethics standards that apply to most District of Columbia government employees. It describes, in a general way, the ethics standards and highlights issues that often arise. The Ethics Manual does not describe all of the ethics statutes and regulations that apply, and it does not cover every situation that can arise.

This Ethics Manual is intended to provide a basic framework to assist District government employees with their everyday ethics questions. It is not intended to replace the advice of the Agency Ethics Counselors, the D.C. Ethics Counselor, or OGE. If you have an ethics question, you should contact your Agency Ethics Counselor, the D.C. Ethics Counselor (the Attorney General), or OGE, before taking action.

---

[4] 6B District of Columbia Municipal Regulations (DCMR) Chapter 18, § 1800.2. 6B DCMR, Chapter 18 will hereinafter be referred to as the DPM and the pertinent section.

[5] Special acknowledgement goes to the Attorney General for producing the initial Ethics Manual, from which this version was adopted.

Table of Contents

Section	Page
General Ethics Standards	6
Employee Cooperation	8
Gifts from Outside Sources	10
Who is a Prohibited Source?	11
What is Not a Gift?	15
Gifts from Lobbyists	17
Gifts Between Employees	20
Fundraising	25
Donations & Volunteers	27
Nepotism	30
Financial Conflicts of Interest	34
Outside Activities & Jobs	40
Teaching, Writing, & Speaking	43
Post-Employment Restrictions	45
Use of Government Property	56
Gambling	58
Use of Nonpublic Information	59
Restrictions on Political Activities	60
Financial Disclosure Requirements	71
Whistleblower Statute	76
Agencies Responsible for Ethics Investigations	80
BEGA's Contact Information	81

General Ethics Standards

There are dozens of *specific* ethics standards that apply to District employees, such as restrictions on gifts from outside sources, gifts between employees, outside activities, financial interests, and post-employment activities. In addition to the specific standards, the District also imposes some *general* principles and 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* principles and standards.

The general principles[6] include the following requirements:

Employees shall:

Respect and adhere to the principles of ethical conduct[7]

[6] DPM § 1800.3.
[7] DPM § 1800.2.

Understand that government service is a public trust[8]

Put forth honest effort[9]

Report credible violations to appropriate authorities[10]

Satisfy lawful obligations to government[11]

Adhere to all federal, state, and local laws and regulations[12]

Employees shall not:

Hold financial interests that conflict with performance of duty[13]

Use nonpublic information improperly[14]

Make unauthorized commitments[15]

Use public office for private gain[16]

Act impartially or give preferential treatment[17]

---

[8] DPM § 1800.3(a).
[9] DPM § 1800.3(e).
[10] DPM § 1800.3(k).
[11] DPM § 1800.3(l).
[12] DPM § 1800.3(m).
[13] DPM §1800.3(b).
[14] DPM §1800.3(c).
[15] DPM § 1800.3(f).
[16] DPM §1800.3(g).

Use government property for other than unauthorized activities[18]

Engage in outside activities that conflict with official duties[19]

Take actions creating the appearance that they are violating the law/ethical standards[20]

Employee Cooperation[21]

Employees shall immediately and directly report credible violations of the District Code of Conduct to the Office of Government Ethics or the Office of the Inspector General (OIG), or both.[22]

---

[17] DPM § 1800.3(h).
[18] DPM § 1800.3(i).
[19] DPM § 1800.3(j).
[20] DPM § 1800.3(n).
[21] DPM §1801.
[22] DPM 1801.1.

An employee shall not interfere with or obstruct any investigation conducted by a District or federal agency.[23]

An employee shall fully cooperate with any investigation, enforcement action, or other official function of the Office of Government Ethics.[24]

Coercive, harassing, or retaliatory action shall not be taken against any employee who, acting in good faith, [25] immediately and directly reports credible violations of the Code of Conduct to OGE or the OIG, or who fully cooperates with any official function of OGE.

[23] DPM 1801.2.
[24] DPM 1801.3.
[25] DPM 1801.4.

Gifts From Outside Sources[26]

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

- A prohibited source;[27] or
- Given because of the employee's official position or duties.[28]

What is a gift?

A "gift" is any:[29]

- Gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.
- Gift includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

---

[26] DPM § 1803.
[27] DPM § 1803.2(a).
[28] DPM § 1803.2(b).
[29] DPM § 1803.4(a).

Who is a Prohibited Source?

A "Prohibited Source" is any person or entity who:[30]

- ❖ Is seeking official action by the employee's agency
- ❖ Does business with the employee's agency
- ❖ Seeks to do business with the employee's agency
- ❖ Conducts activities regulated by the employee's agency
- ❖ Has interests that may be substantially affected by performance of the employee's official duties
- ❖ Has interests that may be substantially affected by the nonperformance of the employee's official duties
- ❖ Is an organization in which the majority of its members are described in the items listed above

If the gift is given to the employee's spouse or other relative, with the employee's knowledge & acquiescence, it is prohibited.[31]	If the gift is given to another person or entity, such as a charity, based on the employee's recommendation, it is prohibited.[32]

[30] DPM § 1803.4(b).
[31] DPM § 1803.4(d)(1).
[32] DPM § 1803.4(d)(2).

Note: Both the Ethics Act, D.C. Official Code § 1-1161.01(45), and the Council of the District of Columbia Code of Official Conduct (Council Period 20), (hereinafter, "Council Code") III (Gifts from Outside Sources) (f)(2) define "prohibited source" as a person that: "(A) Has or is seeking to obtain contractual or other business or financial relations with the District government; (b) Conducts operations or activities that are subject to regulation by the District government; or (C) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities."

The difference is that under the Ethics Act and the Council Code, the prohibited source contracts with, seeks to contract with, or is regulated by ***the District***, whereas under the DPM it deals with the employee's ***agency.*** Therefore, the prohibitions under the Ethics Act and the Council Code are broader than the prohibition under the DPM. **Regardless of this disparity, it is never appropriate to accept a gift from anyone if the purpose is, or might appear to be, to influence government conduct.**

Under no circumstances should an employee:

- Accept a gift in return for being influenced in the performance or non-performance of an official act;[33]

[33] DPM § 1803.3(a).

- Solicit or coerce the offering of a gift;[34] or

- Accepts gifts from the same or different sources so frequently that a reasonable person would believe that the employee is using his or her public office for private gain.[35]

What if my mother, who contracts with another District agency, gives me a birthday gift?

There are some exceptions to the prohibited source gift rule. Your mother can give you a birthday gift because it is clear that the gift is motivated by a family or personal relationship rather than your official duties as a District government employee.[36]

It is important to note, however, that if you are accepting a gift from a prohibited source because of a family or personal relationship, you must **recuse** yourself from working on matters related to that prohibited source.

Additional exceptions to the prohibited source gift rule - - an employee may accept:

- Unsolicited gifts, worth $10 or less, per source, per occasion (totaling no more than

[34] DPM § 1803.3(b).
[35] DPM § 1803.3(c).
[36] DPM § 1803.5(b).

$20 per year), as long as it would not appear to a reasonable person to be intended to influence the employee in his or her official duties.[37]

- Meals, lodgings, transportation, etc. resulting from:
  - a spouse or domestic partner's business or employment activities, when it is clear that the benefits have not been offered or enhanced because of the employee's official position;[38] or
  - the employee's authorized outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of the employee's official status.[39]

- Free attendance at an event, from the sponsor of the event, if the employee is assigned to participate as a speaker or panel participant, or is to present information on behalf of the agency at the event. (The employee's agency head or designee must make the assignment in writing).[40]

[37] DPM § 1803.5(a).
[38] DPM § 1803.5(c)(1).
[39] DPM § 1803.5(c)(2).
[40] DPM § 1803.5(d).

- ❖ An unsolicited gift of free attendance at a widely attended gathering of mutual interest to a number of parties, from the event sponsor, if the employee's attendance is in the interest of the agency. (The Mayor or designee must make a written determination).[41]

What is NOT a gift?

A "gift" does not include:[42]

- ☐ Modest items of food and refreshments, such as drinks, coffee and donuts, offered other than as part of a meal;

- ☐ Food and beverages, of nominal value, consumed at hosted receptions where attendance is related to the employee's official duties;

- ☐ Admission to and the cost of food and beverages consumed at events sponsored by or in conjunction with a civic, charitable, governmental or community organization, when the admission, food and beverages are of nominal value;

[41] DPM § 1803.5(e).
[42] DPM § 1803.4(a)(1)-(14).

- ☐ Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

- ☐ Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

- ☐ Anything generally available to members of the public, such as loans from financial institutions, commercial discounts, contest rewards and prizes, and anything for which market value is paid by the employee; and

- ☐ Anything paid for by the District or secured by the District under a contract.

NOTE for Councilmembers and staff: *See also Council Code III (Gifts from Outside Sources). Council Code III(c)(8)(A) provides that an employee may accept an unsolicited gift from a prohibited source that has a market value of $50 or less on any single occasion (not to exceed $100 in a calendar year).*

Gifts from Lobbyists

The Ethics Act: D.C. Official Code § 1-1162.31 (a) prohibits a registered lobbyist or anyone acting on his or her behalf from *offering, giving, or causing 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 any calendar year.

Council Code: Council Code III(e) prohibits soliciting or accepting anything of value from a registered lobbyist that is **given for the purpose of influencing the actions of the employee** in making or influencing the making of an administrative decision or legislative action.

When is a gift solicited or accepted because of the employee's position?

A gift is accepted or solicited because of the employee's position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his District government position.[43] Under those circumstances, the employee is **prohibited** from accepting or soliciting the gift.

What does it mean to say a gift is accepted or solicited indirectly?

A gift is accepted or solicited indirectly if the gift is given, with the employee's knowledge and acquiescence, to his parent, sibling, spouse, child, or dependent relative because of that person's relationship.[44] In that situation, the gift is an indirect gift to the employee and is **prohibited**.

A gift is accepted or solicited indirectly if the gift is given to any other person or entity, including any

[43] DPM § 1803.4(c).
[44] DPM § 1803.4(d)(1).

charitable organization, on the basis of designation, recommendation, or other specification by the employee.[45] In that situation, the gift is an indirect gift to the employee and is **prohibited**.

What should I do if I am offered or receive a gift that cannot be accepted?[46]

- Inform the person offering the gift that District government ethics rules don't permit acceptance; and
- Return the gift to the donor, donate the gift to a non- profit charity, or reimburse the donor for the market value of the gift;[47]
- Donate it to the District pursuant to the District's donation process;
- If the gift is perishable and returning it would be impractical:[48]
  - share it with office staff;
  - donate to charity;
  - destroy it.

- **Note**: Sharing with office staff, donating to a charity, reimbursing the donor, returning the gift, or destroying the gift, are all one-time only options with respect to any donor.[49]

[45] DPM § 1803.4(d)(2).
[46] DPM § 1803.7.
[47] DPM § 1803.7(a).
[48] DPM § 1803.7(b).
[49] DPM § 1803.7(c)

Gifts Between Employees[50]

- Supervisor/Employee

  As a general rule, an employee may NOT:

  - Give a gift or make a donation toward a gift for an official superior;[51] or

  - Solicit a contribution from another employee for a gift to their official superior.[52]

- Higher/lower salary

  As a general rule, an employee may NOT:

  - Directly or indirectly, accept a gift from an employee receiving less pay than themselves unless:[53]

    - ★ The two employees are not in a subordinate-official superior relationship;[54]
    - ★ There is a personal relationship between the two employees that would justify the gift;[55]

[50] DPM § 1804.
[51] DPM § 1804.2(a).
[52] DPM § 1804.2(b).
[53] DPM § 1804.3.
[54] DPM § 1804.3(a).
[55] DPM § 1804.3(b).

★ The gift was not given or solicited to gain or induce any professional advantage.[56]

◆ Official superior

An official superior shall not coerce a subordinate to make or contribute to a gift.[57]

Exceptions

Holidays and Birthdays

On an occasional basis, including *any occasion on which gifts* ***traditionally*** *are given or exchanged,* an official superior may accept a gift from a subordinate or other employee receiving less pay[58] if the gift is:

❑ An item, other than cash, with an aggregate market value of $10 or less per occasion;[59]

[56] DPM § 1804.3(c).
[57] DPM § 1804.4.
[58] DPM § 1804.6(a).
[59] DPM § 1804.6(a)(1).

- ❑ An item such as food and refreshments to be shared in the office among employees;[60]

- ❑ For personal hospitality provided at a residence, which is of a type and value customarily provided by the employee to personal friends;[61]

- ❑ An item given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions;[62]

- ❑ An item appropriate to the occasion and given in recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child;[63] or

- ❑ An item appropriate to the occasion and given when terminating a subordinate-official superior relationship, such as retirement, resignation, or transfer.[64]

NOTE for Councilmembers and staff: *See also Council Code V (Gifts Between Employees), which permits gifts between subordinates and official superiors, on an occasional basis, if the gift (other than cash) has an aggregate market value of $50 or less, is food, or is a gift for personal hospitality.*

---

[60] DPM § 1804.6(a)(2).
[61] DPM § 1804.6(a)(3).
[62] DPM § 1804.6(a)(4).
[63] DPM § 1804.6(b)(1).
[64] DPM § 1804.6(b)(2).

Voluntary Contributions

An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:[65]

- On a special, infrequent occasion in recognition of infrequently occurring occasions of personal significance or upon occasions that terminate a subordinate-official superior relationship;[66] or

- On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.[67]

Q & A: Gifts Between Employees

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. So long as the gift you give is appropriate to the occasion, or the amount of money from any

[65] DPM § 1804.6(c).
[66] DPM § 1804.6(c)(1).
[67] DPM § 1804.6(c)(2).

person you collect to buy the gift is not more than $10, you can give your boss a baby shower present.

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

A: Yes. To buy a gift for a superior to celebrate a special, infrequent occasion, you may invite donations of up to $10 from another employee. It must be clear, though, that these donations are voluntary. 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: Yes. A birthday is an occasion of personal significance on which gifts traditionally are given or exchanged. Just make sure that the gift is not cash and costs $10 or less, or consists of food & refreshments to be shared in the office.

Fundraising[68]

General Rules

- Donation boxes, sign-up sheets, and other fundraising materials are permissible.
    - They must be placed in a common area in the office to avoid the appearance of employees giving the items or funds as gifts to a specific employee.
- The initiator of the fundraising cannot be in a management position.
    - It is important to avoid the appearance that items or funds being collected are expected from employees.

- The names of outside entities, whether sponsoring or benefitting from the fundraising, cannot be placed on the donation boxes.
    - It is important to avoid the appearance of using public office for the private gain of a specific outside entity.
- An employee cannot solicit donations to a fundraiser or purchases from a fundraising

[68] *See* OAG Administrative Memorandum No. 2006-1 (Fundraising in Office).

catalog of items from each individual employee.

- It is important to avoid the possibility of a superior soliciting a subordinate for donations or purchases.

💻 Social Media 💻

An employee fundraising in a personal capacity via social media may engage in a fundraising event *not* sponsored by the government but may not allow his or her title, position, or any authority connected with the District government to further the fundraiser.

The employee many not solicit funds or other support from:

- Subordinates
- Prohibited sources

Donations to and Volunteers for the District Government

Earlier in the Ethics Manual, we discussed the restrictions on gifts *to District employees*. Now we will discuss 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.[69] 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 complete an on-line application process before soliciting or accepting a donation.[70]

---

[69] Mayor's Memorandum 2012-3, at p. 1.
[70] Office of Partnerships and Grants Services Donation Agreement, *available at* http://opgs.dc.gov/publication/donation-agreement-revised.

The Office of the Attorney General reviews all donations for legal sufficiency. In addition, 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.[71]

Failure to follow the donation process is a Code of Conduct violation, subject to enforcement by BEGA.[72]

Volunteering for the District

Individuals who volunteer their services for the District also are subject to standards of conduct, including conflicts of interest.[73] The volunteer must sign a volunteer agreement,[74] must be assigned an agency employee to supervise the volunteer,[75] and must be informed of the scope of the services to be performed.[76]

[71] Mayor's Memorandum 2012-3, at p. 5.
[72] *See* Section 101(7)(G) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective July 15, 2014, D.C. Law 20-122, D.C. Official Code § 1161.01(7)(G) (61 DCR 8246).
[73] DPM § 4000.6.
[74] DPM § 4000.25.
[75] DPM § 4000.14.
[76] DPM § 4000.25(a).

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?

A. As a volunteer for the District, he will be subject to ethics standards, including conflicts of interest, which could restrict some of his outside activities.[77]

[77] DPM § 4000.6. In addition, DPM § 4000.7 says that the District would not accept or use a volunteer's services if it would constitute a conflict of interest or reasonably could give rise to the appearance of a conflict of interest.

Nepotism[78]

Restrictions on the Employment of Relatives

General Rules

❖ Any employee involved in the hiring process may not directly or indirectly make a **hiring decision** regarding a position within his or her own agency with respect to a relative.[79]

- **Hiring decision** means selecting, appointing, employing, promoting, reassigning, advancing, or advocating a personnel action.[80]
- In this section, the employee involved in the hiring process is referred to as a "public official," which, in context, means **hiring official**.[81]
- Specifically, the **hiring official** also may not appoint, employ, promote, evaluate, interview, advance (or advocate for such actions) any individual who is a relative in an agency in which the **hiring official** serves or exercises jurisdiction or control.[82]

[78] DPM § 1806
[79] DPM § 1806.3
[80] DPM § 1806.2(b)
[81] DPM § 1806.2(a)
[82] DPM § 1806.3

Sanctions

- ❖ Violations of these rules constitute a Code of Conduct violation, which may be punishable by up to a $5,000 fine per violation.[83]

- ❖ Violations of these rules by the **hiring official** shall subject the **hiring official** to disciplinary action by his or her agency.[84]

  - ♦ Disciplinary action can include removal.[85]

- ❖ In the event of a violation, the **hiring decision** shall be rescinded immediately (i.e. the relative will be **immediately** fired).[86]

- ❖ A **hiring official** who violates these rules shall pay restitution to the District of Columbia government for any gains received by the relative.[87]

  - ♦ Such gains may include the salary and benefits received by the relative, to date.

Recusal

- ❖ When an agency contemplates making a **hiring decision** concerning a relative of a **hiring official** within the same agency, the

[83] D.C. Official Code § 1162.21(a)(1).
[84] DPM § 1806.3
[85] DPM § 1806.3
[86] DPM § 1806.4
[87] DPM § 1806.5

hiring official MUST file a written recusal, which shall be included in the relative's official personnel file along with the subject personnel action.[88]

Definition of Relative[89]

Father	Mother	Son	Daughter
Brother	Sister	Uncle	Aunt
First Cousin	Nephew	Niece	Husband
Wife	Father-in-law	Mother-in-law	Son-in-law
Daughter-in-law	Brother-in-law	Sister-in-law	Stepfather
Stepmother	Stepson	Stepdaughter	Stepbrother
Stepsister	Half-brother	Half-sister	

Exceptions

- If the **hiring official** is contacted by a background investigator in the context of a formal background investigation regarding a relative, the **hiring official** may answer

[88] DPM § 1806.6
[89] DPM § 1899.1

questions and provide information as directed by the background investigator.

- In the event of emergencies resulting from natural or manmade disasters, the Mayor may suspend the prohibitions of this section.[90]

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 Opinion[91] citing *United States v. Windsor,*[92] 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.

[90] DPM § 1806.7.
[91] Legal Advisory LA-13-10, dated August 19, 2013, http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=8589937529.
[92] *United States v. Windsor,* 133 S. Ct. 2675 (2013).

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.[93]

The Federal Criminal Conflict of Interest Statute:[94]

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

[93] 18 U.S.C. § 208(a).
[94] 18 U.S.C. § 208(a).

concerning prospective employment.[95]

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.[96] 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."[97] If you have a question about whether something is a "particular matter," ask your Agency Ethics Counselor or contact BEGA for advice.

What counts as "*participation*?"

An employee *participates* in a matter when the employee takes action on it.[98] Examples of participation include making a recommendation or decision, giving advice, or investigating, and the active supervision of a subordinate who is taking action.[99] On the other hand, simply knowing about the government's action in a matter does not constitute "*participation*."[100]

---

[95] *Id.*
[96] 5 C.F.R. § 2640.103(a)(1).
[97] 5 C.F.R. § 2640.103(a)(1).
[98] 5 C.F.R. § 2635.402(b)(4).
[99] *Id*.
[100] *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.[101]

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 non-governmental organization in which the employee or a family member (including

[101] *Id.*

parents, siblings, adult children and their spouses or domestic partners) has a financial interest.[102]

No District government employee or any member of his or her immediate household shall knowingly:

- Acquire any stocks, bonds, commodities, real estate, or other property which could **unduly influence** or give the appearance of unduly influencing the employee in the conduct of his or her official duties and responsibilities as a District government employee.[103]
- Operate or acquire an interest in a business that is **in any way** related, **directly or indirectly**, to the employee's official duties or to any governmental matter that she could influence.[104]

A District government employee who is called upon to act on behalf of the District government in a matter relating to a non-governmental entity in which the employee or a member of the employee's immediate family has a financial interest shall:[105]

- Make this fact known to his immediate supervisor **and** a person designated by the

[102] D.C. Official Code § 1-1162.23.
[103] DPM § 1805.8(a)
[104] DPM § 1805.8(b)
[105] DPM §§ 1805.3 and 1805.9

agency head, **in writing**, at the **earliest possible moment.**[106]

Unless a waiver of the conflict of interest is granted by BEGA, the head of the employing agency subsequently shall determine whether the employee must:

- **Divest** him or herself of such interest; or
- **Disqualify** him or herself from taking part in any official decision or action involving the matter.[107]

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.[108]

---

[106] *Id.*
[107] *Id.*
[108] DPM § 1805.9; D.C. Official Code § 1-1162.23(a); 18 U.S.C. § 208(a).

NOTE for Councilmembers/Elected Officials:
See also Council Code I (Conflicts of Interest (c)(1) (Recusal Statement), which provides:

> *Any elected official who, in the discharge of the elected official's official duties, would be required to act in any matter prohibited under subsection (a) of this section shall make full disclosure of the financial interest, prepare a written statement describing the matter and the nature of the potential conflict of interest, and deliver the statement to the Council Chairman. In the case of elected officials other than members of the Council, the statement shall be delivered to the Ethics Board.*

In addition, Council Code I(c)(3) provides that during a proceeding in which an elected official would be required to take action in any matter that is prohibited under subsection (a) of this section, the Chairman shall:

(A) Read the statement provided in subsection (c)(1) of this section into the record of the proceedings; and

(B) Excuse the elected official from votes, deliberations, and other actions on the matter.

Council Code ((c)(3)(C) also prohibits excused Councilmember from participating in or attempting to influence the outcome of the particular matter.

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:

- conflicts with his or her official government duties and responsibilities,[109]
- is reasonably likely to interfere with the employee's ability to do his/her District job,[110]
- interferes with the employee's regular working hours,[111]
- impairs the efficient operation of the District,[112]
- allows anyone to capitalize on the employee's official title or District position,[113] or
- uses government time or resources for other than official business, or government approved or sponsored activities.[114]

[109] DPM § 1800.3(j).
[110] *Id*. at § 1807.1(a).
[111] *Id*. at § 1807.1(b).
[112] *Id*. at § 1807.1(a).
[113] *Id*. at § 1807.1(e).
[114] *Id*. at § 1807.1(b).

Prohibited outside activities

In addition, District employees **shall not**:

- order, direct, or request subordinate officers or employees to perform during regular working hours any personal services not related to official District government functions and activities;[115]
- maintain a financial or economic interest in or serving (with or without compensation) as an officer or director of any outside entity if there is **any likelihood** that such entity might be involved in an official government action or decision taken or recommended by the employee;[116]
- participate as a District employee in any particular matter (such as a judicial proceeding, investigation, contract or grant) that could have a financial effect on an organization for which the employee is an officer, director, trustee, partner, or employee;[117]
- serve in a representative capacity or as an agent or attorney for any outside entity involving any matter before the District of Columbia;[118] or

[115] DPM § 1807.1(c).
[116] DPM § 1807.1(d).
[117] 18 U.S.C. § 208(a).
[118] DPM § 1807.1(h).

- ❖ engage in any outside employment, private business activity, or other interest which is in violation of federal or District law.[119]

Exceptions

Employees may:

- ◆ act, **without compensation**, as agent or attorney for another District employee who is the subject of any personnel action, if not inconsistent with his or her duties;[120]
- ◆ act, with or without compensation, as agent or attorney for his or her parent(s), spouse, domestic partner, child, or any person for whom, or for any estate for which, he or she is serving as guardian, executor, administrator, or other personal fiduciary (as long as the employee did not participate personally and substantially in those matters as part of his or her District government responsibilities). (**Permission required).**[121]

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

[119] DPM § 1807.1(i).
[120] DPM § 1807.6.
[121] DPM § 1807.7.

accept compensation from the federal government on an hourly basis for that week.)[122] 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.[123] Finally, a District employee must not be paid by a non-District source for work performed as a District employee.[124]

Teaching, Writing, and Speaking

In general, District employees are allowed to receive compensation for teaching, writing, and speaking.[125] The employee, however, must do this outside of regular working hours, or while on annual leave or on leave without pay.[126] An employee may not use nonpublic government information unless the agency head gives written permission.[127] If an employee is paid for teaching, writing, or speaking, 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.[128]

[122] Mayor's Memorandum 2003-6 (Outside Employment).
[123] 18 U.S.C. § 205(b).
[124] *Id*. at § 209(a).
[125] DPM § 1807.2.
[126] *Id*.
[127] DPM § 1807.3.
[128] DPM § 1807.4.

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.

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.

NOTE for Councilmembers and staff: *See also Council Code III (Outside Activities).*

Post-Employment Restrictions
(Seeking Future Employment)

As a general guideline, post-employment restrictions begin when you begin your job hunt.

As you dust off your resumé and start to update it, think about whether your current position with the District government will overlap with your job hunt and your future employment. If you think there will be an overlap of any sort, there are things you can do to avoid a post-employment problem.

If your job hunt will involve applying to positions with people and entities you deal with in your current District job, you may need to **recuse** yourself from dealing with that person or entity.

Recusal will involve: (1) notifying your current District agency that you intend to job hunt and that your job hunt will involve applying to positions with persons or entities you currently deal with; and (2) putting your **recusal** in **writing** and providing it to your agency head, general counsel, agency ethics counselor, or other appropriate person.

Three Categories of Post-Employment Restrictions

- ► **Permanent Prohibition**
- ► **2-Year Prohibitions**
- ► **1-Year Prohibition**

Permanent Prohibition

A former government employee who *participated personally and substantially* in a *particular government matter involving a specific party*:

Shall be ***permanently prohibited*** from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency.[129]

Shall be ***permanently prohibited*** from making **any** oral or written communication to an agency with the *intent to influence* that agency on behalf of another person.[130]

✸✸✸Bottom line: No Communications or Appearances✸✸✸

[129] DPM § 1811.3.
[130] DPM § 1811.4.

"Particular Matter Involving a Specific Party"[131] includes:

◊ Investigation
◊ Application
◊ Contract
◊ Controversy
◊ Claim
◊ Charge
◊ Accusation
◊ Arrest
◊ Judicial or other proceeding
◊ Request for a ruling or determination

"Particular Matter Involving a Specific Party" excludes:

◊ General legislation
◊ General policy-making
◊ General rule-making

Case-by-case analysis often is required to determine whether something is a particular matter involving a specific party, so please call BEGA for assistance.

"Participate Personally and Substantially"

Although the term "participate personally and substantially" is not defined in 6B DCMR § 1899.1, relevant federal regulations define the term.

☐ To participate "personally" means to participate: "(i) [d]irectly, either individually or in combination with other persons; or (ii) [t]hrough direct and active supervision of the participation of

[131] DPM § 1899.1.

any person he supervises, including a subordinate."[132]

☐ To participate "substantially" means that the employee's involvement is "of significance to the matter."[133]

Therefore, some examples of participating personally and substantially include taking an action as a District government employee through:

◊ Decision
◊ Approval
◊ Disapproval
◊ Recommendation
◊ The rendering of advice
◊ Investigation
◊ Other such action

"Communications or Appearances"

Communications or Appearances includes:

◊ In-person meetings
◊ Telephone calls
◊ Email
◊ Facebook
◊ Twitter, Tumblr, Instagram, or other social media

[132] 5 C.F.R. § 2641.201(i)(2).
[133] 5 C.F.R. § 2641.201(i)(3).

"Permanently" means for the lifetime of the particular matter involving a specific party, not your lifetime. So, if the particular matter involving a specific party is a contract, for example, when the contract ends, the permanent ban ends as well.

2-Year Prohibitions

→ **Behind the Scenes Advice-Giving**
→ **Official Responsibility**

Behind the Scenes Advice-Giving

A former District government employee is prohibited for two years from engaging in behind-the-scenes assistance in representing another person before an agency as to a particular matter involving a specific party if the former District government employee participated in that matter as a District government employee.[134]

The behind-the-scenes assistance includes:

- aiding
- counseling
- advising
- consulting
- assisting in representing[135]

[134] DPM § 1811.8.
[135] *Id.*

The two-year period is measured from the date of termination of employment in the position held by the former employee when the employee participated personally and substantially in the matter involved.[136]

A former District government employee can never use *non-public/confidential* District government information learned while a District government employee.

Official Responsibility

A former District government employee shall be prohibited for two (2) years after terminating District government employment from knowingly acting as an *attorney, agent, or representative* in *any formal or informal* matter before an agency if he or she previously had **official responsibility** for that matter.[137]

The former District government employee had official responsibility for any matter that was actually pending under the former employee's responsibility within a period of one year before the termination of such responsibility.[138]

The term "official responsibility" is defined in 6B DCMR § 1899.1 as "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others,

[136] DPM § 1811.9.
[137] DPM § 1811.5.
[138] DPM § 1811.6.

personally or through subordinates, to approve, disapprove, or otherwise direct governmental action."

The definition usually applies to former managers or agency heads who had oversight of many matters under their jurisdiction, but generally did not perform the work on those matters. Instead, these individuals provided general supervision over the matters for which they ultimately were responsible.

The two years are measured from the date when the former employee's official responsibility for a particular matter ends, not from the termination of government service, unless the two occur simultaneously.[139]

"Official Responsibility" means direct administrative or operating authority:

- Whether intermediate or final
- Either exercisable alone or with others
- Personally or through subordinates
- To approve, disapprove, or otherwise direct governmental action.[140]

[139] DPM § 1811.7.
[140] DPM § 1899.1.

One-Year Prohibition (Cooling Off Period)

A former government employee shall be prohibited for **one year** from having *any transactions* with the former agency *intended to influence* the agency, in connection with any *particular matter pending* before the agency or in which it has a *direct and substantial interest*, whether or not such matter involves a specific party.[141]

This restriction is intended to prohibit the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business.[142]

This restriction applies without regard to whether the former employee had participated in, or had responsibility for, the particular matter, and shall include matters which **first arise after** the employee leaves government service.[143]

This restriction shall apply regardless of whether the former employee is representing another or representing him or herself (unless it is a personal matter), either by appearance before an agency or through communications with that agency.[144]

---

[141] DPM § 1811.10.
[142] DPM § 1811.11.
[143] *Id.*.
[144] DPM § 1811.12.

Exceptions to the One-Year Cooling Off Period

- To furnish scientific or technological information to the agency
  - Employee has outstanding qualifications in a scientific, technological, or other technical discipline
  - Employee is acting with respect to a particular matter that requires such qualifications
  - The interest of the District would be served by such former government employee's participation
  - Consultation with federal OGE required
  - Certification (exemption) issued by the Mayor (or designee)
  - Certification published in the *D.C. Register*[145]

- If the employee's new job is with a state or federal government[146]

- To give testimony under oath[147]

- Personal matters (i.e. income taxes, pension benefits, drivers' licenses, etc.)[148]

[145] DPM § 1811.15.
[146] DPM § 1811.16.
[147] DPM § 1811.14.
[148] DPM § 1811.17.

- ➔ Litigation or Administrative Proceedings (i.e. wrongful termination)[149]

- ➔ Returning to work **on behalf of** the District as a contractor or consultant[150]

    - Cannot represent anyone else
    - Cannot work for an entity doing business with the District
    - If you are an attorney, the District must be your client under legal ethics rules
    - Must **never** become adverse to the District in **any** way
    - Must have **separate representation** if payment, performance, or contractual disputes develop, or to renegotiate, modify, renew, or obtain a new contract.

NOTE for Councilmembers and staff: *See also Council Code VIII (Post-Government Employment Conflicts of Interest), which includes the Permanent Restrictions on Particular Matters, the two-year*

---

[149] *Id.*.

[150] *See* OGE formal, written Advisory Opinions 1165-001, dated April 17, 2014, http://www.bega-dc.gov/sites/default/files/documents/1165-001%20-%20Advisory%20Opinion.pdf, and 1167-001, dated May 20, 2014, http://www.bega-dc.gov/sites/default/files/documents/1167-001%20-%20Advisory%20Opinion%20-%20Redacted.pdf

ban for "Official responsibility," and the one-year ban on appearances and communications with the intent to influence the Councilmember for whom the employee worked or any former subordinate employee, but not the two-year ban for behind-the scenes advice-giving.

Use of Government Property[151]

Government property should only be used for government rather than any private purpose.[152]

In general, District employees have a duty to protect and conserve District property. Also, District employees must not use – or allow others to use – District property for anything other than "officially approved purposes."[153]

Exceptions

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.[154]
(b) If the agency head authorizes the use of District government property for purposes in accordance with law or regulation.[155]
(c) Recognized employee groups may use District facilities for authorized off-duty meetings or training.
(d) District property may be used for non-government purposes if that use will not

[151] DPM § 1808.
[152] DPM § 1808.1.
[153] *Id.*
[154] DPM § 1808.2(b).
[155] *Id.*

increase the maintenance cost of that property. (For example, a District employee may use library materials and other government-purchased books.)

NOTE for Councilmembers and staff: *See also Council Code VI (Use of Government Resources), which permits the use of de minimis government resources for other than officially approved purposes if it does not interfere with the employee's official duties and responsibilities (Council Code VI(a)(3)), and allows for a superior to order, direct or request subordinate employees to use Council time or resources for the purposes of scheduling (Council Code VI(a)(2)).*

Gambling

In general, District employees must not gamble while they are on duty and while they are on government-owned or leased property.[156]

Gambling on duty and while on government property violates Chapter 18 standards such as prohibitions against using District facilities for other than authorized activities[157] and adhering to all federal, state, and local laws and regulations.[158]

Gambling may result in disciplinary action.[159]

There are two common sense exceptions: Gambling is not prohibited if an employee:

1. must engage in gambling as part of agency-approved law-enforcement duties; or
2. is engaging in lawful activities as part of the employee's job duties for the DC Lottery and Charitable Games Control Board.

---

[156] DPM § 1808.1.
[157] DPM § 1800.3(i)
[158] DPM § 1800.3(m)
[159] DPM § 1603.3(g). *See also* DPM Chapter 16 Table of Appropriate Penalties, Causes Specifications/General Considerations at #7.

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. [160] The employee also must not permit others to use nonpublic information for such purposes.[161]

NOTE for Councilmembers and staff: *See also Council Code VII (Use of Confidential Information), which prohibits the willful or knowing and unauthorized or advanced disclosure or use of confidential or privileged information obtained through their District position.*

[160] DPM § 1800.3(c).
[161] *Id.*

Restrictions on Political Activities

(The Hatch Act)

History

The political activity of District government employees is restricted by the **local Hatch Act**[162] and the **Ethics Act**.[163] In addition, the **federal Hatch Act**[164] contains some restrictions that apply to District employees whose salaries are paid in whole or in part with federal funds (i.e., a federal loan or grant to the District).

The following summarizes the current limitations and prohibitions for all District government employees and for those who also are covered by the federal Hatch Act:

---

[162] "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 2013" (D.C. Law 20-4, D.C. Official Code § 1-1171, effective March 7, 2013) (the "Local Hatch Act").

[163] 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 (2014 Supp.)).

[164] 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. *See also* Public Law No. 112-230, "Hatch Act Modernization Act of 2012" and 5 U.S.C. § 1501(4).

Permissible Political Activity

The local Hatch Act permits District government employees to take an active part in political management or in political campaigns. This means that if you are a District government employee, you can:

- file as a non-partisan candidate for a District-regulated election;
- file as a partisan or non-partisan candidate for a non-District regulated election;
- work on and manage the District-regulated partisan or non-partisan campaign of another person;
- work on, manage, and fund-raise for your own District-regulated non-partisan campaign:
- work on, manage, and fund-raise for a non-District-regulated campaign of another person or yourself, regardless of whether it is a partisan or non-partisan campaign;
- organize a "meet & greet"[165] event for another person, as long as you do not fundraise for the District-regulated campaign of another person;
- attend a "meet & greet" event for another person, even if there is a cost to attend or it is for fundraising purposes;

[165] A "meet & greet" event is an event where attendees actually can meet and greet a candidate.

Political Activity Prohibited by the Local Hatch Act

The Local Hatch Act prohibits ALL District government employees from:

★ engaging in any political activity while - -
- at work or otherwise on duty;
- in any room or building occupied in the discharge of official duties of the D.C. government;
- wearing a uniform or official insignia
- in a vehicle owned or leased by the District[166]

★ using government resources for political campaigns
- government resources include: funds, personal services of employees during their work hours, supplies, materials, equipment, email, office space, telephones, and IT services such as the use of data, the Internet, and texting[167]

★ using their official authority or influence for the purpose of interfering with or affecting the result of any election[168]

---

[166] D.C. Official Code § 1-1171.03(a)(1-4).
[167] D.C. Official Code § 1-1163.36.
[168] D.C. Official Code § 1-1171.02(a)(1)

★ **coercing,** explicitly or implicitly, any subordinate employee to engage in political activity.[169]

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.[170]

Political activity includes supporting or opposing any:

- candidate (partisan or nonpartisan)
- initiative
- referendum or
- recall measure

[169] D.C. Official Code § 1-1171.03(b).
[170] D.C. Official Code § 1-1171.01(8)(A).

Employee means any individual who:

- ☐ is paid by the D.C. government from grant or appropriated funds for his or her services;
- ☐ holds office in D.C.;
- ☐ is a member of a board or commission who is nominated for a position pursuant to § 2(e) of the Confirmation Act of 1978[171]; or
- ☐ is a member of a board or commission who is nominated pursuant to § 2(f) of the Confirmation Act of 1978[172] when the member is engaged in political activity that relates to the subject matter that the member's board or commission regulates.[173]

If not otherwise employed by the District, the local Hatch Act *does not* include the following as District government employees:

- Employees of the courts of the District of Columbia;
- The Mayor;
- The Attorney General after January 1, 2015;
- The members of the Council;
- Advisory Neighborhood Commissioners;
- Members of the State Board of Education; or

[171] D.C. Official Code § 1-523.01(e).
[172] D.C. Official Code § 1-523.01(f).
[173] D.C. Official Code § 1-1171.01(3)(C).

- Members of the District of Columbia Statehood Delegation.[174]

When engaging in "political activity" that is **regulated by the District**, District government employees cannot:

- 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.[175]

District government employees who *are* District residents cannot:

[174] D.C. Official Code § 1-1171.01(3)(A)(i-vii).
[175] D.C. Official Code § 1-1171.02(a)(2, 4).

- File as a candidate for election to a partisan political office.[176]

Enforcement/Penalties

BEGA enforces the local Hatch Act. Violations constitute a violation of the Code of Conduct as set forth in the Ethics Act.[177] BEGA sanctions may include a civil penalty of up to $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.

In addition, employees who violate these provisions may be subject to discipline (including termination) or criminal prosecution.

Designated Employee

The Mayor and each member of the Council may designate one District government employee *while on leave* to knowingly solicit, accept, or receive political contributions. The designation must be made in writing and filed with the Board of Ethics and Government Accountability.[178]

[176] D.C. Official Code § 1-1171.02(a)(3).
[177] D.C. Official Code § 1-1161.01(7).
[178] D.C. Official Code § 1-1171.02(b).

The Federal Hatch Act

District government employees whose salaries are paid in whole or in part with federal funds ("covered District employees") also are covered by specific provisions in the federal Hatch Act.[179] 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.[180]

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

[179] 5 U.S.C. § 1501(14) (defining who is covered).
[180] 5 U.S.C. § 1502.

Enforcement of the Federal Hatch Act

The federal Hatch Act is enforced by the U.S. Office of Special Counsel (OSC).[181] A violation of the federal Hatch Act also may be a violation of the District's personnel laws and regulations, which include the District's Code of Conduct.

If you have questions about the federal Hatch Act specifically, you may contact the Hatch Act Unit of 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

[181] OSC initiates investigations and may bring an enforcement action with the U.S. Merit Systems Protection Board. 5 USC § 1504.

Q & A: Restrictions on Political Activities

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.

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.

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 BEGA.

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.

Financial Disclosure Requirements

Pursuant to the Ethics Act, many District employees and Public Officials are required to file Public Financial Disclosure Statements (PFDS) with BEGA, Confidential Financial Disclosure Statements (CFDS) with their agency heads, or Public Financial Disclosure Certifications with BEGA.

Public Financial Disclosure Statements Filed with BEGA

By May 15th of each year, Public Officials (except for Advisory Neighborhood Commissioners (ANCs) and candidates) must file a **PFDS** with BEGA[182] for the previous calendar year.

Public Officials who must file Public Financial Disclosure Statements include:

- the Mayor, Chairman, and each member of the Council;
- the Attorney General;
- a District elected Representative or Senator;
- a member of the State Board of Education;
- a person serving as a subordinate agency head in a position designated as within the Executive Service;

[182] D.C. Official Code 1-1162.24.

- a member of a board or commission listed in D.C. Official Code § 1-523.01(e); and
- Employees who are paid at a rate of Excepted Service level 9 or higher (regardless of pay scale) who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing polices, 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.[183]

Public Financial Disclosure Certifications for ANCs and Candidates

All ANCs[184] and candidates for nomination for election, or election, to public office,[185] are required to file **Public Financial Disclosure Certifications** on or before May 15th of each year for the previous calendar year, directly with the BEGA.

Confidential Financial Disclosure Statements for Designated Employees

By April 15th of every year, each Agency Head must notify those agency employees who will be required to file a CFDS form.[186]

[183] D.C. Official Code § 1-1161.01(47).
[184] D.C. Official Code § 1-1162.24(a)(3)(A).
[185] D.C. Official Code § 1-1162.24(a)(3)(B).
[186] D.C. Official Code § 1-1162.25(c).

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.[187] The CFDS must be filed with the designated employee's agency head or designee by May 15th of each year for the previous calendar year.[188]

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;

[187] D.C. Official Code § 1-1162.25(a).
[188] *Id.*

- 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 (i.e., anyone who conducts or seeks to conduct business with the District of Columbia government – see p. 12 for full Ethics Act definition).[189]

The reporting individual also must certify that they have not engaged in any improper activity, such as accepting bribes or receiving funds through improper means.[190]

[189] D.C. Official Code § 1-1162.24(a)(1)(A)-(E).
[190] D.C. Official Code § 1-1162.24(a)(1)(G).

Electronic filing is available to all **Public filers** on BEGA's website.[191] This includes ANCs and candidates who must file Public Certifications with BEGA. The BEGA website also provides general information and Frequently Asked Questions (FAQs).[192]

[191] http://efiling.bega-dc.gov/efs_forms/login.asp.

[192] www.bega-dc.gov/resources-for/government-employees.

Whistleblower Statute

In addition to the mandatory reporting requirements discussed earlier in this Ethics Manual, District government employees may be protected civilly under the District's whistleblower statute. 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.[193] Therefore, employees who make "protected disclosures" to a "public body" or "supervisor" are protected under the whistleblower statute

What is a "*Protected Disclosure*"?

"*Protected Disclosure*"[194] means any disclosure of information, not specifically prohibited by statute, without restriction to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties by an employee to a supervisor or a public body that the employee **reasonably believes** evidences:

- Gross mismanagement
- Gross misuse or waste of public resources or funds

[193] D.C. Official Code § 1-615.51.
[194] D.C. Official Code § 1-615.52(a)(6).

■ Abuse of authority in connection with the administration of a public program or the execution of a public contract

■ A violation of a federal, state, or local law, rule, or regulation, or of a term of a contract between the District government and a District government contractor which is not of a merely technical or minimal nature

■ A substantial and specific danger to the public health and safety

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.[195]

Who counts as a "*supervisor*?"

A "*supervisor*" is:

- an agency head,
- a department director,
- a manager,[196] 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; or[197]
- authority to "effectively recommend remedial or corrective action" for the violation of misuse of government resources.[198]

What reporting obligations do *supervisors* have?

As soon as a *supervisor* becomes aware of a violation of federal, state or local law, rule or

[195] *Id*. at § 1-615.52(a)(7).
[196] *Id*. at § 1-615.52(a)(8).
[197] *Id*. at § 1-617.01(d).
[198] *Id*. at § 1-615.52(a)(8).

regulation or of a contract term (not of a merely technical or minimal nature), she must report the violation to a public body.[199] Failure to make such a disclosure can result in employment discipline or dismissal.[200]

Prohibitions on retaliation

District officials are **prohibited from retaliating** against any employee who makes a protected disclosure or refuses to comply with an illegal order.[201]

[199] *Id*. at § 1-615.58(8).
[200] *Id.* at. §§ 1-615.58(8), (9), (11).
[201] D.C. Official Code § 1-615.52(a)(5)(A).

Agencies with Responsibility for Ethics Investigations

Responsibility for investigating alleged unethical conduct by District employees is distributed among many different government agencies.

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

Agency	Investigates allegations of:
District:	
Board of Ethics and Government Accountability (BEGA)	Ethics violations, including conflicts of interest, DPM violations, and violations of the local Hatch Act, by **all** District government employees and public officials in executive and legislative branch agencies, as well as independent agencies, boards and commissions, and the Advisory Neighborhood Commissions.[202]
Office of the Inspector General	Waste, fraud, and abuse, including crime, corruption, and conflict of interest

[202] D.C. Official Code § 1-1161.01 *et seq*.

Agency Heads and their designees	Employee disciplinary matters and matters that must be reported to the IG
Office of the Attorney General	Although OAG does not have direct responsibility for enforcing District ethics standards that occur outside of OAG, it can bring suit to recover funds taken by employees and public officials in violation of D.C. laws, and can bring injunctive actions, in appropriate circumstances, to enjoin on-going conduct that may violate D.C. laws.[203]
Federal:	
US Attorney's Office & FBI	criminal violations[204]

Contact BEGA

BEGA Hotline: (202) 535-1002
BEGA Email: BEGA@dc.gov
BEGA Main Number: (202) 481-3411
BEGA Website: www.bega-dc.gov
BEGA Address: 441 4th Street, NW
Suite 830 South
Washington, D.C. 20001

[203] D.C. Official Code § 1-301.81(a)(1).
[204] D.C. Official Code § 23-101©.