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

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Ethics Guidelines for the DC One Fund Campaign

Purpose

This guide is intended to provide District employees with direction on those activities that should be followed, as well as those that must be avoided, during the DC One Fund campaign, the only authorized District government "workplace giving program."[1] So as to be most helpful to its readers, the guide draws on years of One Fund campaign experience and contains examples of permissible fundraising practices and events, a discussion of prohibited practices, and several fact-specific scenarios.[2]

Background

The roots of the DC One Fund can be traced back to Commissioner's Order No. 55-702 (dated April 19, 1955). The Order followed an agency study that had found "widespread dissatisfaction among District employees [with] the excessive number of charity drives each year." *Id.* at 1. The reasons cited for the dissatisfaction were the "frequently disappointing" amounts raised, the "inordinate amount of time" taken by the drives, and the difficulty in making planned contributions. *Id.* Looking to the success enjoyed by several federal government agencies, the study recommended, and the Order adopted, "the policy of a one-solicitation campaign." *Id.* at 3. The Order also adopted the recommendation that "employees be permitted to designate the charitable organizations that are to receive their contributions." *Id.*

Not long after the advent of Home Rule, Mayor Washington issued Mayor's Order 75-195 (dated August 22, 1975) to rescind Commissioner's Order No. 55-702 and to establish the District of Columbia Government Employees Annual One Fund Drive. One of the stated purposes of the Mayor's Order was to "reestablish the authority to conduct a single drive." Mayor's Order at 1. However, there was no citation to "the authority" for a charitable fundraising drive, and the only

[1] Office of the Secretary, *DC One Fund – Each One Help One*, http://os.dc.gov/onefund (last visited Sept. 9, 2015).

[2] This guide *does not* apply to the collection of gifts-in-kind, such as food, clothing, and toys, or to the solicitation of District government employees outside the workplace.

authority cited for the Mayor's Order itself was, without reference to any particular section, the District of Columbia Home Rule Act. *Id.*[3]

In 1987, Mayor Barry issued Mayor's Order 87-158 (dated July 2, 1987) to establish the Office of the District of Columbia One Fund ("One Fund Office") in the Executive Office of the Mayor. The purpose of the One Fund Office was "to provide continuity and overall management on the development and operational efficiency of the annual District of Columbia Government Employees Annual One Fund Drive." *Id.* at 1. A year later, Mayor Barry amended Mayor's Order 87-158. *See* Mayor's Order 88-194 (dated August 23, 1988). While the general purpose of the One Fund Office was left essentially the same, Mayor's Order 88-194 provided that the Office also was to "promote[] the District government's philosophy of charitable fundraising *as an extension of public service*." *Id.* at 1 (emphasis added). That provision is noteworthy because, while it does not provide the legal authority on which to base a government-wide charitable fundraising effort, it does represent the only official expression to date of the policy underlying such an effort. As explained immediately below, even though the DC One Fund is now operated by the Office of the Secretary, Mayor's Order 88-194 is otherwise still in effect.

At present, the Office of the Secretary runs the day-to-day operations of the DC One Fund along with designated agency coordinators[4] and, during the One Fund campaign season, administers the program jointly with the United Way of the National Capital Area and The United Black Fund Inc. of Greater Washington, DC.[5] The Office of the Secretary receives applications from charitable organizations and determines those that are eligible for participation in the One Fund campaign, which begins on the first Monday of October and ends on the second Friday of December. District employees have the opportunity to participate in a variety of One Fund campaign events and to make donations to the organization or organizations of their choice through recurring or one-time payroll deductions. All payroll deduction pledges start on the first or second pay period of the following calendar year.[6] Overall, the objective is to achieve "an effective and efficient single campaign among DC government employees for the support of worthy, charitable causes with minimal disruption to the work force."[7]

BEGA's Role During the DC One Fund Campaign

Whatever uncertainty there may be about the legal authority for the DC One Fund, a resolution

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[3] Mayor's Order 75-195 was amended and reissued by Mayor's Order 81-178 (dated August 17, 1981). However, the latter Mayor's Order was equally as silent on the authority for a charitable fundraising drive.

[4] *See DC One Fund – Each One Help One supra* note 1.

[5] *Id.*

[6] *Id.*

[7] *Id.*

of the issue is beyond the scope of this guide.[8] Further, the fact remains that the DC One Fund campaign has become an official annual event on the District government's calendar and, as such, operates as an exception to the prohibition against enriching outside private entities through the government sponsored efforts of its employees.[9] BEGA plays a role with respect to the campaign to the extent that its operation calls into question any provision of the Code of Conduct.

BEGA was established by section 202(a)(1) of the 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 § 1-1162.02(a)(1)), to administer and enforce the Code of Conduct. The Code of Conduct, which applies to all District government employees and public officials,[10] includes both the Council's Code of Official Conduct and Chapter 18 of Title 6B of the District of Columbia Municipal Regulations (also known as the District Personnel Manual).[11]

In addition to the Code of Conduct, BEGA looks to the regulations implementing the Combined Federal Campaign ("CFC") – the federal counterpart to the DC One Fund campaign – when giving advice on permissible One Fund campaign activities.[12] The CFC is the largest annual workplace charity campaign in the world,[13] and the Office of Personnel Management, which administers the program, finalized revisions to the already time-tested regulations in 2014.[14] The revised regulations will go into effect on January 1, 2016, but BEGA will be guided by them beginning with this year's DC One Fund campaign.

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[8] However, the Board of Ethics and Government Accountability ("BEGA") has submitted legislation that would expressly permit District government employees to participate in DC One Fund activities as authorized by the Mayor in consultation with the Director of Government Ethics to ensure compliance with ethics best practices. *See* section 2(q) of the Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015, as introduced on June 12, 2015 (D.C. Bill 21-250).

[9] *See* 6B DCMR § 1800.3(g) ("Employees shall not use public office or position for private gain.").

[10] *See* section 201a of the Ethics Act (D.C. Official Code § 1-1162.01a).

[11] *See* section 101(7)(A) and (E) of the Ethics Act (D.C. Official Code § 1-1161.01(A) and (E)).

[12] The only District regulations related to the DC One Fund campaign are those promulgated by the Department of Human Resources. *See* 6B DCMR § 1146.1 (defining the campaign as "an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in the Metropolitan Washington Area in accordance with arrangements prescribed by Mayor's Order"); §§ 1146. 9 and .10 (authorizing employee contributions).

[13] Office of Personnel Management, *Combined Federal Campaign*, http://www.opm.gov/combined-federal-campaign/ (lasted visited Sept. 9, 2015).

[14] *See* Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations, 79 Fed. Reg. 21,581 (April 17, 2014) (to be codified at 5 C.F.R. § 950.101 *et seq.*).

Best Practices During the DC One Fund Campaign[15]

Examples of Permitted Fundraising Practices

- Recognizing employees who give above a certain amount at One Fund-related award ceremonies
- Setting agency-wide DC One Fund donation goals[16]
- Publicly displaying bar graphs, thermometers, and other types of charts showing the in-progress status of the overall campaign
- Creating promotional items, such as balloons, posters, counter cards, lapel pins, and miscellaneous materials
- Volunteering as a performer, speaker, or event organizer at a DC One Fund campaign event

Examples of Permitted Fundraising Events

- A walk or bike-a-thon
- Bowling tournament
- Raffle
- Kick-off event
- Halloween party
- Award ceremony
- Food events, such as bake sales or cook-offs
- Joint fair with multiple agencies
- Employee talent show

All events should be approved by the agency head in advance and, unless otherwise approved by the agency head, be conducted on official government time. Also, all events must be open to all District employees, regardless of their participation in the campaign. If prizes are offered at any event, they must be modest in nature and value.[17]

Appropriated Funds

Because the DC One Fund campaign is an official government program, reasonable expenditures from appropriated funds are permitted for certain promotional and administrative purposes. Examples include campaign kick-off events, non-monetary awards (*e.g.*, a reserved parking space

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[15] The following list of best practices and events has been compiled from discussions with the D.C. Office of the Secretary and a review of federal agency publications. *See, e.g.,* Department of the Army, *Fund-Raising Within the Department of the Army*, Army Reg. 600-29 (June 7, 2010); U.S. Department of Commerce, *2015 Combined Federal Campaign FAQs on Fundraising* (Jan. 2, 2015), available at: http://2010-2014.commerce.gov/sites/default/files/documents/2015/january/cfc-faqs-2015.pdf.

[16] However, see the discussion in the section below on Prohibited Practices for examples of goals that are not permissible.

[17] *See* the CFC regulation to be codified at 5 C.F.R. § 950.502(b).

for a limited period of time), official time for One Fund campaign activities, and the preparation and distribution of One Fund campaign materials. However, the use of appropriated funds for food, drinks, entertainment, and personal gifts is prohibited. Employees may voluntarily donate food or drinks, but cannot be reimbursed out of appropriated funds for any related expenses.[18]

In-Kind Donations to the DC One Fund Campaign

Employees may make voluntary in-kind donations to the District for DC One Fund events.[19] For individuals and organizations not part of the District government, voluntary in-kind donations must be made through application to the Office of Partnerships and Grant Services ("OPGS"). This is to ensure that donations to the government from outside entities are tracked and vetted to guard against the appearance that such donations are for an improper purpose such as to curry influence with a government agency. District agencies can solicit and accept donations[20] from outside sources, but if they so choose, must do so through an online application process, information about which is available on the OPGS website.[21] Because the application can take up to fifteen days to process, one should submit it as early as possible.

Prohibited Practices

Coercive Practices

No action can be taken that removes, or could appear to remove, an employee's free choice to participate or not to participate in the DC One Fund campaign as he or she chooses. This prohibition reaches an employee's decisions concerning participation in campaign events, whether and how much to donate to the campaign, and confidentiality with respect to the identity of any entity to which the employee chooses to donate.

Examples of coercive practices include, but are not limited to, the following:[22]

- Solicitation of employees by their supervisor or by any individual in their supervisory chain of command. This does not prohibit the head of an agency from performing the usual activities associated with the campaign kick-off or from demonstrating his or her support of

[18] The policy on the use of appropriated funds is based on several federal sources. In particular, *see* Occupational Safety and Health Review Commission – Refreshments for a Combined Federal Campaign Event, Comp. Gen. B-325023, July 11, 2014 ("Food is a personal expense. Appropriations are not available to pay for food unless specifically authorized, or unless the agency can demonstrate that such expenditures are an essential constituent part of the effective accomplishment of a statutory responsibility."); Office of Personnel Management, *Frequently Asked Questions*, http://go.usa.gov/3MVEh (last visited Sept. 9, 2015).

[19] In-kind donations can be real property, personal property, or services rendered for the District government.

[20] However, donations given by outside sources with the intent to receive some benefit in return cannot be accepted.

[21] Visit http://opgs.dc.gov/node/228022.

[22] With some minor modification, the examples are taken directly from the CFC regulation to be codified at 5 C.F.R. § 950.108.

the campaign in employee newsletters or other routine communications with District employees.

- Supervisory inquiries about whether an employee chooses to participate or not to participate or the amount of an employee's donation. However, supervisors may be given summary information about the participation of the units they supervise.
- Setting of 100 percent participation goals. This is inherently coercive because it suggests that *everyone* in the agency must participate.
- Establishing personal dollar goals and quotas.
- Developing and using lists of contributors (along with the amounts contributed) or non-contributors.
- Providing and using contributor lists for purposes other than the routine collection and forwarding of donations and allotments.
- Using as a factor in a supervisor's performance appraisal the results of the solicitation in the supervisor's unit or organization.

Conflicts of Interest

Employees are prohibited from serving in any DC One Fund position that influences or determines the eligibility of charitable organizations for the campaign while serving in any official capacity with a charitable organization that could be, or appear to be, a conflict of interest.[23] Employees also may not solicit donations on behalf of a charitable organization with which they have any affiliation.

Preferential Treatment

Employees may not endorse or encourage other employees to donate to a specific charity or charities in specific groups. Likewise, DC One Fund events should not have "designated" campaign beneficiaries, but must allow each donor to make his or her own decision about how and to whom the donation is to be designated.

Gambling

In planning DC One Fund campaign events that involve opportunities of chance (*e.g.*, raffles and door prizes), employees must avoid gambling.[24] This is especially true if any such activities occur on government property, where gambling is prohibited.[25] However, if, for example, entry into an

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[23] *See* the CFC regulation to be codified at 5 C.F.R. § 950.109.

[24] Under the common law, prohibited lottery and gambling offenses generally involve activities in which each of the following elements is present: (1) the award of a prize, (2) determined on the basis of chance, (3) where consideration was paid. *See, e.g., F.C.C. v. Am. Broad. Co.,* 347 U.S. 284, 289-91 (1954); *Corporate Organization & Audit Co. v. Hodges,* 47 App. D.C. 460, 465 (1918) ("[A] lottery, according to a recognized authority, has these essential elements – consideration, prize, and chance." (citation omitted)).

[25] "It shall be unlawful in the District to participate in any game of chance for money or property with dice, cards, or any gambling table or other gambling device adopted, devised, and designed for the purpose of playing any game of chance for money or property upon any public property or highway, or upon any vacant or unoccupied property that is so near to a public highway that it is seen or heard from the highway." 19 DCMR § 1309.

event is based simply on attendance, then any door prize is permitted because no consideration or "buy in" is paid by participants. On the other hand, if there is any requirement that participants make a One Fund donation or have to pay an entry fee, the event is not permitted.

Examples

Scenario #1

An agency DC One Fund coordinator solicits donations at work. Each employee who donates above $20.00 receives a raffle ticket for a chance to win a coffee maker.

> *Answer: The raffle is **not permissible** because non-participating employees are not included. Furthermore, the raffle constitutes gambling on government property; consideration has been paid (a monetary donation), in a game of chance (a raffle), for a prize with some value (a coffee maker).*

Scenario #2

An agency supervisor solicits money in his unit to fund a DC One Fund campaign raffle prize of a free entrée at a local restaurant. The supervisor then gives a raffle ticket to every employee in the unit for a chance to win the free entrée.

> *Answer: The solicitation is **not permissible** because the supervisor is soliciting money from subordinates. This is inherently coercive.*

Scenario #3

An agency DC One Fund coordinator who is not a supervisor solicits donations at work for the campaign and gives a raffle ticket to every employee for a chance to win a gift certificate, whether the employee makes a donation or not.

> *Answer: The raffle and the solicitation are **permissible**. Gambling has not occurred because no employee has paid consideration for the raffle ticket. The solicitation is permitted because there is no coercive effect. Everyone in the agency is given a raffle ticket without any requirement that they participate in the One Fund campaign, and One Fund campaign donations are not solicited by a supervisor.*

Scenario #4

An agency director agrees to post the logos of local business donors on the agency's website to recognize their support during the DC One Fund campaign.

> *Answer: This is **not permissible.** Recognizing businesses as donors on a District website benefits those businesses with an implied endorsement from the District government. Also, benefitting the businesses by the posting destroys the bona-fide nature of their donations. The donations can reasonably be seen as not having been*

made in the spirit of charitable giving, but with the intent to gain some commercial advantage.

Scenario #5

An agency director expresses support for the DC One Fund campaign in a kick-off email in which he challenges employees to meet an agency-wide goal of $10,000 in donations.

> *Answer: The email is* ***permissible*** *as an expression of the director's general support for the campaign. The email is addressed to the entire agency, and there is no setting of a 100% participation goal or establishing personal dollar goals.*[26]

Scenario #6

An agency director expresses support for the DC One Fund campaign in a kick-off email and urges employees to make their donations "count even more" by giving to charitable organizations that serve those in the agency's client population.

> *Answer: The email is* ***not permissible*** *because some employees may feel pressured by it to make a donation, and, in any event, the email reflects a preference for a specific group of organizations. Each employee must be free to make his or her own decision about whether to donate and to whom the donation is to be designated.*

Scenario #7

The same director in Scenario #6 invites only charitable organizations that serve the agency's client population to the annual DC One Fund fair.

> *Answer: The invitation is* ***not permissible*** *because it reflects a preference for a specific group of organizations. Invitations to charitable organizations to attend DC One Fund events should include as wide a variety of organizations as possible, and the attending organizations should be selected in a manner that is fair, especially if limited event space is a consideration (e.g., random selection up to a certain number of all organizations responding to the invitation, first to respond to the invitation up to a certain number, etc.).*

Scenario #8

A charitable organization is invited to attend a DC One Fund fair organized by a number of agencies. At its table, the organization makes promotional brochures available for free, but displays certain items with its logo (*e.g.*, coffee mugs and tee shirts) for sale.

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[26] *See* CFC Foundation, *FAQ*, http://www.cfctoday.org/tags/faq ("Each federal agency may also set a financial goal.") (last visited Sept. 9, 2015).

Answer: The sale of the items is ***not permissible****. Charitable organizations participating in DC One Fund events may distribute promotional materials at no charge, but are* ***not allowed to sell any items, do any fundraising, or solicit volunteers****.*

Scenario #9

An agency wishes to reward those of its employees who make DC One Fund campaign donations of more than a certain amount with 8 hours of administrative leave with pay.

Answer: This prize is ***not permissible*** *because it is not modest in value. The cost to the District government, even for one employee, could be significant. Examples of appropriate prizes may include opportunities for lunch with agency officials, agency parking spaces for a specific time period, and items of minimal financial value.*[27]

Scenario #10

An employee of an agency is a board member of a charitable organization that has been deemed eligible as a DC One Fund participant. He urges his colleague, the agency DC One Fund coordinator, to include the organization among those spotlighted at a campaign event. The employee promises to attend the event and to be available to answer any questions about the organization.

Answer: The employee's conduct is ***not permissible.*** *His efforts on behalf of the charitable organization would violate 6B DCMR § 1800.3(g), which prohibits District government employees from using their public position for private gain.*

This last scenario also serves as a useful reminder that employees who work on the DC One Fund campaign or otherwise participate in any of its related activities are still District government employees and that, therefore, they are subject to the Code of Conduct and to any additional ethics and campaign-related rules of their respective agencies.

For assistance, especially in resolving any ethics questions related to the DC One Fund campaign, please contact the staff of this Office at (202) 481-3411.

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[27] *See* the CFC regulation to be codified at 5 C.F.R. § 950.502(b).