

WHO IS A FINANCIAL DISCLOSURE FILER?



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Goals of this Course:

- Explain who is a
 - ▣ Public Financial Disclosure Filer
 - ▣ Confidential Financial Disclosure Filer

Who is a Public Filer?

□ Statutory Authority:

- ▶ D.C. Code § 1-1162.24(a)(1) “**Public officials**, except Advisory Neighborhood Commissioners, members of the Washington Metropolitan Area Transit Board of Directors, and candidates for nomination for election, or election, to public office, who are not otherwise required to file, shall file annually with the Ethics Board a public report...”

Who is a Public Filer?

□ REMINDER:

- A person is considered a “public official” only if they held the position that made them a “public official” for more than thirty (30) days within the prior calendar year.

Who is a Public Filer?

□ Elected officials

- The Mayor, Chairman, & each Member of the District Council
- The Attorney General
- A Representative or Senator elected pursuant to § 1-123
- A Member of the State Board of Education

Who is a Public Filer?

Members of these Boards and Commissions:

- The Alcoholic Beverage Control Board
- The District of Columbia Board of Library Trustees
- The Board of Trustees of the University of the District of Columbia
- The Board of Zoning Adjustment
- The Police Complaints Board
- The Contract Appeals Board
- The District of Columbia Board of Elections and Ethics
- The Commission on Human Rights
- The District of Columbia Housing Finance Agency Board of Directors
- The District of Columbia Lottery and Charitable Games Control Board
- The Historic Preservation Review Board
- The Metropolitan Washington Airports Authority Board of Directors
- The Office of Employee Appeals
- The Public Employee Relations Board
- The Public Service Commission
- The Rental Housing Commission
- The Washington Convention and Sports Authority Board of Directors
- The Water and Sewer Authority Board of Directors
- The Zoning Commission for the District of Columbia
- The District of Columbia Taxicab Commission
- The Board of Commissioners of the District of Columbia Housing Authority
- Homeland Security Commission
- Commission on Fashion Arts and Events

*Many Board and Commission members are public filers by virtue of being District employees, even if the specific board or commission on which they serve is not listed here

Who is a Public Filer?

- ❑ District Employees (Current & Former) if they were:
 - ❑ A subordinate Agency Head in an Excepted Service Position; or
 - ❑ An employee paid, **regardless of pay schedule**, at a rate equivalent to an Excepted Service employee paid at a rate of Excepted Service 9 or above (which is **\$101,296** or above for 2015), who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or the appearance of a conflict of interest.

Who is a Public Filer?

- Whether a District of Columbia employee is a “Public Official” under the Ethics Act, and thus, a Public Filer, is a two prong test.
 1. The employee must make over the specific salary amount (\$101,296 for calendar year 2015), **AND**
 2. The employee must make decisions or substantially participate in areas of responsibility like contracting, procurement, grant management, licensing, inspecting, regulating, or any other area that could create a financial conflict of interest.

Who is a Confidential Filer?

- **Statutory Authority:**
 - D.C. Code § 1-1162.25(a) “Any employee, other than a public official, who advises, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, **as determined by the appropriate agency head**, shall file... with that agency head a report containing a full and complete statement of the information required by § 1-1162.24.”

Who is a Confidential Filer?

- Essentially, a Confidential filer is a person who would be a Public filer because of their job duties, but who makes less than the salary amount required for a Public filer (\$101,296 for calendar year 2015).
- Confidential Filers must be told they have been designated as such in writing by April 18, 2016. They must also be informed they can appeal this designation.

Appeal of Confidential Filer Designation

- Employees can appeal their designation as a Confidential Financial Disclosure Statement filer. The steps are as follows:
 1. Submit a written request, appealing their designation, to the agency head within five (5) days of the written notification of their designation (DPM § 1810.7(a)).
 2. The agency head must then make a redetermination of the employee's status as a filer, in writing, within five (5) days of receiving the request from the employee. (DPM § 1810.7(b)).

Appeal of Confidential Filer Designation

3. If the agency head's denies the employee's request that they not be designated as a Confidential Filer, that denial is appealable, in writing, within five (5) days of the time the employee receives the notice of denial. The employee can then appeal this decision to the Director of Government Ethics, Darrin P. Sobin. (DPM § 1810.7(c)).
4. The decision of the Director of Government Ethics, with respect to the designation of the employee as a Confidential Filer, must be issued within five (5) days of his receipt of the appeal, and is final. (DPM § 1810.8).

Who files a Public Financial Disclosure Certification?

- Statutory Authority:
 - ▶ D.C. Code § 1-1162.24(3)(A-B) “(A) An **Advisory Neighborhood Commissioner** who is not otherwise required to file a report...shall file the certification required by paragraph (1)(G) of this subsection for the preceding year. (B) Effective January 1, 2015, **a candidate** for nomination for election, or election, to public office who is not otherwise required to file a report...shall file the certification required by paragraph (1)(G) of this subsection for the preceding year.
- Only Advisory Neighborhood Commissioners and Candidates file these shortened forms.

Determining Which Positions Should File Financial Disclosure Forms

- Ask yourself:
 - Does the position require the employee to make decisions in one of the listed areas of responsibility?
 - Does the position require the employee to participate personally and substantially in one of the listed areas of responsibility?
 - Is there potential for conflict of interest, appearance of favoritism, or loss of impartiality?

“Participate Personally and Substantially”

- Personal and substantial participation occurs when an employee participates in a particular matter through: direct involvement; direct and active supervision of subordinates’ involvement; decision; approval; disapproval; recommendation; investigation; or giving advice.
- Consider whether the employee’s decision is independent or accepted with little or no review by the supervisor.
- Participation is substantial even if does not determine the outcome; it is substantial if it is significant to the outcome of the matter.

Contracting & Procurement

- All contracting officers and specialists, procurement analysts and agents, and all employees with authority to obligate District funds
- Program Managers, Contract Administrators, or other employees who are responsible for the technical monitoring of a contract or who are personally and substantially involved in the initiation and development of a contract (i.e. providing input into statement of work, negotiation of contract, or selection of vendor)
- NOT A FILER: If an employee is a “Procurement Assistant, but is only responsible for typing and processing procurement documents, answering status inquiries from the public, performing office support duties such as filing and copying, and maintaining an online contract database, that employee does NOT have any actual contracting or procurement responsibilities.

Administration of Grants

- Administering, awarding, monitoring, or making determinations regarding grants, subsidies, licenses, or other benefits
- Grants Management Officers, Specialists, and other employees with authority to commit District funds
 - ▣ Ex: An employee assists in the review of grant applications, determining their relevance to agency programs, and making funding recommendations. Employee's supervisor typically accepts these recommendations without further clarification. This ability to affect the financial interest of outside organizations as well as the employee's authority to commit District funds would make them a Financial Disclosure Filer.

Regulating

- All employees who substantially participate in the drafting of regulations
 - ▣ Ex: Attorneys
- All employees who enforce compliance with regulations
 - ▣ Ex: Employees who collect assessments from outside vendors or companies.
- Both groups of employees have the ability to affect the finances of outside vendors or groups and the potential for favoritism or a loss of impartiality, or at the very least the appearance of favoritism, to occur is high in these positions.

Auditing, Inspecting & Licensing

- Auditors, inspectors, and employees engaged in licensing have the ability to affect the finances of outside vendors or groups by their decisions and the potential for favoritism or a loss of impartiality, or at the very least the appearance of favoritism, to occur is high in these positions.
- Ex: Health inspectors, Construction inspectors, employees issuing Certified Business Entity status

Agency Responsibilities

- **March 1, 2016-** Submit a list of all the Public Filers from your agency to BEGA in the requested format
- **April 18, 2016-** Notify all Confidential Filers in your agency, board or commission, in writing, that they have been designated as Confidential Filers, and that they can appeal this designation.
- **May 1, 2016-** Submit a list of all Confidential Filers from your agency to BEGA in the requested format

Agency Requirements

2016 Filing Deadline

Monday May 16, 2016

- ❑ Public Financial Disclosure Statements and Certifications must be submitted electronically by this date
- ❑ Confidential Financial Disclosure Statements must be submitted to the employee's agency head by this date

Agency Requirements

- **May 16, 2016-June 1, 2016-** Review all Confidential Financial Disclosure Statements

- **June 1, 2016-** Submit a Confidential Filers Review Report to BEGA in the requested format.
 - This report indicates which employees, if any, failed to file, which employees appealed their designation as Confidential Filers and the status of the appeal, and reports any actual or potential ethics violations disclosed on the forms to BEGA.

Agency Requirements

- **June 15, 2016-** BEGA publishes in the D.C. Register the names of all public filers who
 1. Filed,
 2. Failed to file, or
 3. Sought an extension of the filing deadline
 - The Director of Government Ethics can grant extensions to the filing deadline, but only for good cause shown.

Where & How to File Publicly

- **All Public Filers must file Electronically at www.bega-dc.gov**
 - Follow the “File a Financial Disclosure Statement” button on the Home Page, and click the “E-file” link to access the FDS e-filing system
- **In April, every Public filer will receive a letter from BEGA. The letter will:**
 - Explain the process for filing
 - Include the necessary log-in information for those who wish to file electronically
 - However, you are still required to file if you are a Public Official even if you do not receive a letter from BEGA.

Where & How to file Confidentially

- Download a fillable PDF of the Confidential Financial Disclosure Statement from:
www.bega-dc.gov/financial-disclosure-forms
- Submit the form to the agency head or their designee (as instructed by the agency)
- Agency may also create their own procedures for submission of Confidential Financial Disclosure Statements

Questions about Financial Disclosure?

Contact:

- Bega-fds@dc.gov

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