

FILING SHEET

OFFICE OF THE SECRETARY

2015 JUN 12 PM 1:50

DATE: June 12, 2015

1. SHORT TITLE OF MEASURE OR DOCUMENT

Comprehensive Code of Conduct of the District of Columbia
Establishment and BECA Amendment Act of 2015

2. NAME/LOCATION ON V DRIVE: _____
DISK ATTACHED

3. REFERRAL OF PROPOSED LEGISLATION _____

4. COMMITTEE REPORT

5. EMERGENCY LEGISLATION

- _____ Circulated Statement of Reason and Effect of Emergency
- _____ Emergency Declaration Resolution
- _____ Emergency Legislation
- _____ Temporary Legislation

6. _____ CIRCULATED CEREMONIAL RESOLUTION

****Please contact Information Systems Division for a framed copy****

7. REPROGRAMMING REQUEST

8. AMENDMENT(S) _____ Bill No. _____ PR No. _____

9. PUBLIC HEARING NOTICE

10. PUBLIC ROUNDTABLE NOTICE

11. PUBLIC OVERSIGHT HEARING NOTICE

12. OTHER CORRESPONDENCE

FILED BY

CHAIRMAN, MEMBER OR COMMITTEE

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



June 12, 2015

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

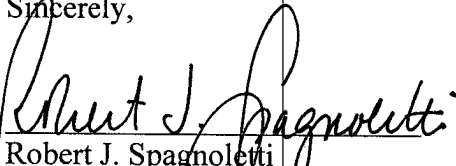
Pursuant to section 209(b)(1) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (D.C. Official Code § 1-1162.09(b)(1)), and in accordance with Council Rule 401(b)(1), I am enclosing proposed legislation, entitled the "Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015", for you to introduce for consideration and approval by the Council.

I am also enclosing a section-by-section analysis of the bill to assist the Council during the legislative process.

The proposed legislation would amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to establish the Comprehensive Code of Conduct of the District of Columbia and would make conforming amendments.

If you have any questions, please contact Darrin Sobin, Director of Government Ethics, at (202) 481-3411.

Sincerely,



Robert J. Spagnoletti
Chairman, Board of Ethics and
Government Accountability

Enclosures (as stated)

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Chairman Phil Mendelson
at the request of the Board of Ethics
and Government Accountability

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Board of Ethics and Government Accountability, introduced the following bill, which was referred to the Committee on the Judiciary.

To amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to establish the Comprehensive Code of Conduct of the District of Columbia; and to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the “Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015”.

Sec. 2. The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*), is amended as follows:

(a) The Table of Contents is amended, after “SUBTITLE B. DIRECTOR OF GOVERNMENT ETHICS.”, to read as follows:

“SUBTITLE C. CONFLICTS OF INTEREST. [Repealed]

“SUBTITLE C-i. COMPREHENSIVE CODE OF CONDUCT OF THE DISTRICT OF COLUMBIA.””

(b) Section 101 (D.C. Official Code § 1-1161.01) is amended as follows:

(1) Paragraph (1) is amended to read as follows:

“(1) “Administrative decision” means any activity directly related to action by an

1 official in the executive branch, but does not include proceedings related to a contested case
2 conducted under the Administrative Procedure Act.”.

3 (2) Paragraph (3) is repealed.

4 (3) Paragraph (3A) is redesignated as paragraph (3C) and new paragraphs (3A)
5 and (3B) are added to read as follows:

6 “(3A) “Agency” means any unit of the District government, including the
7 Council, required by law, by the Mayor, or by the Council to administer any law, rule, or any
8 regulation adopted under authority of law, including a board or commission. Agency also
9 includes an Advisory Neighborhood Commission and any unit of the District government created
10 or organized by the Council as an agency, including an independent agency.

11 “(3B) “Boards and commissions” means bodies established by law or by order of
12 the Mayor consisting of appointed members to perform a trust or execute official functions on
13 behalf of the District government.”.

14 (4) Paragraph (6) is amended to read as follows:

15 “(6) “Candidate” means, for purposes other than section 223n, an individual who
16 seeks nomination for election, or election, to office, whether or not the individual is nominated or
17 elected. An individual deemed to be a candidate for the purposes of the Comprehensive Code of
18 Conduct shall not be deemed, solely by reason of that status, to be a candidate for the purposes of
19 any other law. For the purposes of this paragraph, an individual shall be deemed to seek
20 nomination for election, or election, if the individual:

21 “(A) Received contributions or made expenditures, or has given consent to
22 any other person to receive contributions or make expenditures, with a view to bringing about the
23 individual’s nomination for election, or election, to office;

1 “(B) Knows, or has reason to know, that any other person has received
2 contributions or made expenditures for that purpose, and has not notified that person in writing to
3 cease receiving contributions or making expenditures for that purpose; provided, that an
4 individual shall not be deemed a candidate if the individual notifies each person who has
5 received contributions or made expenditures that the individual is only testing the waters, has not
6 yet made any decision whether to seek nomination or election to public office, and is not a
7 candidate; or

8 “(C) Filed a nominating petition.”.

9 (5) Paragraph (7) is repealed.

10 (6) Paragraph (9) is repealed.

11 (7) New paragraphs (9A) and (9B) are added to read as follows:

12 “(9A) “Comprehensive Code of Conduct” means the Comprehensive Code of
13 Conduct of the District of Columbia established by subtitle C-i of Title II.

14 “(9B) “Contractor” means a person that enters into a contract with the District,
15 including a vendor of supplies.”.

16 (8) A new paragraph (10C) is added to read as follows:

17 “(10C) “Covered individual” shall have the same meaning as provided in section
18 223b(a).”.

19 (9) Paragraph (11) is amended to read as follows:

20 “(11) “Direct and predictable effect” means:

21 “(A) A close causal link between any decision or action to be taken in the
22 particular matter and any expected effect of the matter on a financial or personal interest;

1 “(B) A real, as opposed to a speculative possibility, that the matter will
2 affect the financial or personal interest; and

3 “(C) The effect is more than de minimis.”.

4 (10) A new paragraph (14A) is added to read as follows:

5 “(14A) “Elected official” means an individual holding office as a result of any
6 election that is regulated by the Elections Board. The term includes, but is not limited to the
7 following:

8 “(A) The Mayor, Chairman, and each member of the Council;

9 “(B) The Attorney General;

10 “(C) A Representative or Senator elected pursuant to section 4 of the
11 District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10,
12 1981 (D.C. Law 3-171; D.C. Official Code § 1-123);

13 “(D) An Advisory Neighborhood Commissioner; and

14 “(E) A member of the State Board of Education.”.

15 (11) Paragraph (15) is amended to read as follows:

16 “(15) “Election” means, except for section 223n(d), a primary, general, or special
17 election held in the District of Columbia for the purpose of nominating an individual to be a
18 candidate for election to office, or for the purpose of electing a candidate to office, or for the
19 purpose of deciding an initiative, referendum, or recall measure, and includes a convention or
20 caucus of a political party held for the purpose of nominating such a candidate.”.

21 (12) Paragraph (18) is amended to read as follows:

22 “(18) “Employee” means, except as specified in section 223n(a)(2), a person who
23 performs a function of the District government, whether or not for compensation, including a

1 member of a board or commission, an Advisory Neighborhood Commissioner, a special
2 government employee, and a volunteer. The term does not include the District of Columbia
3 Court of Appeals and the District of Columbia Superior Court, or an individual performing
4 services for the District government as a vendor or contractor; except that, for the purposes of
5 section 223d, individuals performing services for the District government as a vendor or
6 contractor shall be considered employees.”.

7 (13) A new paragraph (22A) is added to read as follows:

8 “(22A) “Former employer” is any person or organization:

9 “(A) For whom or for which the covered individual has served as an
10 owner, officer, director, trustee, general partner, agent, attorney, consultant, contractor, or
11 employee; or

12 “(B) From whom or from which the covered individual receives an
13 ongoing economic benefit.”.

14 (14) Paragraph (23) is amended to read as follows:

15 “(23) “Gift” means any gratuity, favor, discount, entertainment, hospitality,
16 payment, subscription, advance, loan, forbearance, rendering, or deposit of money, services, or
17 other item having monetary value, unless consideration of equal or greater value is given. Gifts
18 may also consist of the giving of time and services as well as training, transportation, local
19 travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in
20 advance, or reimbursement after the expense has incurred. It does not include:

21 “(A) Modest items of food and refreshments, such as soft drinks, coffee
22 and donuts, offered other than as part of a meal;

1 “(B) Food and beverages, of nominal value, consumed at hosted
2 receptions where attendance is related to the covered individual’s official duties;

3 “(C) For elected officials, admission to and the cost of food and beverages
4 consumed at events sponsored by a trade association or a civic, charitable, or community
5 organization; provided, that the invitation to the event is extended directly by the event sponsor;

6 “(D) Greeting cards and items with little intrinsic value, such as plaques,
7 certificates, trophies, and other items that are intended solely for display or presentation;

8 “(E) Unsolicited advertising or promotional items of nominal value, such
9 as pens and note pads;

10 “(F) Unsolicited items received by covered individuals for the purposes of
11 evaluation or review, provided the individual has no beneficial personal interest in the eventual
12 use or acquisition of the item by the individual’s agency;

13 “(G) Unsolicited gifts from dignitaries or from the federal government, a
14 state or territory, or a foreign country that are of a nominal value and intended to be personal in
15 nature and, in the case of a foreign country, are permitted under 5 U.S.C.
16 § 7342;

17 “(H) Loans from banks and other financial institutions made in the
18 ordinary course of business on terms generally available to the public;

19 “(I) Opportunities and benefits, including favorable rates and commercial
20 discounts

21 “(i) Available to the public or to a class consisting of all District
22 employees;

1 “(ii) Offered to members of a group or class in which membership
2 is unrelated to District employment; or

3 “(iii) Offered to members of an organization, such as a covered
4 individuals’ association or agency credit union, in which membership is related to District
5 employment if the same offer is broadly available to large segments of the public through
6 organizations of similar size;

7 “(J) Rewards and prizes given to competitors in contests or events,
8 including random drawings, open to the public unless the covered individual’s entry into the
9 contest or event is required as part of his or her official duties;

10 “(K) Pension and other benefits resulting from continued participation in
11 an employee welfare and benefits plan maintained by a former employer;

12 “(L) Anything that is paid for by the District or secured by the District
13 under a District contract;

14 “(M) A political contribution, as defined by section 223n(a)(8)(A),
15 otherwise reported as required by law;

16 “(N) The market value paid by a covered individual for any benefit
17 received as a result of his or her participation in any carpool or other such mutual arrangement
18 involving another covered individual or other individuals, if he or she bears a fair proportion of
19 the expense or effort involved.”.

20 (15) Paragraph (26) is amended to read as follows:

21 “(26) “Immediate family” means the spouse or domestic partner of an employee
22 and any parent, stepparent, grandparent, brother, stepbrother, sister, stepsister, child, stepchild, or

1 foster child of the employee, and the spouse or domestic partner of any such parent, stepparent,
2 grandparent, brother, stepbrother, sister, stepsister, child, stepchild, or foster child.”.

3 (16) Paragraph (28) is amended to read as follows:

4 “(28) “Income” means gross income as defined in section 61 of the Internal
5 Revenue Code (26 U.S.C. § 61), including gross income obtained from honoraria.”.

6 (17) Paragraph (32)(A) is amended by striking the word “Lobbying” and inserting
7 the phrase ““Lobby or “lobbying”” in its place.

8 (18) Paragraph (33)(B) is amended by striking the phrase “for purposes of this
9 act” and inserting “for purposes of section 223r” in its place.

10 (19) A new paragraph (34A) is added to read as follows:

11 “(34A) “Nominal” means an individual cash donation of no more than twenty
12 dollars (\$20) or an individual voluntary gift of no more than twenty dollars (\$20) in market
13 value.”.

14 (20) Paragraph (43) is repealed.

15 (21) Paragraph (46) is amended to read as follows:

16 “(46) “Prohibited source” means any person that:

17 “(A) Is seeking official action by the District government;

18 “(B) Has or is seeking to obtain contractual or other business or financial
19 relations with the District government;

20 “(C) Conducts operations or activities that are subject to regulation by the
21 District government;

22 “(D) Has an interest that may be favorably affected by the performance or
23 non-performance of the covered individual’s official responsibilities; or

1 “(E) Is an organization in which the majority of its members are described
2 in subparagraphs (A) through (D) of this paragraph.”.

3 (22) Paragraph (47) is amended to read as follows:

4 “(47) “Public official” means:

5 “(A) A candidate for nomination for election, or election, to public office;

6 “(B) The Mayor, Chairman, and each member of the Council of the
7 District of Columbia holding office under the Home Rule Act;

8 “(C) The Attorney General;

9 “(D) A Representative or Senator elected pursuant to section 4 of the
10 District of Columbia Statehood Constitutional Convention Initiative of 1979, effective March 10,
11 1981 (D.C. Law 3-171; D.C. Official Code § 1-123);

12 “(E) An Advisory Neighborhood Commissioner;

13 “(F) A member of the State Board of Education;

14 “(G) A person serving as a subordinate agency head in a position
15 designated as within the Executive Service;

16 “(H) Members of the Children and Youth Investment Trust Corporation
17 Board of Directors appointed pursuant to section 2403 of the Service Improvement and Fiscal
18 Year 2000 Budget Support Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C.
19 Official Code § 2-1553); members of the Health Benefit Exchange Authority Executive Board
20 appointed pursuant to section 6 of the Health Benefit Exchange Authority Establishment Act of
21 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.05); members of
22 the Not-for-Profit Hospital Corporation Board of Directors appointed pursuant to section 5115 of
23 the Not-for-Profit Hospital Corporation Establishment Amendment Act of 2011, effective

1 September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 44-951.04); members of the Police
2 and Firemen’s Retirement and Relief Board appointed pursuant to section 122 of An Act To
3 increase compensation for District of Columbia policemen, firemen, and teachers; to increase
4 annuities payable to retired teachers in the District of Columbia; to establish an equitable tax on
5 real property in the District of Columbia; to provide for additional revenue for the District of
6 Columbia; and for other purposes, approved September 3, 1974 (88 Stat. 1041; D.C. Official
7 Code § 5-722); members of the Real Property Tax Appeals Commission appointed pursuant to
8 section 2 of the Real Property Tax Appeals Commission Establishment Act of 2010, effective
9 April 8, 2011(D.C. Law 18-363; D.C. Official Code § 47–825.01a); members of the Retirement
10 Board appointed pursuant to section 121 of the District of Columbia Retirement Reform Act,
11 approved November 17, 1979 (93 Stat. 866; D.C. Official Code § 1-711); and members of the
12 Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to
13 section 1 of the Washington Metropolitan Area Transit Regulation Compact, approved
14 November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01);

15 “(I) A member of a board or commission listed in section 2(e) of the Confirmation
16 Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)); and

17 “(J) A District of Columbia employee paid, regardless of pay schedule, at a rate
18 equivalent to an Excepted Service employee paid at a rate of Excepted Service 9 or above, who
19 makes decisions or participates substantially in areas of contracting, procurement, administration
20 of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or
21 auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a
22 conflict of interest; and any additional employees designated by rule by the Ethics Board.”.

1 (23) Paragraph (48) is amended by striking the phrase “section 227” and inserting
2 the phrase “section 223r” in its place.

3 (c) A new section 101a is added to read as follows:

4 “Sec. 101a. Intent of Council.

5 “It is the intent of the Council, in enacting subtitle C-i of Title II, to consolidate the
6 District’s government ethics laws by establishing the Comprehensive Code of Conduct of the
7 District of Columbia.”.

8 (d) Section 201a (D.C. Official Code § 1-1162.01a) is amended by striking the phrase
9 “Code of Conduct” and inserting the phrase “Comprehensive Code of Conduct” in its place.

10 (e) Section 202 (D.C. Official Code § 1-1162.02) is amended by striking the phrase
11 “Code of Conduct” wherever it appears and inserting the phrase “Comprehensive Code of
12 Conduct” in its place.

13 (f) Section 206(c) (D.C. Official Code § 1-1162.06(c)) is amended by striking the phrase
14 “Code of Conduct” and inserting the phrase “Comprehensive Code of Conduct” in its place.

15 (g) Section 209 (D.C. Official Code § 1-1162.09) is amended as follows:

16 (1) Subsection (a) is amended by striking the phrase “Code of Conduct” and
17 inserting the phrase “Comprehensive Code of Conduct” in its place.

18 (2) Subsection (b) is repealed.

19 (h) Section 211(6) (D.C. Official Code § 1-1162.11(6)) is amended by striking the phrase
20 “Code of Conduct” and inserting the phrase “Comprehensive Code of Conduct” in its place.

21 (i) Section 212 (D.C. Official Code § 1-1162.12) is amended by striking the phrase
22 “Code of Conduct” wherever it appears and inserting the phrase “Comprehensive Code of
23 Conduct” in its place.

1 (j) Section 213 (D.C. Official Code § 1-1162.13) is amended by striking the phrase
2 “Code of Conduct” wherever it appears and inserting the phrase “Comprehensive Code of
3 Conduct” in its place.

4 (k) Section 215(b) (D.C. Official Code § 1-1162.15(b)) is amended by striking the phrase
5 “Code of Conduct” and inserting the phrase “Comprehensive Code of Conduct” in its place.

6 (l) Section 219 (D.C. Official Code § 1-1162.19) is amended by striking the phrase
7 “Code of Conduct” wherever it appears and inserting the phrase “Comprehensive Code of
8 Conduct” in its place.

9 (m) Section 220(a)(5) (D.C. Official Code § 1-1162.20(a)(5)) is amended by striking the
10 phrase “Code of Conduct” and inserting the phrase “Comprehensive Code of Conduct” in its
11 place.

12 (n) Section 221 (D.C. Official Code § 1-1162.21) is amended by striking the phrase
13 “Code of Conduct” wherever it appears and inserting the phrase “Comprehensive Code of
14 Conduct” in its place.

15 (o) Section 222(a) (D.C. Official Code § 1-1162.22(a)) is amended by striking the phrase
16 “Code of Conduct” and inserting the phrase “Comprehensive Code of Conduct” in its place.

17 (p) Subtitle C and section 223 (D.C. Official Code § 1-1162.23) are repealed.

18 (q) A new subtitle C-i is added to read as follows:

19 “Subtitle C-i. Comprehensive Code of Conduct of the District of Columbia.

20 “Sec. 223a. Definitions.

21 “For the purposes of this subtitle, the term:

22 “(1) “Advocate” means recommending, commending, endorsing, or taking similar action
23 intended to influence positively a hiring decision.

1 “(2) “Affiliated organization” means:

2 “(A) An organization or entity:

3 “(1) In which the covered individual serves as officer, director, trustee,
4 general partner, or employee;

5 “(2) In which the covered individual or member of his or her household is
6 a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market
7 value; or

8 “(3) That is a client of the covered individual or member of his or her
9 household; or

10 “(B) A person with whom the covered individual is negotiating for or has an
11 arrangement concerning prospective employment.

12 “(3) “Authorized purposes” means those purposes for which government resources are
13 made available to members of the public or those purposes authorized by an agency head in
14 accordance with law or regulation.

15 “(4) “Business relationship” means a relationship established to provide for business
16 services.

17 “(5) “Connected to the attendee’s official duties” includes participation in the event as a
18 speaker or a panel participant, presenting information related to the District government or
19 matters before the District government, performing a ceremonial function appropriate to the
20 official position of such individual, or attendance is otherwise in the interests of the District
21 government.

22 “(6) “Days” means calendar days, unless otherwise specified.

1 “(7) “Formal background investigation” means the process of authenticating the
2 information supplied by a job applicant in his or her resume, application, and interviews.

3 “(8) “Free attendance” may include waiver of all or part of a widely attended gathering or
4 other fee or the provision of food, refreshments, entertainment, instruction and materials
5 furnished to all attendees as an integral part of the event. Free attendance does not include travel
6 expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group
7 setting with all other attendees.

8 “(9) “Government resources” includes any form of real or personal property in which a
9 federal, District, state, or local government agency or entity has an ownership, leasehold, or other
10 property interest as well as any right or other intangible interest that is purchased with
11 government funds, including personal services of a covered individual or contractor during his or
12 her hours of work. The term includes equipment, or material of any kind, including office
13 supplies, telephone and other telecommunications equipment and services, the government mails
14 and email system, automated data processing capabilities, printing and reproduction facilities,
15 government records, and government vehicles.

16 “(10) “Hiring decision” means interviewing, selecting, appointing, employing,
17 evaluating, promoting, demoting, reassigning, advancing, disciplining, or separating, or
18 otherwise advocating for or taking any personnel action.

19 “(11) “Hiring official” means a covered individual or any other individual in whom
20 authority by law, rule, or regulation is vested, or to whom the authority has been delegated, to
21 make a hiring decision.

1 “(12) “Official responsibility” means the administrative or operating authority, whether
2 intermediate or final, and either exercisable alone or with others, personally or through
3 subordinates, to approve, disapprove, or otherwise direct governmental action.

4 “(13) “Official superior” means any other employee, including but not limited to an
5 immediate supervisor, whose official responsibilities include directing or evaluating the
6 performance of the employee’s official duties or those of any other official superior of the
7 employee. An employee shall be considered to be the subordinate of any of his or her official
8 superiors. For purposes of section 223c, section 223e, and section 223g(c), the term “official
9 superior” is deemed to be the Ethics Board for elected officials and, for members of boards and
10 commissions, the Mayor.

11 “(14) “Ongoing economic benefit from a former employer” shall include any pension,
12 annuity, stock option, bonus, cash or in-kind distribution in satisfaction of equitable interest,
13 payment of all or a portion of the premiums on a life or health insurance policy, or any other
14 comparable benefit.

15 “(15) “Participated personally and substantially” means as follows:

16 “(A) To “participate” means to take an action as a covered individual through
17 decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other
18 such action, or to purposefully forbear in order to affect the outcome of a matter. A covered
19 individual can participate in particular matters that are pending other than in his or her own
20 agency. A covered individual does not participate in a matter merely because he or she had
21 knowledge of its existence or because it was pending under his or her official responsibility. A
22 covered individual does not participate in a matter unless he or she does so in his or her official
23 capacity.

1 “(B) To participate “personally” means to participate:

2 “(i) Directly, either individually or in combination with other persons; or

3 “(ii) Through direct and active supervision of the participation of any
4 person supervised, including a subordinate.

5 “(C) To participate “substantially” means that the covered individual’s

6 involvement is of significance to the matter. Participation may be substantial even though it is

7 not determinative of the outcome of a particular matter. However, it requires more than official

8 responsibility, knowledge, perfunctory or peripheral involvement, or involvement on an

9 administrative or peripheral issue. A finding of substantiality should be based not only on the

10 effort devoted to a matter, but also on the importance of the effort. While a series of peripheral

11 involvements may be insubstantial, the single act of approving or participating in a critical step

12 may be substantial. Provided that a covered individual participates in the substantive merits of a

13 matter, his or her participation may be substantial even though his role in the matter, or the

14 aspect of the matter in which he or she is participating, may be minor in relation to the matter as

15 a whole.

16 “(16) “Personal interest” means an interest that, while not directly financially

17 advantageous, would cause a reasonable person with knowledge of the relevant facts to question

18 the impartiality of the covered individual in a particular matter. Personal interests include,

19 without limitation, benefits to the covered individual, benefits to immediate family members and

20 affiliated organizations, including reputation or business good will, job or career advancement,

21 close personal friendships, and memberships in groups and organizations.

1 “(17) “Professional services relationship” means a relationship where the functions are
2 infrequent, technical or unique and, primarily performed by independent contractors or by
3 consultants whose occupation is the rendering of such services.

4 “(18) “Relative” means, with respect to a hiring official, an individual who is related to
5 the hiring official as a father, mother, grandfather, grandmother, son, daughter, grandson,
6 granddaughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, domestic
7 partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,
8 stepfather, stepmother, stepson, stepdaughter, foster child, stepbrother, stepsister, half-brother, or
9 half-sister.

10 “(19) “Senior employee” means an individual required to file a public financial disclosure
11 statement pursuant to section 223o.

12 “(20) “Special government employee” means any employee of an agency who is retained,
13 designated, appointed, or employed to perform temporary duties either on a full-time or
14 intermittent basis, with or without compensation, for not to exceed one hundred and thirty (130)
15 days during any period of three hundred and sixty five (365) consecutive days.

16 “(21) “Training” means the process of providing for and making available to an
17 employee, and placing or enrolling the employee in, a planned, prepared, and coordinated
18 program or course of instruction in scientific, professional, technical, mechanical, trade, clerical,
19 fiscal, administrative, or other fields which will improve individual and organizational
20 performance and assist in achieving the agency’s mission and performance goals.

21 “(22) “Usual and customary constituent services” includes a covered individual’s
22 representational activities, such as advocacy, communications, inquiry, oversight, and other

1 actions, made on another person’s behalf; provided, that the individual does not, directly or
2 indirectly:

3 “(A) Threaten reprisal or promise favoritism for the performance or
4 nonperformance of another person’s duties; or

5 “(B) Request that another person abuse or exceed the discretion available to that
6 person under law.

7 “Sec. 223b. Applicability and standards of conduct.

8 “(a) The Comprehensive Code of Conduct shall apply to the ethical responsibilities of all
9 employees and public officials serving the District of Columbia, its instrumentalities, subordinate
10 and independent agencies, the Council of the District of Columbia, boards and commissions, and
11 Advisory Neighborhood Commissions, pursuant to section 201a. Unless expressly designated
12 otherwise, these individuals shall hereinafter be referred to as “covered individuals.”

13 “(b) The Comprehensive Code of Conduct shall not apply to the following:

14 “(1) The District of Columbia Court of Appeals;

15 “(2) The District of Columbia Superior Court;

16 “(3) Individuals performing services for the District government as vendors
17 or contractors, except as to section 223d; and

18 “(4) Lobbyists, except as to section 223h and section 223r.

19 “(c) The following principles shall apply to all covered individuals and form the basis for
20 the standards contained in the Comprehensive Code of Conduct. Where a situation is not
21 specifically covered by another provision of law or policy, covered individuals shall apply the
22 following principles in determining whether their conduct is proper:

1 “(1) Covered individuals shall at all times maintain a high level of ethical conduct
2 in connection with the performance of official duties, and shall refrain from taking, ordering, or
3 participating in any official action which would adversely affect the confidence of the public in
4 the integrity of the District government. Covered individuals shall strive to act solely in the
5 public interest and not for any private gain or take an official action on a matter as to which they
6 have a conflict of interest created by a personal interest of their own or of an immediate family
7 member or an affiliated organization, avoiding both actual and perceived conflicts of interest and
8 preferential treatment.

9 “(2) Covered individuals shall take full responsibility for understanding and
10 complying with the letter and spirit of all laws and regulations governing standards of conduct
11 for District employees, including those relating to conduct, conflicts of interest, gifts, financial
12 disclosures, campaign finance, and political activity.

13 “(3) Covered individuals shall strive to perform their duties in a proper and
14 efficient manner.

15 “(4) Covered individuals shall protect and conserve government resources and
16 shall not use them for other than authorized activities.

17 “(5) Covered individuals shall not knowingly make unauthorized commitments or
18 promises of any kind purporting to bind the District government.

19 “(6) Covered individuals shall act impartially and not give preferential treatment
20 to any private organization or individual.

21 “(7) Covered individuals shall not take actions creating the appearance that they
22 are violating the law or the ethical standards set forth in the Comprehensive Code of Conduct.
23 Whether particular circumstances create an appearance that the law or the ethical standards have

1 been violated shall be determined from the perspective of a reasonable person with knowledge of
2 the relevant facts.

3 “(8) Covered individuals shall satisfy in good faith their lawful obligations,
4 including all just financial obligations to federal, state, District and local governments.

5 “(9) Covered individuals shall not hold personal interests or financial interests
6 that conflict with the conscientious performance of their duties.

7 “(10) Covered individuals shall not engage in financial or other transactions using
8 nonpublic government information or allow the improper use of such information to further any
9 private interest.

10 “(11) Covered individuals shall not, except as permitted by sections 223h and
11 223i, solicit or accept any gift or other item of monetary value from a prohibited source.

12 “(12) Covered individuals shall not engage in outside employment or activities,
13 including seeking or negotiating for employment, that conflict with their official government
14 duties and responsibilities.

15 “(13) Covered individuals shall immediately and directly report credible
16 violations of the Comprehensive Code of Conduct to the Ethics Board, the District of Columbia
17 Office of the Inspector General, or both.

18 “(14) Covered individuals shall not interfere with or obstruct any investigation
19 conducted by a District or federal agency.

20 “(15) Covered individuals shall fully cooperate with any investigation,
21 enforcement action, or other official function of the Ethics Board.

22 “(16) Coercive, harassing, or retaliatory action shall not be taken against any
23 covered individual acting in good faith under the Comprehensive Code of Conduct.

1 “(17) Covered individuals shall not do indirectly what they may not do directly
2 under the Comprehensive Code of Conduct.

3 “(18) Covered individuals shall not aid, abet, counsel, command, induce, or
4 procure a violation of the Comprehensive Code of Conduct, any additional agency standards of
5 ethical conduct authorized by section 223s, or any federal ethics law or regulation that is
6 applicable to the District government.

7 “(d) A violation of the Comprehensive Code of Conduct or additional agency standards
8 of ethical conduct authorized by section 223s shall be cause for appropriate corrective or adverse
9 action to be taken under the procedures applicable to the covered individual involved.

10 “(e) It is the responsibility of the employing agency to initiate appropriate corrective or
11 adverse action in individual cases. Such action may be in addition to any other action or penalty
12 prescribed by law.

13 “(f) A covered individual who violates the Comprehensive Code of Conduct shall be
14 subject to the penalties provided in section 221. Penalties imposed by the Ethics Board shall be
15 separate and apart from any corrective or adverse action taken by the covered individual’s
16 agency.

17 “Sec. 223c. Conflicts of interest.

18 “(a) No covered individual shall use his or her official position or title, or personally and
19 substantially participate, through decision, approval, disapproval, recommendation, the rendering
20 of advice, investigation, or otherwise, including participating in preliminary discussions, in a
21 judicial or other proceeding, application, request for a ruling or other determination, contract,
22 claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence
23 the outcome of a particular matter, in a manner that the covered individual knows is likely to

1 have a direct and predictable effect on a personal interest or financial interest of his or her own or
2 of an immediate family member or an affiliated organization.

3 “(b) A covered individual other than an elected official may seek a waiver, and the
4 prohibition in subsection (a) of this section shall not apply, if the covered individual:

5 “(1) Advises his or her official superior and the Ethics Board of the nature and
6 circumstances of the particular matter;

7 “(2) Makes full disclosure of the personal interest or financial interest; and

8 “(3) Receives in advance a written determination made by both the official
9 superior and the Ethics Board that:

10 “(A) The interest is not so substantial as to be deemed likely to affect the
11 integrity of the services that the government may expect from the covered individual; or

12 “(B) Another legally cognizable basis for waiver exists.

13 “(c) Recusal statements shall be required as follows:

14 “(1) Any elected official who, in the discharge of his or her official duties, would
15 be required to act in any matter prohibited under subsection (a) of this section shall make full
16 disclosure of the personal interest or financial interest, prepare a written statement describing the
17 matter and the nature of the potential conflict of interest, and deliver the statement to:

18 “(A) In the case of a member of the Council, the Council Chairman; or

19 “(B) In the case of an elected official other than members of the Council,
20 the Ethics Board; or

21 “(2) Any covered individual other than an elected official who, in the discharge of
22 his or her official duties, would be required to act in any matter prohibited under subsection (a)
23 of this section shall:

1 “(A) Make full disclosure of the personal interest or financial interest;

2 “(B) Prepare a written statement describing the matter and the nature of
3 the potential conflict of interest; and

4 “(C) Deliver the statement to his or her official superior and to the Ethics
5 Board.

6 “(d) During a proceeding in which an elected official would be required to take action in
7 any matter that is prohibited under subsection (a) of this section, he or she shall:

8 “(1) Read the statement provided in paragraph (1) of this subsection into the
9 record of proceedings; and

10 “(2) Excuse the elected official from votes, deliberations, and other actions on the
11 matter.

12 “(e) No elected official excused from votes, deliberations, or other actions on a matter
13 shall in any way participate in or attempt to influence the outcome of the particular matter in a
14 manner that is likely to have a direct and predictable effect on a personal interest or financial
15 interest of his or her own or of an immediate family member or an affiliated organization.

16 “(f) Upon receipt of the statement provided in subsection (c)(2) of this section, the
17 covered individual’s official superior shall assign the matter to another covered individual who
18 does not have a potential conflict of interest.

19 “(g)(1) A covered individual shall not receive any compensation, salary, or contribution
20 to salary, gratuity, or any other thing of value from any source other than the District government
21 for his or her performance of official duties.

22 “(2) No covered individual, member of his or her immediate family, or affiliated
23 organization may knowingly acquire:

1 “(A) Stocks, bonds, commodities, real estate, or other property, whether
2 held individually or jointly, the acquisition of which could unduly influence or give the
3 appearance of unduly influencing the covered individual in the conduct of his or her official
4 duties and responsibilities; or

5 “(B) An outside interest, personal or financial, that is related directly to the
6 covered individual’s official duties, or which might otherwise be involved in an official action
7 taken or recommended by him or her, or which is in any way related to matters over which the
8 individual could wield any influence, official or otherwise.

9 “Sec. 223d. Contingent fees.

10 “(a) A contractor shall not offer to pay any fee or other consideration that is contingent on
11 the making of a contract.

12 “(b) Every District government contract shall contain the following prohibition against
13 contingent fees: “The contractor warrants that no person or selling agency has been employed or
14 retained to solicit or secure the contract upon an agreement or understanding for a commission,
15 percentage, brokerage fee, or contingent fee, except bona fide employees or bona fide established
16 commercial or selling agencies maintained by the contractor for the purpose of securing
17 business. For a breach or violation of this warranty, the District shall have the right to terminate
18 the contract without liability or in its discretion to deduct from the contract price or
19 consideration, or otherwise recover, the full amount of the commission, percentage, brokerage,
20 or contingent fee.”

21 “(c) A covered individual shall not solicit or secure, or offer to solicit or secure, a
22 contract for which the individual is paid or is to be paid any fee or other consideration contingent
23 on the making of the contract between the individual and any other person.

1 “Sec. 223e. Personal and financial interests and disclosures.

2 “(a) It is the policy of the District government to avoid conflicts of interest concerning
3 the award, implementation, monitoring, and performance of contracts. Accordingly, as a means
4 of assisting District government agencies to evaluate real or potential conflicts of interest in this
5 area, each covered individual shall be required to disclose to his or her employing agency upon
6 appointment, such previous employment relationships (whether in the private or public sectors)
7 as the employing agency may direct, including full disclosure of any ongoing economic benefit
8 to the covered individual from a former employer.

9 “(b) The employing agency shall inform each new hire of the requirement to disclose
10 employment relationships as described in subsection (a) of this section. A new hire with
11 employment relationships to disclose shall so inform his or her official superior and a person
12 designated by the agency head, and complete D.C. Standard Form 36, Previous Employment
13 Relationships, within thirty (30) days of the effective date of his or her appointment.

14 “(c) The employing agency also shall communicate the following information to each
15 new hire in writing:

16 “(1) That for one (1) year after the date of initial employment with the District
17 government, a covered individual required to make a disclosure under this section shall be
18 screened from, and shall not participate in any manner, in the District government’s decision to
19 enter into, extend, modify, or renew a contract or consultancy engagement with the individual’s
20 former employer (hereafter, “procurement action”);

21 “(2) That the one-year (1-year) restriction from participation in any procurement
22 action prescribed in paragraph (1) of this subsection shall be extended for as long as the covered
23 individual receives an ongoing economic benefit from a former employer; and

1 “(3) That the covered individual shall have the continuing responsibility to
2 advise his or her official superior and a person designated by the agency head of the receipt of an
3 ongoing economic benefit from a former employer.

4 “(d) Notwithstanding the provisions set forth in subsection (c) of this section, except in
5 the case of elected officials or where there is an existing conflict of interest under section 223c,
6 the head of the employing agency may authorize a covered individual required to make a
7 disclosure under this section to do any of the following as part of the individual’s official duties:

8 “(1) Participate in the oversight or review of the work-product or performance of
9 a former employer that is currently a contractor or consultant with the District government;

10 “(2) Serve as the District government’s liaison with the former employer; or

11 “(3) Otherwise communicate with the former employer on matters pending before
12 the covered individual’s employing agency.

13 “(e) The determination to require a covered individual to perform any of the duties listed
14 in subsection (d) of this section shall be based upon a written determination of the agency head,
15 made in light of all relevant circumstances, that the interest of the District government in the
16 covered individual’s participation outweighs the concern that a reasonable person might question
17 the integrity of the District government’s programs or operations. Applying this standard, the
18 agency head may determine that the covered individual’s participation reasonably may be
19 permitted in certain activities involving his or former employer, but not in others. In all instances
20 under this subsection in which the covered individual is prohibited from participation, he or she
21 shall be screened from the receipt of any information regarding the former employer’s matter
22 that is pending before the District government.

1 “(f) An agency head may delegate the responsibility for making any of the determinations
2 prescribed in this section to other personnel in the agency. The person in the agency making any
3 such determinations may consult with the Director of Government Ethics.

4 “(g) A covered individual who is called upon to act for or on behalf of the District
5 government in a matter relating to or involving a non-governmental entity in which he or she, a
6 member of his or her immediate family, or an affiliated organization has a personal interest or
7 financial interest, shall make this fact known to his or her official superior and a person
8 designated by the agency head, in writing, at the earliest possible moment. Unless a waiver of the
9 conflict of interest is granted pursuant to section 223c(b), the head of the employing agency shall
10 determine whether or not the covered individual must take remedial action, including, if
11 appropriate, the divestment of financial interests, or merely disqualify himself or herself from
12 taking part in any official decision or action involving the matter.

13 “Sec. 223f. Restrictions on hiring and employment (nepotism).

14 “(a) Except as provided in subsection (b) of this section, a hiring official shall not
15 directly or indirectly make a hiring decision involving a relative with respect to a paid or unpaid
16 position in an agency in which the official serves or exercises jurisdiction or control.

17 “(b) A hiring official may not advocate for any individual who is a relative in an agency
18 in which the hiring official serves or exercises jurisdiction or control, except to answer questions
19 in a formal background investigation.

20 “(c) Any hiring decision secured or effectuated in violation of this section shall be
21 rescinded immediately.

1 “(d) When the agency contemplates making a hiring decision concerning a relative of a
2 hiring official within the same agency, the hiring official must file a written recusal, which shall
3 be included in the relative’s official personnel file along with the subject personnel action.

4 “(e) In the event of emergencies resulting from natural or manmade disasters, the Mayor
5 may, by rulemaking, temporarily suspend the prohibitions of this section, as permitted by section
6 1804(c) the District of Columbia Government Comprehensive Merit Personnel Act of 1978
7 (“Merit Personnel Act”), effective March 14, 2012 (D.C. Law 19-115; D.C. Official Code § 1-
8 618.04(c)); and the Civil Service Act of 1967, effective October 13, 1978, as amended (Pub. L.
9 90-206; 5 U.S.C. § 3110(d)).

10 “(f) Except as otherwise provided in subsection (e) of this section, there shall be no
11 suspensions or waivers of any provision of this section.

12 “Sec. 223g. Outside activities.

13 “(a) No covered individual shall engage in outside employment, private business activity,
14 or other outside activity that is incompatible with government service, including, but not limited
15 to, the following:

16 “(1) Engaging in any activity that conflicts or would appear to conflict with the
17 fair, impartial, and objective performance of the covered individual’s official duties and
18 responsibilities or with the efficient operation of the District government;

19 “(2) Using government time or resources for other than official business or
20 government approved or sponsored activities;

21 “(3) Ordering, directing, or requesting subordinates to perform any personal
22 services not related to official District government functions and activities;

1 “(4) Maintaining personal or financial interests in, or serving (with or without
2 compensation) as an officer or director of an outside entity, if there is any likelihood that such
3 entity might be involved in an official government action or decision taken or recommended by
4 the covered individual or his or her agency;

5 “(5) Engaging in any outside activity that permits the covered individual, or an
6 affiliated organization, to capitalize on his or her official title or position;

7 “(6) Divulging any official government information to any unauthorized person or
8 in advance of the time prescribed for its authorized issuance, or otherwise making use of or
9 permitting others to make use of information not available to the general public;

10 “(7) Engaging in any outside activity that might impair the covered individual’s
11 mental or physical capacity to such an extent that he or she can no longer carry out his or her
12 duties and responsibilities as a government employee in a proper and efficient manner; and

13 “(8) Engaging in any outside activity that is in violation of federal or District law,
14 rule, or regulation.

15 “(b) A covered individual may engage in outside employment or activities such as
16 teaching, writing for publication, consultative activities, and speaking engagements if the
17 activities are:

18 “(1) Consistent with subsection (a) of this section;

19 “(2) Not otherwise prohibited by law, regulation, or agency standards; and

20 “(3) Conducted outside of regular working hours, or while the covered individual
21 is on annual leave, compensatory leave, exempt time off, or leave without pay.

22 “(c) If the covered individual receives compensation or anything of monetary value for
23 engaging in an activity permitted by subsection (b) of this section, the subject matter shall not be

1 devoted substantially to the responsibilities, programs, or operations of his or her agency, to his
2 or her official duties or responsibilities, or to information obtained from his or her government
3 employment, unless the covered individual has written authorization from his or her official
4 superior to do so.

5 “(d) The information used by a covered individual engaging in outside employment or
6 activities shall not draw on official data or ideas that are not public information, unless the
7 individual has written authorization from his or her official superior to use such information.

8 “(e)(1) Except as provided in paragraph (2) of this subsection, a covered individual shall
9 not:

10 “(A) Represent another person, as agent or attorney or otherwise, have a personal
11 interest or financial interest in, or provide assistance in prosecuting a claim against the District of
12 Columbia before any agency, instrumentality, or court of the District of Columbia; or

13 “(B) Represent another person, as agent or attorney or otherwise, before any
14 agency, instrumentality, or court of the District of Columbia, in a matter in which the District of
15 Columbia is a party or has a direct and substantial interest.

16 “(2) The prohibitions in paragraph (1) of this subsection shall not apply to a
17 covered individual, who, if not inconsistent with the faithful performance of his or her duties,
18 and acting without compensation represents:

19 “(A) A person who is the subject of disciplinary or other personnel
20 administration proceedings in connection with those proceedings; or

21 “(B) A nonprofit cooperative, voluntary, professional, recreational, or
22 similar organization, group, or union, if a majority of the organization’s or group’s members are
23 current officers or employees of the United States government or of the District of Columbia

1 government, or their spouses or dependent children; provided, that this exception shall not apply
2 to any matter that:

3 “(i) Is a claim under paragraph (1)(A) of this subsection;

4 “(ii) Is a judicial or administrative proceeding where the
5 organization or group is a party; or

6 “(iii) Involves a grant, contract, or other agreement (including a
7 request for any such grant, contract, or agreement) providing for the disbursement of federal
8 funds to the organization or group.

9 “(f) The prohibitions in this section shall not apply to a covered individual, who, if not
10 inconsistent with the faithful performance of his or her duties, and acting with or without
11 compensation, represents his or her parent(s), spouse, domestic partner, child, or any person for
12 whom, or for any estate for which, he or she is serving as guardian, executor, administrator,
13 trustee, or other personal fiduciary, except in those matters in which he or she has participated
14 personally and substantially as a government employee, through decision, approval, disapproval,
15 recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of
16 the covered individual’s official responsibility; provided, that the covered individual’s official
17 superior approves the representation. This provision shall not abridge a government attorney’s
18 responsibilities under the District of Columbia Rules of Professional Conduct.

19 “(g) A special government employee shall be subject to subsection (e)(1) of this section
20 only in relation to a particular matter involving specific parties in which he or she has at any time
21 participated personally and substantially as a District government employee, or which is pending
22 before his or her employing agency.

23 “(h) Nothing in this section shall prohibit the following:

1 “(1) A covered individual from giving testimony under oath or from making
2 statements required to be made under penalty of perjury; or

3 “(2) A member of the faculty of the University of the District of Columbia David
4 A. Clark School of Law from taking all actions necessary to teaching or supervising students in
5 the school’s law clinics and clinical programs; provided, that taking any such actions shall not
6 abridge a faculty member’s responsibilities under the District of Columbia Rules of Professional
7 Conduct or as codified in applicable regulations.

8 “Sec. 223h. Gifts from outside sources.

9 “(a) Except as provided in section 223i, a covered individual shall not solicit, accept, or
10 agree to solicit or accept, either directly or indirectly, any gift:

11 “(1) From a prohibited source; or

12 “(2) Given because of the individual’s official position or duties.

13 “(b) A gift is solicited or accepted because of the covered individual’s position or duties
14 if it is from a person other than a covered individual and would not have been solicited, offered,
15 given, or accepted had the covered individual not held the status, authority, or duties associated
16 with his or her District government position.

17 “(c) A gift prohibited under subsection (b) of this section that is solicited or accepted
18 indirectly includes a gift given:

19 “(1) With the covered individual’s knowledge and acquiescence to a member of
20 his or her immediate family or to an affiliated organization because of the family member’s or
21 organization’s relationship to the covered individual; or

22 “(2) To any other person or organization, including any charitable organization,
23 on the basis of designation, recommendation, or other specification by the covered individual.

1 “(d) The prohibitions set forth in this section do not apply to gifts accepted under the
2 circumstances described in the following paragraphs of this subsection, and a covered
3 individual’s acceptance of a gift in accordance with one of those paragraphs will not be deemed
4 to violate the principles set forth in section 223b:

5 “(1) A covered individual may accept unsolicited gifts having a market value of
6 \$20 or less per source per occasion; provided, that the aggregate market value of individual gifts
7 received from any one person under the authority of this paragraph shall not exceed \$50 in a
8 calendar year, except when the offer of the gift would appear to a reasonable person to be
9 intended to influence the covered individual in his or her official duties;

10 “(2) A covered individual may accept a gift given under circumstances which
11 make it clear that the gift is motivated by a family relationship or a pre-existing bona fide
12 personal friendship rather than the position of the covered individual. Relevant factors in making
13 such a determination include the history of the relationship, the nature and frequency of past
14 gifting within the relationship, and whether the family member or friend personally pays for the
15 gift;

16 “(3) A covered individual may accept meals, lodgings, transportation and other
17 benefits:

18 “(A) Resulting from the business or employment activities of his or her
19 spouse or domestic partner when it is clear that such benefits have not been offered or enhanced
20 because of the individual’s official position; or

21 “(B) Resulting from the covered individual’s authorized outside activities
22 when it is clear that such benefits have not been offered or enhanced because of the individual’s
23 official status; and

1 “(4) A covered individual may, on behalf of an agency of the District
2 government, have his or her agency accept and use a gift, if done in accordance with the
3 Acceptance and use of gifts by District Entities Act of 2000, effective October 19, 2000 (D.C.
4 Law 13-172; D.C. Official Code § 1-329.01).

5 “(e) Notwithstanding any exception provided in this section, no covered individual shall:

6 “(1) Directly or indirectly demand, solicit, accept, or agree to demand, solicit, or
7 accept, any gift personally or for any other person, in return for:

8 “(A) Any official act performed or to be performed by the individual;

9 “(B) Being influenced in the performance or nonperformance of any
10 official act;

11 “(C) Being influenced to commit or aid in committing, or to collude in, or
12 allow, any fraud, or make opportunity for the commission of any fraud, on the District of
13 Columbia; or

14 “(D) Being induced to do or omit to do any act in violation of the covered
15 individual’s official duty;

16 “(2) Accept gifts from the same or different sources on a basis so frequent that a
17 reasonable person would be led to believe the employee is using his or her public office for
18 private gain; or

19 “(3) Accept any gifts in violation of 5 U.S.C. § 7342.

20 “(f) A covered individual who receives a gift that cannot be accepted under the provisions
21 of this section shall inform the person offering the gift that District government ethics rules do
22 not permit acceptance of the gift, and:

23 “(1) Return the gift to the donor;

1 “(2) Donate the gift to an organization that is tax exempt pursuant to
2 26 U.S.C. § 501(c)(3);

3 “(3) Reimburse the donor the market value of the gift;

4 “(4) If the gift is perishable and it would not be practical to return it to the donor,
5 donate the gift to charity, share it with the office staff, or destroy it.

6 “(5) The actions set forth in paragraphs (1) through (4) of this subsection may be
7 taken one time only with respect to any donor.

8 “Sec. 223i. Conferences, widely attended gatherings, and training.

9 “(a) When a covered individual participates as a speaker or panel participant or otherwise
10 to present information on behalf of his or her agency at a conference, forum, symposium, or
11 other similar event, the individual may accept an offer of free attendance at the event on the day
12 of his or her participation when provided by the sponsor of the event; provided, that the covered
13 individual’s participation shall be authorized in advance of the event and in writing.

14 “(b) When a covered individual’s attendance is in the interest of his or her agency, the
15 individual may accept an unsolicited gift of free attendance at all or appropriate parts of a widely
16 attended gathering from either of the following:

17 “(1) The sponsor of the event; or

18 “(2) A person other than the sponsor of the event, if more than fifty (50) people
19 are expected to attend the event and the gift of free attendance has a market value of \$350 or less.

20 “(c) A covered individual may accept a gift of free attendance for an event pursuant to
21 subsection (b) of this section only if the following conditions are met:

22 “(1) That a large number of people is expected to attend the event;

1 “(2) That the people attending the event represent a diversity of views or interests
2 within a given industry, profession, or subject matter; and

3 “(3) That the covered individual’s attendance is determined by the agency head or
4 designee, in advance of the event and in writing, to be in furtherance of agency programs and
5 operations and to be connected to the attendee’s official duties.

6 “(d) When others in attendance will generally be accompanied by a guest, and where the
7 invitation is from the same person who invited the covered individual, the agency may authorize
8 a covered individual to accept an unsolicited invitation of free attendance to an accompanying
9 guest to participate in all or a portion of the event at which the individual’s free attendance is
10 permitted under subsections (a) or (b) of this section; provided, that the market value of the gift
11 of free attendance includes the market value of free attendance by the accompanying guest as
12 well as the market value of the covered individual’s own attendance.

13 “(e) A covered individual may not accept a gift bag for an event under subsections (a) or
14 (b) of this section if the event sponsor is a prohibited source, unless the contents of the bag are
15 materials integral to the event or otherwise meet the requirements of section 223h.

16 “(f)(1) A covered individual may, on behalf of an agency of the District government,
17 have his or her agency accept from an organization that is tax exempt pursuant to 26 U.S.C.
18 § 501(c)(3) a contribution or award incident to training, or accept payment of travel, food,
19 lodging, and other expenses incident to attending training; provided, that such acceptance is done
20 in accordance with the Acceptance and use of gifts by District Entities Act of 2000, effective
21 October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 1-329.01), and with 5 U.S.C. § 4111.

22 “(2) A spouse or domestic partner may share lodging with the covered individual
23 who is attending training under this subsection; provided, that the spouse or domestic partner

1 may not accept travel, food, or other expenses incidental to the training unless he or she pays
2 market value for the same.

3 “(g)(1) A covered individual who accepts free attendance for an event under subsections
4 (a) or (b) of this section, or accepts a contribution, award, or expenses incident to training under
5 subsection (d) of this section, shall, by the last business day of each month, disclose to the Mayor
6 or to the Secretary to the Council, as appropriate, the following information for each such
7 acceptance:

8 “(A) The name and address of the event sponsor or training provider;

9 “(B) The purpose of attending the event or training;

10 “(C) The nature and value of what was accepted; and

11 “(D) A copy of the agency authorization.

12 “(2) The Mayor and Secretary of the Council shall publish on their respective
13 websites a list of each free attendance, contribution, award, or expense accepted under this
14 section on the first Friday in the first full week of each month or, if the Friday is a holiday, the
15 next business day.

16 “Sec. 223j. Gifts between covered individuals.

17 “(a) Except as provided in subsections (d) and (e) of this section, a covered individual
18 shall not:

19 “(1) Directly or indirectly, give a gift to or make a donation toward a gift for an
20 official superior; or

21 “(2) Solicit a contribution from another covered individual for a gift to either the
22 covered individual’s official superior or the other individual’s official superior.

1 “(b) Notwithstanding a subordinate-official superior relationship, a covered individual
2 may accept a gift, directly or indirectly, from a covered individual if:

3 “(1) There is a pre-existing bona fide personal relationship between the two
4 individuals that would justify the gift; and

5 “(2) The gift is not given or solicited to gain or induce any professional
6 advantage.

7 “(c) Notwithstanding any exception provided in this section, an official superior shall not
8 coerce a subordinate to make or contribute to a gift.

9 “(d) On an occasional basis, including any occasion on which gifts are traditionally given
10 or exchanged, the following may be given to an official superior or accepted from a subordinate
11 or other covered individual:

12 “(1) Items, other than cash, with an aggregate market value of \$20 or less per
13 occasion;

14 “(2) Items such as food and refreshments to be shared in the office among several
15 employees;

16 “(3) Personal hospitality provided at a residence that is of a type and value
17 customarily provided by the covered individual to personal friends; or

18 “(4) Items given in connection with the receipt of personal hospitality if of a type
19 and value customarily given on such occasions.

20 “(e) A gift appropriate to the following occasions may be given to an official superior or
21 accepted from a subordinate or other covered individual receiving less pay:

22 “(1) In recognition of special occasions of personal significance such as marriage,
23 illness, or the birth or adoption of a child; or

1 “(2) Upon occasions that terminate a subordinate-official superior relationship,
2 such as retirement, resignation, or transfer.

3 “(f) Regardless of the number of covered individuals contributing to gifts permitted under
4 subsection (e) of this section, a covered individual shall not accept such gift or gifts from a
5 donating group if the market value exceeds an aggregate of \$300.

6 “(g) Notwithstanding any other provision in this section, the Director of Government
7 Ethics may, upon written request, authorize covered individuals to solicit voluntary support for
8 victims, including other covered individuals, in cases of emergencies and disasters. As used in
9 this subsection, the term “support” includes both monetary donations and donations of in-kind
10 gift items such as food, clothing, toys, and household items; the phrase “emergencies and
11 disasters” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave,
12 tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion,
13 or other catastrophe in any part of the world.

14 “Sec. 223k. Use of government resources, prestige of office, and letters of
15 recommendation.

16 “(a) A covered individual has a duty to protect and conserve government resources and
17 shall not use such resources, or allow their use, for other than authorized purposes.

18 “(b) A covered individual shall not:

19 “(1) Use or allow the use of government resources to influence in any manner a
20 member of the Council or other public official in violation of 18 U.S.C. § 1913; or

21 “(2) Use or allow the use of government resources, including the
22 expenditure of funds, the personal services of employees during their hours of work, and
23 nonpersonal services, including supplies, materials, equipment, office space, facilities, and

1 telephones and other utilities, to support or oppose any candidate for elected office, whether
2 partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure,
3 including a charter amendment referendum conducted in accordance with section 303 of the
4 District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official
5 Code § 1-203.03).

6 “(c) A covered individual may accept any material, article, or service that is available as
7 part of any District government program or provided free to District residents or visitors.

8 “(d)(1) Except as permitted by this subsection, a covered individual may not knowingly
9 use the prestige of office or public position for that covered individual’s private gain or that of
10 another.

11 “(2) The performance of usual and customary constituent services, without
12 additional compensation, is not prohibited under paragraph (1) of this subsection.

13 “(3) Covered individuals shall not use or permit the use of their position or title or
14 any authority associated with their public office in a manner that could reasonably be construed
15 to imply that the District sanctions or endorses the personal or business activities of another,
16 unless the District has officially sanctioned or endorsed the activities.

17 “(e) The Mayor, Councilmembers, and the Attorney General may express support for, or
18 serve as an honorary chair or honorary member of, a nonprofit entity’s fundraising event, so long
19 as the entity for which funds are raised supports a nongovernmental bona fide charitable activity.
20 Use of the Mayor’s, Councilmember’s, or Attorney General’s name or title in fundraising
21 solicitations or announcements of general circulation shall be in accordance with such terms and
22 limitations as each person may prescribe; provided, that the authority granted by this subsection

1 shall not extend to the use of the public official’s name or title in solicitations made by him or
2 her, or made on his or her behalf, directly to individual contributors.

3 “(f) An agency, through its agency head, may do the following:

4 “(1) Promote, endorse, co-sponsor, and collaborate with charitable
5 organizations whose sole mission is to support the agency; or

6 “(2) Where the charitable organization’s mission is not solely to support the
7 agency, the agency may nonetheless participate in events and other activities designed to raise
8 funds for programs that assist the agency’s constituents and that are consistent with the agency’s
9 mission; provided, that the agency shall not, except where otherwise authorized by law:

10 “(A) Endorse, co-sponsor, or directly solicit funds for such events or
11 activities; and

12 “(B) Be listed or identified as a sponsor or co-sponsor in any promotional
13 materials for the event. The agency may be listed only as a participant in such promotional
14 materials.

15 “(g) Notwithstanding subsection (d) of this section, a covered individual shall not be
16 prevented from organizing, engaging, or participating in the annual One Fund fundraising drive
17 and related activities as authorized by the Mayor in consultation with the Director of
18 Government Ethics to ensure compliance with ethics best practices.

19 “(h) A covered individual may provide a letter of reference, letter of support, or letter of
20 recommendation on District government letterhead on behalf of an individual or entity under the
21 following circumstances:

22 “(1) An elected official, agency head, or an authorized covered individual may

1 sign a letter of recommendation using his or her official title in response to a request for an
2 employment recommendation based upon personal knowledge of the ability of a current or
3 former employee with whom he or she has dealt in the course of their government employment
4 and the letter relates to the duties performed by the individual;

5 “(2) An elected official, agency head, or an authorized covered individual may
6 sign a letter of reference on behalf of a current or former government contractor, vendor, or grant
7 recipient; provided, that:

8 “(A) The letter is evaluative in nature and contains verifiable facts, such
9 as the timely completion of a project or noting whether all aspects of a contract were fulfilled,
10 and does not contain opinions or an endorsement of the individual or entity; and

11 “(B) The letter is addressed to the current or former contractor, vendor,
12 or grant recipient rather than to a third-party;

13 “(3) An elected official may provide a letter of support with respect to a proposed
14 action sought by an individual or entity from a government or private entity; provided, that:

15 “(A) The elected official expresses his or her own views rather than
16 those of the District government, unless an official position of the government has been adopted;

17 “(B) The letter is evaluative in nature and is not an endorsement of the
18 individual or entity;

19 “(C) No direct solicitation of funds is made;

20 “(D) No specific action is requested, except that a letter may request that
21 certain factors be taken into consideration in reaching a decision; and

22 “(E) The letter is not coercive and, in the case of a District government
23 entity, does not exceed what is permitted as a usual and customary constituent service; and

1 “(4) An elected official who does not have personal knowledge of an individual or
2 entity’s work ability or performance may nonetheless sign a letter of recommendation addressing
3 only the character or residence of the individual or entity requesting the letter, if the elected
4 individual has knowledge of the individual’s or entity’s character or residence.

5 “Sec. 223l. Use of privileged, confidential, protected, and non-public information.

6 “(a) Covered individuals and former covered individuals shall not:

7 “(1) Willfully or knowingly disclose or use privileged or confidential information,
8 information protected from disclosure by section 204(a)(6) the Freedom of Information Act of
9 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a)(6)), or
10 information that is otherwise non-public, without authorization or unless required by law to do
11 so; or

12 “(2) Divulge information in advance of the time prescribed for its authorized
13 issuance or otherwise make use of or permit others to make use of information not available to
14 the general public.

15 “(b) When disclosure of privileged, confidential, or otherwise protected information is in
16 the interest of the District government, as determined by the Mayor or Chairman of the Council,
17 or their respective designee, in writing, because it will further government programs and
18 operations, a covered individual may disclosure such information if not otherwise prohibited by
19 law.

20 “Sec. 223m. Post-governmental employment conflicts of interest.

21 “(a) Covered individuals shall comply with the provisions of 18 U.S.C. § 207(a)(1) and
22 (2).

1 “(b) No covered individual shall, after the termination of his or her service or
2 employment with the District government, knowingly make, with the intent to influence, any
3 communication to or appearance before any employee of any agency or court of the District of
4 Columbia government, on behalf of any other person (except the District of Columbia) in
5 connection with a particular matter:

6 “(1) In which the District of Columbia is a party or has a direct and substantial
7 interest;

8 “(2) In which the covered individual participated personally and substantially as
9 an employee; and

10 “(3) Which involved a specific party or specific parties at the time of such
11 participation.

12 “(c) No covered individual shall, within two (2) years after the termination of his or her
13 service or employment with the District government, knowingly make, with the intent to
14 influence, any communication to or appearance before any employee of any agency or court of
15 the District government, on behalf of any other person (except the District of Columbia), in
16 connection with a particular matter:

17 “(1) In which the District of Columbia is a party or has a direct and
18 substantial interest;

19 “(2) Which the covered individual knows or reasonably should know was
20 actually pending under his or her official responsibility as an employee within a period of one (1)
21 year before the termination of his or her service or employment with the District government;
22 and

1 “(3) Which involved a specific party or specific parties at the time it was
2 pending.

3 “(d) The two-year (2-year) restriction period in subsection (c) of this section shall be
4 measured from the date when the former covered individual’s responsibility for a particular
5 matter ends, not from the termination of government service, unless the two occur
6 simultaneously.

7 “(e) A former covered individual shall be prohibited for two (2) years from knowingly
8 aiding, counseling, advising, consulting, or assisting in representing any other person (except the
9 District of Columbia) as to a particular government matter involving a specific party if the
10 covered individual participated personally and substantially in that matter as a government
11 employee.

12 “(f) The two-year (2-year) period in subsection (e) of this section shall be measured from
13 the date of termination of employment in the position held by the former covered individual
14 when he or she participated personally and substantially in the matter involved.

15 “(g) A former senior employee (other than a special government employee who serves
16 for fewer than one-hundred and thirty (130) days in a calendar year) shall be prohibited for one
17 (1) year from having any transactions with his or her former agency intended to influence the
18 agency in connection with any particular government matter pending before the agency or in
19 which it has a direct and substantial interest, whether or not such matter involves a specific party.

20 “(h) The restriction in subsection (g) of this section is intended to prohibit the possible
21 use of personal influence based on past governmental affiliations to facilitate the transaction of
22 government business. Therefore, the restriction shall apply without regard to whether the former

1 senior employee had participated in, or had responsibility for, the particular matter, and shall
2 include matters that first arise after the employee leaves government service.

3 “(i) The restriction in subsection (g) of this section shall apply whether the former senior
4 employee is representing another or representing him or herself, either by appearance before an
5 agency or through communications with that agency.

6 “(j) A former senior employee, who was employed by the Council, a Councilmember, or
7 a Council Committee, shall be prohibited for one (1) year from having any transactions with
8 either the Council, Councilmember, members of the committee, or an employee of the
9 Councilmember or committee for whom the employee worked (“Councilmember or
10 committee”), intended to influence the Councilmember or committee, in connection with any
11 matter on which the former employee seeks action by a Councilmember or Council employee in
12 his or her official capacity.

13 “(k) The prohibitions contained in this section shall not apply to acts done in carrying out
14 official duties on behalf of:

15 “(1) The United States or the District of Columbia, or as an elected official of a
16 state or local government;

17 “(2) An agency or instrumentality of a state or local government, if the
18 appearance, communication, or representation is on behalf of such government; or

19 “(3) An accredited, degree-granting institution of higher education, as defined in
20 the Higher Education Act of 1965, approved November 8, 1965 (79 Stat. 1219; 20 U.S.C. §
21 1001), or a hospital or medical research organization, exempted and defined under section
22 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or
23 representation is on behalf of such institution, hospital, or organization.

1 “(l) The restriction in subsection (g) of this section shall not apply to appearances,
2 communications, or representations by a former senior employee concerning:

3 “(1) New matters, if the former senior employee is an elected official of a state or
4 local government and is acting on behalf of that government, or is regularly employed by and
5 acting on behalf of an agency or instrumentality of federal, state, or local government; an
6 accredited, degree-granting institution of higher education; or a non-profit hospital or medical
7 research organization; or

8 “(2) Matters of a personal and individual nature, such as personal income taxes,
9 pension benefits, or professional licensure or certification of the former senior employee. A
10 former senior employee also may appear on his or her own behalf in any litigation or
11 administrative proceeding involving the employee’s former agency.

12 “(m) The restriction in subsection (g) of this section shall not prevent a former senior
13 employee from making or providing a statement, which is based on the employee’s own special
14 knowledge in the particular area that is the subject of the statement; provided, that no
15 compensation is thereby received, other than that regularly provided for by law or regulation for
16 witnesses.

17 “(n) The restrictions in this section shall not prevent a covered individual from giving
18 testimony under oath, or from making statements required to be made under penalty of perjury.
19 Notwithstanding the preceding sentence, a former employee of the Council who is subject to the
20 restrictions in subsection (b) of this section with respect to a particular matter may not, except
21 pursuant to court order, serve as an expert witness for any other person, other than the District of
22 Columbia, in that matter.

1 “(o) A former covered individual may be exempted from the restrictions in this section if
2 the Mayor or the Chairman of the Council (or their respective designee), in consultation with the
3 Director of the Office of Government Ethics, executes a determination. The determination shall
4 be in writing and shall state that the covered individual has outstanding qualifications in a
5 scientific, technological, or other technical discipline; is acting with respect to a particular matter
6 which requires such qualifications; and the interest of the District of Columbia would be served
7 by such individual’s participation.

8 “Sec. 223n. Political activities.

9 “(a) For the purposes of this section, the following terms shall have the meanings
10 ascribed:

11 “(1) “Candidate” means an individual who seeks nomination or election to any
12 elective office in the District whether or not the person is elected. An individual is deemed to be
13 a candidate if the individual has received political contributions or made expenditures or has
14 consented to another person receiving contributions or making expenditures with a view to
15 bringing about the individual’s nomination or election.

16 “(2) “Employee” means:

17 “(A) Any individual paid by the District government from grant or
18 appropriated funds for his or her services, or holding office in the District of Columbia, other
19 than the following (if not otherwise employed by the District):

20 “(i) Employees of the courts of the District of Columbia;

21 “(ii) The Mayor;

22 “(iii) The Attorney General;

23 “(iv) The members of the Council;

1 “(v) Advisory Neighborhood Commissioners;

2 “(vi) Members of the State Board of Education; or

3 “(vii) Members of the District of Columbia Statehood Delegation;

4 “(B) A member of a board or commission who is nominated for a position

5 pursuant to section 2(e) of the Confirmation Act of 1978, approved March 3, 1979 (D.C. Law 2-

6 142; D.C. Official Code § 1-523.01(e)); and

7 “(C) A member of a board or commission who is nominated for a position

8 pursuant to section 2(f) of the Confirmation Act of 1978, approved March 3, 1979 (D.C. Law 2-

9 142; D.C. Official Code § 1-523.01(f)), when the member is engaged in political activity that

10 relates to the subject matter that the member’s board or commission regulates.

11 “(3) “On duty” means the time period when an employee is:

12 “(A) In a pay status other than paid leave, compensatory time off, credit

13 hours, time off as an incentive award, or excused or authorized absence (including leave without

14 pay); or

15 “(B) Representing any agency or instrumentality of the District

16 government in an official capacity.

17 “(4) “Partisan” when used as an adjective means related to a political party.

18 “(5) “Partisan political group” means any committee, club, or other organization

19 that is regulated by the District government and that is affiliated with a political party or

20 candidate for public office in a partisan election, or organized for a partisan purpose, or which

21 engages in partisan political activity.

22 “(6) “Partisan political office” means any office in the District government for

23 which any candidate is nominated or elected as representing a party, any of whose candidates for

1 Presidential elector received votes in the last preceding election at which Presidential electors
2 were selected, but shall exclude any office or position within a political party or affiliated
3 organization.

4 “(7) “Political activity” means any activity that is regulated by the District
5 directed toward the success or failure of a political party, candidate for partisan political office,
6 partisan political group, ballot initiative, or referendum; provided, that for the purposes of
7 subsection (d) of this section, political activity is not limited to activities regulated by the
8 District.

9 “(8)(A) “Political contribution” means:

10 “(i) A gift, subscription, loan, advance, or deposit of money, or
11 anything of value, made for any political purpose;

12 “(ii) A contract, promise, or agreement, express or implied, whether
13 or not legally enforceable, to make a contribution for any political purpose;

14 “(iii) A payment by any person, other than a candidate or a
15 political party or affiliated organization, of compensation for the personal services of another
16 person which are rendered to any candidate or political party or affiliated organization without
17 charge for any political purpose; and

18 “(iv) The provision of personal services, paid or unpaid, for any
19 political purpose.

20 “(B) The term “political contribution” shall not include the value of
21 services provided without compensation by any individual on behalf of any candidate, campaign,
22 political party, or partisan political group.

23 “(9) “Political party” means a national political party, a State political

1 party, or an affiliated organization that is regulated by the District.

2 “(10) “Political purpose” means an objective of promoting or opposing a
3 political party, candidate for partisan political office, or partisan political group that is regulated
4 by the District.

5 “(b) Nothing in this section shall be construed as prohibiting an employee from taking an
6 active part in political management or in political campaigns, unless the employee’s activity
7 violates subsection (c) or (d) of this section.

8 “(c) For purposes of District-regulated elections, an employee shall not:

9 “(1) Directly or indirectly solicit, accept, or receive a political contribution from
10 any person, except if the employee has filed as a candidate for political office; he or she may
11 fundraise for himself or herself only;

12 “(2) Be a candidate for election to a partisan political office; except that an
13 employee may run for nomination or as a candidate for election to office within a partisan
14 political party;

15 “(3) Knowingly direct, or authorize anyone else to direct, that any subordinate
16 employee participate in an election campaign or request a subordinate to make a political
17 contribution; or

18 “(4) Knowingly solicit or discourage the participation in any political activity of
19 any person who:

20 “(A) Has a measure pending before the Council; or

21 “(B) Is the subject of or a participant in an ongoing audit, investigation, or
22 enforcement action being carried out by the Council.

1 “(d) For purposes of all elections, whether or not held in the District of Columbia, the
2 following activities are prohibited:

3 “(1) An employee shall not engage in political activity:

4 “(A) While the he or she is on duty;

5 “(B) In any facility of the District government, including any agency or
6 instrumentality thereof;

7 “(C) While wearing a uniform or official insignia identifying the office or
8 position of the employee;

9 “(D) Using any vehicle owned or leased by the District of Columbia,
10 including any agency or instrumentality thereof; or

11 “(E) Using his or her official authority or influence for the purpose of
12 interfering with, or affecting the result of, an election or a nomination for office; and

13 “(2) An employee may not coerce, explicitly or implicitly, any subordinate
14 employee to engage in political activity.

15 “(e) The Mayor and each member of the Council may designate one employee while on
16 leave to solicit, accept, or receive a political contribution from any person; provided, that:

17 “(1) The employee shall not perform those activities while the employee is on
18 duty or in any facility of the District government, including any agency or instrumentality
19 thereof;

20 “(2) Any designation pursuant to this subsection shall be made in writing to the
21 Secretary of the District of Columbia or the Secretary to the Council; and

22 “(3) Any designated employee shall file a report within fifteen (15) days of being
23 designated and as otherwise required pursuant to section 224.

1 “Sec. 223o. Financial disclosures.

2 “(a) Public disclosure of financial interests shall be accomplished as follows:

3 “(1) Public officials, except Advisory Neighborhood Commissioners, members of
4 the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to
5 title III of the Washington Metropolitan Area Transit Regulation Compact, approved November
6 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01), and candidates, who are not otherwise
7 required to file pursuant to this paragraph, shall file with the Ethics Board on or before May 15th
8 of each year, a public financial disclosure statement containing a full and complete statement of
9 the information required by subsection (c) of this section.

10 “(2) The disclosure statement required to be filed by paragraph (1) of this
11 subsection shall be filed online via the Ethics Board’s website; provided, that a public official
12 may seek a waiver of the online filing requirement upon a written showing of good cause to the
13 Director of Government Ethics.

14 “(3) Each agency head shall provide to the Ethics Board, no later than the first
15 Monday of March of each year, a list of all public officials within the agency. The list shall
16 include the name, title, position, salary, home address, work email address (or personal email
17 address, if available, where the official no longer works for the agency), and work telephone
18 number (or personal telephone number, if available, where the official no longer works for the
19 agency or does not have a District government telephone number).

20 “(4) The Ethics Board may, on a case-by-case basis, exempt a public official from
21 the financial disclosure filing requirement, or some portion thereof, for good cause shown in
22 writing.

1 “(5) A public official may, in writing and for good cause shown, request the
2 Director of Government Ethics to extend for up to ninety (90) days the time in which to file the
3 public financial disclosure statement.

4 “(6) For the purposes of the financial disclosure statement required by this
5 subsection, a person shall be considered to have been a public official if he or she has served as a
6 public official for more than thirty (30) days during any calendar year in a position for which
7 financial disclosure statements are required under this subsection.

8 “(7) If a public official ceases to hold the office or position, the occupancy of
9 which imposes upon him or her the reporting requirements set forth in this subsection, the public
10 official shall file the financial disclosure statement within three (3) months after leaving the
11 office or position.

12 “(8) Financial disclosure statements required by this subsection shall be in a form
13 prescribed by the Ethics Board, which may provide for the grouping of items of income, sources
14 of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of
15 real property, when separate itemization is not feasible or is not necessary for an accurate
16 disclosure of the income, net worth, dealing in securities and commodities, or purchases and
17 sales of rental property of any individual.

18 (9) The Ethics Board shall provide for the annual auditing of all financial
19 disclosure statements filed pursuant to this subsection.

20 “(10) Except as otherwise provided by this subsection, all papers filed under this
21 subsection shall be kept by the Ethics Board in the custody of the Director of Government Ethics
22 for no less than six (6) years. The Director of Government Ethics shall dispose of papers filed

1 pursuant to this section in accordance with the District of Columbia Public Records Management
2 Act of 1985, effective September 5, 1985 (D.C. Law 6-19; D.C. Official Code § 2-1701 *et seq.*) .

3 “(11) The Board shall publish in the District of Columbia Register, before
4 June 15th each year, the name of each public official who has:

5 “(A) Filed a financial disclosure statement under this subsection;

6 “(B) Sought and received an extension of the deadline filing requirement
7 and the reason for the extension; or

8 “(C) Not filed a financial disclosure statement and the reason for not
9 filing, if known.

10 “(12) The Mayor shall develop a list of each business entity transacting any
11 business with the District government, or providing a service to the District for consideration, to
12 include the business name, address, principals, and brief summary of the business transacted
13 within the immediately preceding six (6) months. The list shall be available online and published
14 semiannually on January 1st and July 1st.

15 “(b) Confidential disclosure of financial interests shall be accomplished as follows:

16 (1) Any covered individual, other than a public official, who advises, makes
17 decisions, or participates substantially in areas of contracting, procurement, administration of
18 grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making,
19 regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or
20 appearance of a conflict of interest, as determined by the appropriate agency head, shall file, on
21 or before May 15th of each year, with the agency head a confidential financial disclosure
22 statement containing a full and complete statement of the information required by subsection (c)
23 of this section. Members of the Washington Metropolitan Area Transit Authority Board of

1 Directors appointed pursuant to Washington Metropolitan Area Transit Regulation Compact,
2 approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01) shall file with the
3 Ethics Board the confidential financial disclosure statement required by this subsection.

4 “(2) For the purposes of the financial disclosure statement required by this
5 subsection, a person shall be considered to have been an employee if he or she has served as an
6 employee for more than thirty (30) days during any calendar year in a position for which
7 financial disclosure statements are required under this subsection.

8 “(3) Each agency head shall, on or before April 15th of each year, do the
9 following:

10 “(A) Designate the persons (“designated filers”) in the agency required to
11 file a confidential financial disclosure statement by name, title, position, and salary;

12 “(B) Notify each designated filer in the agency, in writing, of the
13 following:

14 “(i) That he or she has been designated;

15 “(ii) That he or she is required to file a confidential financial
16 disclosure statement on or before May 15th of each year pursuant to paragraph (1) of this
17 subsection; and

18 “(iii) That he or she may request a review of the designation by the
19 agency head within five (5) days, pursuant to paragraph (6) of this subsection; and

20 “(C) Provide each designated filer with instructions on how to complete
21 the confidential financial disclosure statement he or she is required to file; and

1 “(4) Each agency head shall, on or before May 1st of each year, supply the list of
2 designated filers identified by name, title, position, and salary to the Director of Government
3 Ethics.

4 “(5)(A) Each agency head shall review each designated filer’s confidential
5 financial disclosure statement and each supplementary statement, if any, and, on or before June
6 1st of each year, certify or otherwise report to the Director of Government Ethics, indicating
7 whether or not designated filers have filed the required financial disclosure statement, and if not,
8 shall provide a list of those designated filers who have failed to file the required financial
9 disclosure statement. This report shall include information about successful and pending
10 designation appeals.

11 “(B) Upon review of the confidential financial disclosure
12 statement, any violation of the Code of Conduct, or any potential violation, found by the agency
13 head or his or her designee shall be forwarded immediately to the Director of Government Ethics
14 for review.

15 “(6) When an agency head questions whether a specific individual should
16 be designated pursuant to paragraph (1) of this subsection, the matter shall be referred to the
17 Director of Government Ethics for final resolution.

18 “(7) Designated filers may request a review of their designation as follows:

19 “(A) A designated filer may file a written request for review to the agency
20 head within five (5) days of written notification of the designation;

21 “(B) The agency head shall make a redetermination, in writing, within five
22 (5) days of receipt of the request; and

1 “(C) The agency head’s redetermination denying requested relief shall be
2 appealable, in writing, within five (5) days of receipt of the notice of denial to the Director of
3 Government Ethics.

4 “(8) The decision of the Director of Government Ethics respecting the designation
5 shall be in writing and shall be issued within five (5) days of receipt and shall be final.

6 “(9) The Ethics Board shall publish in the District of Columbia Register, before
7 June 15th of each year, the name of each agency whose head failed to comply with paragraph (4)
8 of this subsection.

9 “(10) Confidential financial disclosure statements constitute a record and shall be
10 maintained by the agency head for no less than six (6) years.

11 “(c)(1) Each public official required to file a public financial disclosure statement
12 pursuant to subsection (a) of this section, and each designated filer required to file a confidential
13 financial disclosure statement pursuant to subsection (b) of this section, shall provide a full and
14 complete statement of:

15 “(A) The name of each business entity, including sole proprietorships,
16 partnerships, trusts, nonprofit organizations, and corporations, whether or not transacting any
17 business with the District of Columbia government, in or from which the public official or
18 designated filer or his or her spouse, domestic partner, or dependent children:

19 “(i) Has a beneficial interest, including, whether held in such
20 person’s own name, in trust, or in the name of a nominee, securities, stocks, stock options,
21 bonds, or trusts, exceeding in the aggregate \$1,000, or that produced income of \$200;

22 “(ii) Receives honoraria and income earned for services rendered
23 in excess of \$200 during a calendar year, as well as the identity of any client for whom the public

1 “(D) All professional or occupational licenses issued by the District of
2 Columbia government held by the public official or designated filer or his or her spouse,
3 domestic partner, or dependent children;

4 “(E) All gifts received in a calendar year by the public official or
5 designated filer from a prohibited source;

6 “(F) A certification that the public official or designated filer has:

7 “(i) Not caused title to, interest in, or ownership of property to be
8 placed in another person or entity’s name for the purposes of avoiding the disclosure
9 requirements of this subsection;

10 “(ii) Filed and paid his or her income and property taxes;

11 “(iii) Diligently safeguarded the assets of the taxpayers and the
12 District;

13 “(iv) Reported known illegal activity, including attempted bribes,
14 to the appropriate authorities;

15 “(v) Not accepted any bribes;

16 “(vi) Not directly or indirectly received government funds through
17 illegal or improper means;

18 “(vii) Not raised or received funds in violation of federal or
19 District law; and

20 “(viii) Not received or been given anything of value, including a
21 gift, favor, service, loan gratuity, discount, hospitality, contribution, or promise of future
22 employment, based on any understanding that the public official’s or designated filer’s official
23 actions or judgment or vote would be influenced.

1 “(2)(A) In addition to the financial disclosure statements that must be filed,
2 respectively, pursuant to subsections (a) and (b) of this section, each public official or designated
3 filer shall file a supplementary statement, in writing and to the same extent as specified for the
4 filing of annual financial disclosure statements, within twenty-one (21) days of the following:

5 “(i) Learning that any person or entity listed in his or her financial
6 disclosure statement commences or ceases to do a business activity with the District government
7 or commences or ceases any activity regulated by an agency of the District government, except
8 as to any licensing requirement under applicable law;

9 “(ii) Learning that any person or entity with whom the public
10 official or designated filer holds outside employment, has a financial or real property interest, or
11 has an agreement of indebtedness, which person or entity had not previously engaged in doing
12 business with the District government or had not been regulated by any agency of the District,
13 commences either to do business with or becomes subject to regulation by the District; and

14 “(iii) Commencing any previously unreported outside employment,
15 acquisition of financial or real property interests, or agreement of indebtedness.

16 “(B) For purposes this subsection, a person or entity shall be deemed to be
17 doing business with the District government if a contract or agreement has been formally entered
18 into for supplying goods or services, including contracts for construction, to the District, or the
19 person or entity is seeking to do business with the District.

20 “(d)(1) An Advisory Neighborhood Commissioner or a candidate who is not otherwise
21 required to file an annual financial disclosure statement pursuant to subsection (a) of this section
22 shall file the certification required by subsection (c)(1)(F) of this section for the preceding year.

1 “(2) The certification required to be filed by paragraph (1) of this subsection shall
2 be filed online via the Ethics Board’s website; provided, that an Advisory Neighborhood
3 Commissioner or a candidate may seek a waiver of the online filing requirement upon a written
4 showing of good cause to the Director of Government Ethics.

5 “Sec. 223p. Limitations on honoraria and royalties.

6 “(a) Except as provided in subsections (b) and (c) of this section, neither the Mayor, the
7 Attorney General, the Chairman of the Council, nor any member of the Council or of the State
8 Board of Education, nor any member of his or her immediate family, shall receive honoraria
9 exceeding \$10,000 in the aggregate during any calendar year. For the purposes of this
10 subsection, the term “honorarium” means payment of money or anything of value for an
11 appearance, speech, or article; provided, that a reimbursement for or payment of actual and
12 necessary travel expenses incurred shall not be considered honoraria. For the purposes of
13 computing the \$10,000 limit on honoraria established under this subsection, an honorarium shall
14 be considered received in the year in which the right to receive the honorarium accrues.

15 “(b) Except as provided in subsection (c) of this section, neither the Chairman of the
16 Council, the Mayor, the Attorney General, nor any member of the Chairman of the Council’s, the
17 Mayor’s, or the Attorney General’s immediate family shall accept royalties for works of the
18 Chairman of the Council, the Mayor, or the Attorney General that exceed \$10,000 in the
19 aggregate during any calendar year. For the purposes of computing the limit on royalties
20 established under this subsection, a royalty shall be considered received during the calendar year
21 in which the right to receive the royalty accrues.

22 “(c) For the purposes of this section, any royalty or part of a royalty, or any honorarium
23 or part of an honorarium, paid to a charitable organization by or on behalf of a public official

1 shall not be calculated as part of an aggregate total; provided, that the public official shall not be
2 an officer or board member of, or otherwise exercise any control over, the organization.

3 “Sec. 223q. Ethics training and ethics counseling.

4 “(a)(1) All covered individuals shall complete a mandatory government ethics training
5 course developed by the Ethics Board within three (3) months of beginning service with the
6 District government. The mandatory training may be provided electronically, in person, or both,
7 as considered appropriate by the Ethics Board.

8 “(2) All employees shall certify on a biannual basis that they have completed at
9 least four (4) hours of government ethics training courses, either developed by the Ethics Board
10 or approved by the Director of Government Ethics, within the previous two (2) years.

11 “(b) The Ethics Board shall ensure that ethics training materials, including summary
12 guidelines to all applicable laws and regulations, shall be made readily available online on its
13 website and in print.

14 “(c) Notwithstanding the penalty provisions of the Merit Personnel Act, any public
15 official who knowingly violates any provision of subsection (a) of this section may be subject to
16 an adverse performance action, but not termination.

17 “(d) There shall be no enforcement of a violation of the Comprehensive Code of Conduct
18 taken against a covered individual who relied in good faith upon an advisory opinion of the
19 Director of Government Ethics opinion requested by that individual; provided, that the
20 individual, in seeking the advisory opinion, made full and accurate disclosure of all relevant
21 circumstances and information.

22 “Sec. 223r. Lobbyists.

1 “(a)(1) Except as provided in subsection (b) of this section, the following persons shall
2 register with the Director of Government Ethics pursuant to subsection (c) of this section and pay
3 the required registration fee:

4 “(A) A person receiving money, or an exchange of value received
5 regardless of its form, in an amount of \$250 or more in any 3-consecutive-calendar-month period
6 for lobbying;

7 “(B) A person expending funds in an amount of \$250 or more in any 3-
8 consecutive-calendar-month period for lobbying; and

9 “(C) A person receiving money, or an exchange of value received
10 regardless of its form, from more than one source shall register under this section if the person
11 receives an aggregate amount of \$250 or more in any 3-consecutive-calendar-month period for
12 lobbying.

13 “(2)(A) Except as provided in subparagraph (B) of this paragraph, the registration
14 fee for lobbyists shall be \$250.

15 “(B) The registration fee shall be \$50 for:

16 “(i) Lobbyists who lobby solely for nonprofit organizations; and

17 “(ii) Nonprofit organizations.

18 “(3)(A) There is established as a nonlapsing fund the Lobbyist Administration and
19 Enforcement Fund (“Lobbyist Fund”), which shall be administered by the Ethics Board. The
20 funds in the Lobbyist Fund shall be used by the Ethics Board solely for the purpose of
21 administering and enforcing this section.

22 “(B) All fees collected under paragraph (2) of this subsection shall be
23 deposited into the Lobbyist Fund. All funds deposited into the Lobbyist Fund, and any interest

1 earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the
2 District of Columbia at the end of a fiscal year, or at any other time, but shall be continually
3 available for the uses and purposes set forth in subparagraph (A) of this paragraph without regard
4 to fiscal year limitation, subject to authorization by Congress.

5 “(4) No person shall be permitted to register until any unpaid fine, penalty, or fee
6 owed to the Ethics Board is paid and any past due report required by subsection (d) of this
7 section is filed.

8 “(b)(1) A person need not register pursuant to section (c) of this section if the person is:

9 “(A) A public official or an employee of the United States acting in his or
10 her official capacity;

11 “(B) A publisher or working member of the press, radio, or television
12 who, in the ordinary course of business, disseminates news or editorial comment to the general
13 public;

14 “(C) A member or member-elect of an Advisory Neighborhood
15 Commission, or a candidate for election to an Advisory Neighborhood Commission; or

16 “(D) An entity specified in D.C. Official Code § 47-1802.01(a)(4), whose
17 activities do not consist of lobbying, the result of which shall inure to the financial gain or
18 benefit of the entity.

19 “(2) Any person who is exempt from registration under any provision of this
20 subsection, except a person exempt from registration under the provisions of paragraph (1)(A) of
21 this subsection, may be a registrant for other purposes under this; provided, that no activity
22 engaged in by the person shall constitute a conflict of interest under section 223c. Registrants

1 have no obligation to report activities in furtherance of exempt activities under this section in
2 activity reports required under subsection (d) of this section.

3 “(c)(1) Each registrant shall file a registration form with the Director of Government
4 Ethics, signed under oath, on or before January 15th of each year, or no later than 15 days after
5 becoming a lobbyist (and on or before January 15th of each year thereafter) online via the Ethics
6 Board’s website. If the registrant is not an individual, an authorized officer or agent of the
7 registrant shall sign the form. A registrant shall file a separate registration form for each person
8 from whom he or she receives any money or an exchange of value received, regardless of its
9 form.

10 “(2)(A) The registration shall be on a form prescribed by the Director of
11 Government Ethics and shall include:

12 “(i) The registrant’s name, permanent address, and, if applicable,
13 temporary address while lobbying;

14 “(ii) The name and address of each person who will lobby on the
15 registrant’s behalf;

16 “(iii) The name, address, and nature of the business of any
17 person who gives the registrant any money or exchanges anything of value, regardless of its
18 form, and the terms thereof; and

19 “(iv) The identification, by formal designation, if known, of
20 matters on which the registrant expects to lobby.

21 “(B) The Director of Government Ethics shall publish in the District of
22 Columbia Register on or before February 15th and on or before August 15th of each year a
23 summary of all information required to be submitted under this subsection.

1 “(3) No later than thirty (30) days after a registrant files a registration form with
2 the Director of Government Ethics, the Director shall post the form on the Ethics Board’s
3 website.

4 “(4) A registrant may seek a waiver of the online filing requirement of this
5 subsection upon a written showing of good cause to the Director of Government Ethics.

6 “(5) Failure to register as required by this subsection shall result in a civil penalty.

7 “(d)(1) Each registrant shall file with the Director of Government Ethics between the 1st
8 and 15th day of July and January of each year a report signed under oath concerning the
9 registrant’s lobbying activities during the previous 6-month period online via the Ethics Board’s
10 website. If the registrant is not an individual, an authorized officer or agent of the registrant shall
11 sign the form. A registrant shall file a separate activity report for each person from whom he or
12 she receives any money or an exchange of value received, regardless of its form. The reports
13 shall be posted on the Ethics Board’s website, shall be on a form prescribed by the Director of
14 Government Ethics, and shall include the following:

15 “(A) A complete and current statement of the information required to be
16 supplied pursuant to subsection (c) of this section;

17 “(B)(i) Total expenditures on lobbying broken down into the following
18 categories:

19 “(I) Office expenses;

20 “(II) Advertising and publications;

21 “(III) Compensation to others;

22 “(IV) Personal sustenance, lodging, and travel, if
23 compensated;

1 “(2) A registrant shall file the report required by paragraph (1) of this subsection
2 even if the registrant engaged in no lobbying activities during the reporting period. In such case,
3 the report shall state that no lobbying activities were conducted.

4 “(3) Each registrant shall obtain and preserve all accounts, bills, receipts, books,
5 papers, and documents necessary to substantiate the activity reports required to be made pursuant
6 to this subsection for five (5) years from the date of filing of the report containing these items.
7 These materials shall be made available for inspection upon requests by the Director of
8 Government Ethics after reasonable notice.

9 “(4) A registrant may seek a waiver of the online filing requirement of this
10 subsection upon a written showing of good cause to the Director of Government Ethics.

11 “(5) A registrant may, in writing and for good cause shown, request the Director
12 of Government Ethics to extend for up to thirty (30) days the time in which to file the report
13 required by paragraph (1) of this subsection.

14 “(e)(1) No registrant or anyone acting on behalf of a registrant shall offer, give, or cause
15 to be given a gift to an official in the legislative or executive branch or a member of his or her
16 staff. This subsection shall not be construed to restrict in any manner contributions authorized in
17 sections 333, 334, and 338.

18 “(2) No official in the legislative or executive branch or a member of his or her
19 staff shall solicit or accept anything of value in violation of paragraph (1) of this subsection.

20 “(3) No person shall knowingly or willfully make or cause to be made any false or
21 misleading statement or misrepresentation of the facts relating to pending administrative
22 decisions or legislative actions to any official in the legislative or executive branch.

1 “(4) No person shall, knowing a document to contain a false statement relating to
2 pending administrative decisions or legislative actions, cause a copy of the document to be
3 transmitted to an official in the legislative or executive branch without notifying the official in
4 writing of the truth.

5 “(5) No information copied from registration forms and activity reports required
6 by this part or from lists compiled from such forms and reports shall be sold or utilized by any
7 person for the purpose of soliciting campaign contributions or selling tickets to a testimonial or
8 similar fundraising affair or for any commercial purpose.

9 “(6)(A) No public official shall lobby while acting as a public official, except as
10 provided in subsection (b)(1)(A) of this section.

11 “(B) Notwithstanding subparagraph (A) of this paragraph, a public official
12 may lobby in his or her personal capacity while serving on a board or commission that does not
13 regulate or license the activities of any person who employs the official to lobby.

14 “(7)(A) No lobbyist or registrant or person acting on behalf of the lobbyist or
15 registrant, shall provide legal representation, or other professional services, to an official in the
16 legislative or executive branch, or to a member of his or her staff, at no cost or at a rate that is
17 less than the lobbyist or registrant would routinely bill for the representation or service in the
18 marketplace.

19 “(B) Notwithstanding subparagraph (A) of this paragraph, a nonprofit
20 organization that routinely provides legal representation or other services to clients at no cost
21 may provide such representation or services to such client when doing so serves the purposes for
22 which such services are routinely provided.

23 “Sec. 223s. Additional agency standards.

1 “(a) The Council and each subordinate and independent agency of the District
2 government may adopt additional standards of ethical conduct and reporting requirements that
3 are appropriate to the particular functions and activities of each respective entity and that are not
4 inconsistent with law or the Comprehensive Code of Conduct.

5 “(b) Additional standards of ethical conduct must be approved prior to implementation as
6 follows:

7 “(1) Proposed standards shall be submitted to the Director of Government Ethics
8 in writing for comment, if any;

9 “(2) Following receipt of any comments from the Director of Government Ethics,
10 or the expiration of no fewer than fifteen (15) business days, the proposed standards shall be
11 submitted electronically for approval, respectively, to:

12 “(A) The Council; or

13 “(B) The Department of Human Resources;

14 “(3) Once approved, the proposed standards shall be transmitted to any implicated
15 labor organization for review; and

16 “(4) Following approval by the Council or the Department of Human Resources,
17 respectively, and any appropriate review by a labor organization, the standards shall be published
18 to the impacted employees.”.

19 (r) Sections 224, 225, 226, 227, 228, 229, 230, and 231 (D.C. Official Code §§ 1-
20 1162.24, 1-1162.25, -1162.26, -1162.27, -1162.28, -1162.29, -1162.30, and -1162.31) are
21 repealed.

22 (s) Section 401(a) (D.C. Official Code § 1-1164.01(a)) is amended by striking the phrase
23 “Code of Conduct” and inserting the phrase “Comprehensive Code of Conduct” in its place.

1 Sec. 3. Conforming amendments and repealers.

2 (a) Sections 1801, 1802, and 1804 of the District of Columbia Government
3 Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C.
4 Official Code §§ 1-618.01, 1-618.02, and 1-618.04), are repealed.

5 (b) The Prohibition on Government Employee Engagement in Political Activity Act of
6 2010, effective March 31, 2011 (D.C. Law 18-355; D.C. Official Code § 1-1171.01 *et seq.*), is
7 repealed.

8 (c) Section 3 of the Rules of Organization and Procedure for the Council of the District of
9 Columbia, Council Period 21, Resolution of 2015, effective January 2, 2015 (Res. 21-1; 62 DCR
10 493), is repealed.

11 (d) Rule 202(c) of the Rules of Organization and Procedure for the Council of the District
12 of Columbia, Council Period 21, is amended by striking the phrase “Code of Official Conduct of
13 the Council” and inserting the phrase “Comprehensive Code of Conduct” in its place.

14 (e) Chapter 18 of Title 6B of the District of Columbia Municipal Regulations is repealed.

15 Sec. 4. Fiscal impact statement.

16 The Council adopts the fiscal impact statement in the committee report as the fiscal
17 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
18 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 2-206.02 (c)(3)).

19 Sec. 5. Effective date.

20 This act shall take effect following approval by the Mayor (or in the event of veto by the
21 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
22 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

- 1 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
- 2 Columbia Register.

“Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act of 2015”

SECTION-BY-SECTION ANALYSIS

Section 1 provides the long and short titles of the legislation.

Section 2 contains amendments to the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“BEGA Act”).

(a) The Table of Contents is amended to reflect the repeal of subtitle C (Conflicts of interest) and the addition of new subtitle C-i (Comprehensive Code of Conduct of the District of Columbia).

(b) Section 101 of the BEGA Act is amended by amending the definitions of certain terms and adding or repealing others. The definitions amended are of the terms “administrative decision,” “candidate,” “direct and predictable effect,” “election,” “employee,” “gift,” “immediate family,” “income,” “lobbying,” “lobbyist,” “prohibited source,” “public official,” and “registrant.” Two of the amendments are noteworthy.¹ The term “administrative decision” is amended to read more consistently with the definition of “lobbying.” The general meaning of the term “gift,” which appears in several sections of the Comprehensive Code of Conduct, is retained – “[anything] having monetary value” – but the amended definition draws on a number of sources, including 6B DCMR § 1803.4(a) and Rule III(c) of the Council’s Code of Official Conduct (“Council Code”), to expand the list of those items, benefits, and services to be excluded.² One such exclusion for elected officials is for admission to and the cost of food and beverages consumed at events sponsored by a trade association or a civic, charitable, or community organization, provided that the invitation to the event is extended directly by the event sponsor. The Ethics Board recognizes that elected officials are invited often to such events and that the costs of admission and refreshments are generally modest.

Two of the terms with amended definitions, “candidate” and “employee,” are also noteworthy in that they are the same as terms defined in new section 223n, which contains restrictions on political activities. Section 223n(a) defines ten terms whose application is

¹ Several of the other terms with amended definitions figure into the analysis of other provisions in the bill in the text below.

² *See also* new section 223h(d)(2) (authorizing acceptance of gift “given under circumstances which make it clear that the gift is motivated by a family relationship or a pre-existing bona fide personal friendship rather than the position of the covered individual”).

*limited to section 223n only.*³ *The overlap is mentioned here, so as to alert the reader to the fact that certain terms have different meanings for purposes of different sections of the Comprehensive Code.*

Aside from the definition of “Comprehensive Code of Conduct,” the other definitions added are of the terms “agency,” “boards and commissions,” “contractor,” “covered individual,” “elected official,” “former employer,” and “nominal.” Some of these defined terms reflect the Ethics Board’s operational experience, and others are added for purposes related to specific sections. For example, “contractor” is taken directly from section 104(17) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.04(17)), to lend meaning to the prohibitions on contingent fees set out in new section 223d. The significance of “covered individual” is discussed below in the analysis of new section 223b.

The definitions repealed are of the terms “affiliated organization,” “Code of Conduct,” “compensation,” and “person closely affiliated with the employee.” The definition of “affiliated organization” is repealed, but reenacted in amended fashion in new section 223a(2) because of its application to the Comprehensive Code only. The definition of “compensation” is repealed because the term itself is used in different contexts throughout the Comprehensive Code, and a single definition is confusing. However, the substance of the definition – “any money or an exchange of value received, regardless of its form, by a person acting as a lobbyist” – is retained for purposes of new section 223r. The reasoning behind the repeal of the definition of the term “person closely affiliated with the employee” is discussed below in the analysis of new section 223c.

(c) A new section 101a is added to reflect the Council’s intent to consolidate the District’s government ethics laws by establishing the Comprehensive Code.

(d) – (o) Sections 201a, 202, 206, 209, 211, 212, 213, 215, 219, 220, 221, and 222 of the BEGA Act are, respectively, amended by striking the phrase “Code of Conduct” and inserting the phrase “Comprehensive Code of Conduct” in its place.⁴

(p) Subtitle C and section 223 of the BEGA Act are repealed. The conflicts of interest provisions of section 223 are reenacted in amended fashion in new section 223c.

³ The definitions in section 223n(a) are taken directly from section 2 of the Prohibition on Government Employee Engagement in Political Activity Act of 2010 (“Local Hatch Act”), effective March 31, 2011 (D.C. Law 18-355; D.C. Official Code § 1-1171.01).

⁴ Section 2(g)(2) of the bill also repeals section 209(b) of the BEGA Act. Given the operative effect of the bill – establishing the Comprehensive Code as local law – the provisions of section 209(b) are no longer necessary. Section 209(a) of the BEGA Act, which the bill does not reach, maintains the Ethics Board’s rulemaking authority.

(q) A new subtitle C-i is added to incorporate the provisions of the Comprehensive Code.

Section 223a (Definitions)

Section 223a contains the definitions of twenty-two terms whose application is limited to the Comprehensive Code. With the exception of “affiliated organization,” all the defined terms are new,⁵ added by the Ethics Board either to reflect its operational experience or for purposes related to specific sections of the Comprehensive Code. For example, “business relationship” and “professional services relationship” are taken from the training materials on the Board’s website to assist lobbyists with their required filings. The term “advocate,” which appears in the anti-nepotism prohibitions in section 223f, is added because it has been the subject of instructive discussion in relevant federal employment decisions.⁶ Another example is “formal background investigation,” which is discussed in the analysis of section 223f.

Two of the other terms added by the Ethics Board also warrant mention. The first is “personal interest.” The term is used in several sections of the Comprehensive Code and, as noted in the discussion of section 223c below, reflects the Board’s opinion that the concept of conflict of interest should include non-financial considerations. That view is not new to the District. When the BEGA Act repealed the District of Columbia Campaign Finance Reform and Conflict of Interest Act,⁷ section 601(g) of the former law (codified at D.C. Official Code § 1-1106.01(g)) required recusal by a public official when faced with “a matter as to which he or she [had] a conflict situation created by a personal, family, or client interest.” The rules implementing the law provided that a conflict of interest occurred “when a public official exert[ed] any ‘effort to realize personal gain’, as defined in [3 DCMR] § 9900.1, through official conduct.”⁸ The view also obtains in the federal government,⁹ as well as in other jurisdictions,¹⁰ and the Board believes that it should find expression again in the District.

⁵ Although new, most of the defined terms draw on various District and federal sources. For example, the definitions of “connected to the attendee’s duties” and “usual and customary constituent services” are based on those in the Council Code. Respectively, *see* Rule IV(b)(2) and Rule VI(e)(2). “Agency” is based on the definition of the term in section 301(1) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (“MPA”), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-603.01(1)). “Training” is based on the definition of the term in 5 U.S.C. § 4101(4), and “participated personally and substantially” is based on 5 C.F.R. § 2641.201(i).

⁶ *See, e.g., Alexander v. Department of the Navy*, 24 M.S.P.R. 621 (1984).

⁷ *See* section 501(d) of the BEGA Act.

⁸ 3 DCMR § 3300.1. In turn, 3 DCMR § 9900.1 defined “effort to realize personal gain” as meaning “any attempt by a public official to profit or obtain an advantage or an addition to that which official lawfully receives in his or her official capacity. No actual gain is necessary.”

The second term is “senior employee,” which is added because it is central to the provisions related to the post-employment “cooling-off” period in section 223m. The Board intends the definition of the term – “an individual required to file a public financial disclosure statement pursuant to section 223o” – to capture the group (generally comprised of elected officials and higher ranking employees) that should be most readily restricted from using personal influence to facilitate transacting government business with former colleagues,¹¹ yet not be so broad as to discourage qualified people from applying to work for the District government.

Section 223b (Applicability and standards of conduct)

Section 223b(a) parallels section 201a of the BEGA Act and declares that the Comprehensive Code is applicable to the ethical responsibilities of all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council, boards and commissions, and Advisory Neighborhood Commissions (“ANCs”).¹² While the defined terms “employee” and “public official”¹³ are used where necessary in specific contexts, these individuals are referred to as “covered individuals” throughout the Comprehensive Code. The more inclusive term “covered individual” is adopted to reflect the Council’s concern, in passing the BEGA Act, that “[t]he District lacks a uniform, comprehensive, code of conduct for all employee, including public officials.”¹⁴

⁹ See U.S. Department of Justice *Ethics Handbook* at 2 (January 2014) (available on-line at http://www.justice.gov/jmd/ethics/ethics_handbook.pdf) (stating general rule that employees should avoid situations where “official actions affect or appear to affect [their] private interests, financial or non-financial”).

¹⁰ See, e.g., section 3.214 of San Francisco’s conflict of interest law (providing that “[a] City officer or employee shall disclose on the public record any personal, professional or business relationship with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the officer or employee where as a result of the relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned”).

¹¹ See section 223m(h) and the related discussion in the text below.

¹² Section 223b(b) excludes from coverage of the Comprehensive Code individuals employed by the District of Columbia Court of Appeals and the District of Columbia Superior Court, reflecting the same exclusion in section 201a of the BEGA Act. The subsection also excludes two other groups. The first is individuals performing services for the District government as vendors or contractors, except as to section 223d, which prohibits contingent fees in government contracting. The second group is lobbyists, except as to section 223h, with its restrictions on gifts from prohibited sources, and section 223r, which tracks Part E (Lobbyists) of the BEGA Act, a constituent element of the current Code of Conduct. See section 101(7)(F) of the BEGA Act.

¹³ See section 101(18) and 101(47) of the BEGA Act, as amended, respectively, by section 2(b)(12) and (b)(22) of the bill.

¹⁴ See Report of the Committee on Government Operations on Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“BEGA Act Committee Report”), at 12 (Council of the District of Columbia, December 5, 2011); see also *id.* (“Although subject to two overarching policies – to always maintain a high level of ethical conduct and refrain from adversely

Section 223b(c) sets out the general principles of ethical conduct that form the basis for the standards contained in the Comprehensive Code and are to be applied in those situations that are not specifically covered by other provisions of law or policy. The principles are drawn directly from Rule 202(a) and (b) of the Council’s Rules of Organization and Procedure for Council Period 21 and from 6B DCMR §§ 1800 and 1801.

Section 223b(d) provides that a violation of the Comprehensive Code, or of any additional agency standards of ethical conduct authorized by section 223s, is cause for appropriate corrective or adverse action to be taken under the procedures applicable to the covered individual. Section 223b(f) draws on section 221(a)(4)(A)(i) of the BEGA Act in providing that penalties imposed by the Ethics Board are separate and apart from any personnel action taken by the covered individual’s agency.¹⁵

Section 223c (Conflicts of interest)

With several exceptions, section 223c tracks the conflicts of interest provisions of current section 223 of the BEGA Act and Rule I of the Council Code, which are, as between them, substantively identical.

Section 223c(a) states the general rule that no covered individual can use his or her official position or title, or personally and substantially participate,¹⁶ in a particular matter, or attempt to influence the outcome of a particular matter, in a manner that he or she knows is likely to have a direct and predictable effect¹⁷ on a personal interest or financial interest of his or her own or of an immediate family member or an affiliated organization.

affecting the public trust; and that any effort to realize a personal gain is a violation of the public trust - public officials, [sic] are not subject to any specific code of conduct.”).

¹⁵ Section 221(a)(4)(A)(i) of the BEGA Act provides that “[i]n addition to any civil penalty imposed under [the BEGA Act], a violation of the Code of Conduct may result in ... [r]emedial action in accordance with the Merit Personnel Act.”

¹⁶ The term “participated personally and substantially” is defined in section 223a(15) by its constituent elements. Of note, for purposes of section 223c, participation includes “participating in preliminary discussions.” That express provision does not appear in either section 223 of the BEGA Act or Council Rule I. However, recusal obligations pursuant to the federal analogue of section 223 – 18 U.S.C. § 208, which applies to District government employees – include participation in preliminary discussions. *See, e.g.*, federal Office of Government Ethics Memorandum 04 x 5, at 2 (June 1, 2004).

¹⁷ The term “direct and predictable effect” is defined by 101(11) of the BEGA Act, as amended by section 2(b)(9) of the bill, as meaning “(A) A close causal link between any decision or action to be taken in a particular matter and any expected effect of the matter on a financial or personal interest; (B) A real, as opposed to a speculative possibility, that the matter will affect the financial or personal interest; and (C) The effect is more than de minimis.”

The federal counterpart to this provision is 18 U.S.C. § 208(a). With very similar language, the statute prohibits an individual from “participat[ing] personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.”

The federal statute “has long been interpreted as applying where the matter will have a ‘direct and predictable effect’ on the employee’s financial interest or on the financial interests of other persons or entities specified in the statute.”¹⁸ To that extent, the text of section 223c(a) of the bill reflects the standards of 18 U.S.C. § 208(a), thereby promoting consistent interpretation and enforcement of the local provision.¹⁹ That said, section 223c(a) of the bill does depart from the provisions on which it is based in two respects. First, the section reaches not only financial interests as being the source of conflicts of interest, but personal interests²⁰ as well. The inclusion of personal interests reflects a twice-repeated recommendation by the Ethics Board in its Best Practices Reports that the concept of conflict of interest should include non-financial considerations, so as to reflect the fact that there are, as one government ethics commentator has observed, “many personal interests that create a conflict, even though no money is involved.”²¹

Section 223c(a) also differs in that it eliminates the term “person closely affiliated with the employee,” which appears in both current section 223(a) of the BEGA Act and Rule I(a) of the Council Code. As defined, for purposes of those provisions, the term means “a spouse,

¹⁸ Notice of proposed rules, *Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)*, 60 Fed. Reg. 47208, 47209 (September 11, 1995) (citing 2 Op. Off. Legal Counsel 151, 155 (June 29, 1978)). See also David R. Flickinger, *Attracting the Best and the Brightest to Government Service: Requiring Scientists for Criminal Conflicts of Interest*, 25 Geo. J. Legal Ethics 519, 525-530 (2012) (discussing history, statutory framework, and judicial interpretation of section 208).

¹⁹ On the same note, see the discussion of 18 U.S.C. § 207 in the analysis of section 223m below. See also Advisory Opinion by Director of Government Ethics to Phil Mendelson, Council Chairman, at 3 (Sept. 23, 2013) (available at <http://www.bega-dc.gov/sites/default/files/documents/MendelsonAO.pdf>) (finding 18 U.S.C. § 208 “instructive in interpreting how section 223 [of the BEGA Act] should be applied” in a matter involving legislative recusal).

²⁰ The term “personal interest” is defined by section 223a(16) and is discussed in the section of this analysis summarizing the definitions contained in section 223a.

²¹ Robert Wechsler, *Personal, Non-Financial Interests* (Feb. 7, 2009, 3:56 PM) <http://www.cityethics.org/node/635> (last visited April 29, 2015).

dependent child, general partner, a member of the employee’s household, or an affiliated organization.”²² Aside from the fact that there is the potential for overlap in applying the term – a spouse and dependent child are very often members of someone’s household,²³ for example, and general partners are commonly associated with each other as members of an affiliated organization²⁴ – the language of section 223c(a) is intended to be more expansive. Borrowing from the definition of “immediate family” in section 101(26) of the BEGA Act,²⁵ section 223c(a) extends its prohibition beyond the interests of covered individuals to reach those of their immediate family members and affiliated organizations as well. One simple scenario will serve to illustrate the Ethics Board’s purpose: an elected official is faced with a potential conflict of interest when called upon to participate in a matter that would affect rental properties owned by her father and brother, neither of whom live under her roof.²⁶

Despite these differences in section 223c(a), subsections (b) through (e) make no significant changes in existing practices regarding waivers, recusal statements, or the obligations of elected officials in matters calling for their recusal. However, it should be noted that, for purposes of section 223c (as well as for other sections), the terms “supervisor” and “immediate supervisor” no longer appear. The term “official superior” is used instead. As defined by section 223a(13), “official superior” is broad enough to encompass immediate supervisors for most covered individuals, but, in potential conflicts of interest situations, is tailored to mean the Ethics Board for elected officials and, for members of boards and commissions, the Mayor.²⁷

²² Respectively, *see* section 101(43) of the BEGA Act; Rule I(e)(5) of the Council Code. *Cf.* 18 U.S.C. § 208(a) (“spouse, minor child, general partner, organization in which [officer or employee] is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment”).

²³ *See* current section 101(25) of the BEGA Act (defining “household” as meaning “a public official or employee and any member of his or her immediate family with whom the public official or employee resides”).

²⁴ The term “affiliated organization” is defined by section 223a(2) as an organization or entity in which, generally, a covered individual or a member of his or her household serves in some business capacity or holds more than \$1,000 in stock. An affiliated organization is also defined as a person with whom, or a business entity with which, a covered individual is negotiating for or has an arrangement concerning prospective employment. Current section 101(3) of the BEGA Act and Rule I(e)(1) of the Council Code define the term in the same way.

²⁵ Section 101(26) of the BEGA Act, as amended by section 2(b)(15) of the bill, defines “immediate family” as meaning “the spouse or domestic partner of an employee and any parent, stepparent, grandparent, brother, stepbrother, sister, stepsister, child, stepchild, or foster child of the employee, and the spouse or domestic partner of any such parent, stepparent, grandparent, brother, stepbrother, sister, stepsister, child, stepchild, or foster child.”

²⁶ The same considerations apply to the recusal obligations of elected officials set out in subsection (e) of section 223c and to those specific conflict situations contemplated by subsection (g)(2).

²⁷ The term “official superior” is defined by section 223a(13) as meaning “any other employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee’s official duties or those of any other official superior of the employee. An employee shall be considered to be the subordinate of any of his or her official superiors. For purposes of section 223c, section 223e,

Section 223d (Contingent fees)

Section 223d prohibits the use of contingent fees in District government contracting. The section is based, in substance, on section 416 of the Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-354.16), which itself is an element of the current Code of Conduct.²⁸

Section 223e (Personal and financial interests and disclosures)

Section 223e tracks 6B DCMR § 1805. Subsection (a) of the section states the policy of the District government of avoiding conflicts of interest concerning the award, implementation, monitoring, and performance of contracts and provides that, as a means of assisting District government agencies to evaluate real or potential conflicts of interest in the contracting area, each newly hired covered individual is required to disclose to his or her employing agency such previous employment relationships (whether in the private or public sectors) as the employing agency may direct, including full disclosure of any ongoing economic benefit from a former employer.²⁹

Subsection (c) of the section requires the employing agency to notify each new covered individual that, for one year from the date of hire, he or she will be screened from, and not permitted to participate in any manner in, decisions related to procurement actions with the individual's former employer and that the one-year restriction will be extended for as long as the individual receives an ongoing economic benefit from the former employer.³⁰

and section 223g(c), the term 'official superior' is deemed to be the Ethics Board for elected officials and, for members of boards and commissions, the Mayor."

²⁸ See section 101(7)(D) of the BEGA Act. See also *CapitalKeys, LLC v. Ciber, Inc.*, 875 F. Supp. 2d 59, 63 (D.D.C. 2012) ("Since 1864, the Supreme Court has held that the payment of contingent fees to third parties for the purpose of securing government contracts or sales violates public policy. See *Tool Co. v. Norris*, 69 U.S. (2 Wall.) 45, 55, 17 L. Ed. 868 (1864). In doing so, the Court reasoned that contingent payments 'suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from its inception.' *Id.* This prohibition against contingent fees has been codified into a required warranty against contingent fees on all contracts with both the D.C. and federal governments.").

²⁹ The term "former employer" is defined by 101(22A) of the BEGA Act, as added by section 2(b)(13) of the bill, as meaning, in pertinent part, any person or organization "[f]or whom or for which the covered individual has served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee." The term "ongoing economic benefit from a former employer" is defined in section 223a(14) as including "any pension, annuity, stock option, bonus, cash or in-kind distribution in satisfaction of equitable interest, payment of all or a portion of the premiums on a life or health insurance policy, or any other comparable benefit."

³⁰ Subsection (c)(3) provides that a covered individual's duty to disclose the receipt of ongoing economic benefits from a former employer is a continuing responsibility.

Except in the case of elected officials, or where there is an existing conflict of interest under section 223c, subsections (d) and (e) of section 223e combine to permit the head of an employing agency to authorize a covered individual to take certain actions involving his or her former employer despite the one-year restriction. Those actions include participating in the oversight of the former employer's performance, if the employer is a current contractor or consultant with the District government, and communicating with the former employer on matters pending before the agency. The decision to authorize a covered individual to take any such actions must be based on a written determination, made in light of all relevant circumstances, that the interest of the District government in the covered individual's participation outweighs the concern that a reasonable person might question the integrity of the District government's programs or operations.

Subsection (g) of the section requires a covered individual who is called upon to act for or on behalf of the District government in a matter relating to or involving a non-governmental entity in which he or she, a member of his or her immediate family, or an affiliated organization has a personal interest or financial interest, to disclose this fact in writing at the earliest possible time. A waiver of the conflict of interest may be granted pursuant to section 223c(b).

Section 223f (Restrictions on hiring and employment (nepotism))

Section 223f is based on 6B DCMR § 1806, which implements the prohibitions on nepotism set out in section 1804(a) of the MPA (D.C. Official Code § 1-618.04(a)).³¹ Specifically, the section prohibits a hiring official³² from directly or indirectly making a hiring decision³³ involving a relative³⁴ with respect to a paid or unpaid position in an agency in which

³¹ The nepotism prohibitions in federal law also apply to District government employees. *See* 5 U.S.C. § 3110(a)(1)(D). In prohibiting nepotism in the District government, the Council intended to “mirror” federal law. *See* Report of the Committee on Government Operations on Bill 19-476, the Government of the District of Columbia Comprehensive Merit Personnel Amendment Act of 2011, at 3 (Council of the District of Columbia, December 5, 2011); *id.* at 5 (“Clarifying restrictions on nepotism and unifying federal and local law reestablish the public trust and allows for autonomy.”).

³² “Hiring official” is defined in section 223a(11) as meaning “a covered individual or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated, to make a hiring decision.” The definition is based on that of “public official,” as defined in the nepotism provisions of the MPA and the DCMR, but the term “hiring official” is adopted in section 223f so as to avoid any confusion with the broader term “public official,” which is used in other contexts in the Comprehensive Code.

³³ “Hiring decision is defined by section 223a(10) to mean “interviewing, selecting, appointing, employing, evaluating, promoting, demoting, reassigning, advancing, disciplining, or separating, or otherwise advocating for or taking any personnel action.”

³⁴ “Relative” is defined in section 223a(18) and, based on the Ethics Board's operational experience, expands on the MPA definition of the term by including grandparents, domestic partners, and foster children.

the official serves or exercises jurisdiction or control. The only exception to this general prohibition is to permit advocating for a relative when answering questions as part of a formal background investigation. The exception was added by the Ethics Board because such an investigation, as defined in section 223a(7), is limited to verifying the information supplied in a resume, application, and interviews and because a hiring official, as the applicant's relative, is often in the best position to verify relevant information. Otherwise, the section allows for no other exceptions or waivers of its provisions,³⁵ reflecting the position taken by the Board in its Best Practices Reports.

The section reflects another position taken by the Ethics Board – this one in the latest Best Practice Report – by extending the nepotism prohibitions to both paid and unpaid positions. The Board's position is informed by the decisions of courts in other jurisdictions, notably Florida, which has an anti-nepotism statute substantively identical to section 1804(a) of the MPA. In *Galbut v. City of Miami Beach*, 605 So.2d 466, 467 (Fla. Dist. Ct. App. 1992), the court rejected the contention that the Florida statute applies only to paid positions of employment, declaring that “[t]he use of the words ‘appoint’ and ‘employ’ in the same sentence indicate that the statute was intended to encompass not only paid employment, but also appointment to other positions.” *Id.* Continuing, the court said that “[t]here is no indication in the text of the law that there was an intention to exempt service on unpaid boards from the coverage of the statute.” *Id.*³⁶

The same can be said about MPA section 1804(a). There is no basis in the text of the provision on which to conclude that the Council intended to limit its reach to paid positions, nor is there any such intent expressed in the committee report that accompanied Bill 19-476. In short, the Board believes that, by expressly extending the nepotism prohibitions to both paid and unpaid positions, section 223f furthers the Council's purpose of clarifying the law and increasing the public's trust in the District government's hiring practices.

Section 223g (Outside activities)

Based almost entirely on 6B DCMR § 1807 and Rule II of the Council Code, section 223g contains provisions relating to outside employment, private business activity, and other

³⁵ However, the section does maintain the provision in section 1804(c) of the MPA (D.C. Official Code § 1-618.04(c)) that authorizes the Mayor, by rulemaking, to suspend temporarily the nepotism prohibitions in the event of emergencies resulting from natural or manmade disasters.

³⁶ *Cf. State ex inf. Atty. Gen. v. Shull*, 887 S.W.2d 397, 400 (Mo. 1994), abrogated on other grounds by *State v. Olvera*, 969 S.W.2d 715 (Mo. 1998) (rejecting contention that policy behind anti-nepotism provision in state constitution did not support public official's ouster, where official participated in vote to appoint relative to unpaid position).

outside activities of covered individuals.³⁷ The lead in language of subsection (a) of the section states the general rule that covered individuals are prohibited from engaging in outside activities that are incompatible with government service. The balance of the subsection contains a non-exhaustive list of examples of such outside activities, including engaging in any activity that conflicts or would appear to conflict with the fair, impartial, and objective performance of the covered individual’s official duties or with the efficient operation of the District government, engaging in any activity that permits the covered individual, or an affiliated organization, to capitalize on his or her official title or position,³⁸ and engaging in any activity that is in violation of federal or District law, rule, or regulation.³⁹

Subsection (b) of the section authorizes covered individuals to engage in outside activities such as teaching, writing for publication, consultative activities, and speaking engagements, generally as long as doing so is consistent with the restrictions in subsection (a) and the activities are conducted outside of regular working hours or during some type of approved leave. Subsection (c) imposes yet other conditions on those authorized outside activities for which covered individuals receive compensation or anything of monetary value. In those cases, covered individuals must get written supervisory clearance before undertaking any activity, the subject matter of which is devoted substantially to their official duties or to information obtained from their government employment.⁴⁰

³⁷ Section 223g also reflects the standards of 18 U.S.C. § 203, one of the federal ethics laws that applies to District government employees. The statute generally prohibits receiving compensation for representing others on claims against the government.

³⁸ The prohibition in subsection (a)(5) on capitalizing on one’s official title or position is not intended to affirmatively require a covered individual to censure or remove biographical information from his or her resume or *curriculum vitae*. Rather, the prohibition will be enforced when there is a perceived or intended connection between the individual’s outside activity and his or her official title or position.

³⁹ While the Ethics Board has sought to reflect in the Comprehensive Code the standards of those federal ethics laws that apply to District government employees, it has not done so with respect to the few that, in the Board’s view, would infrequently come into play, if at all. For example, one of those laws is 18 U.S.C. § 219(a), which prohibits “act[ing] as an agent of a foreign principal required to register under the [federal] Foreign Agents Registration Act of 1938 or a lobbyist required to register under the [federal] Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity.” Similarly, with respect to District law, the Comprehensive Code does not contain express provisions reflecting the Official Correspondence Regulations, effective April 7, 1977 (D.C. Law 1-118; D.C. Official Code § 2-701 *et seq.*), or section 338 of the Campaign Finance Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1163.38) (constituent service programs). Both those laws are elements of the current Code of Conduct, *see* section 101(7)(C) and (F) of the BEGA Act, but seldom figure into enforcement efforts. Nevertheless, subsection (a)(8) of section 223g is intended to reach outside activities that violate all applicable federal and District laws, rules, and regulations.

⁴⁰ The Ethics Board notes that, for enforcement purposes, the Director of Government Ethics has interpreted 6B DCMR § 1807.4, the basis for subsection (c) of section 223g, as not precluding the receipt of compensation for teaching, speaking, or writing on a subject within a covered individual’s discipline or inherent area of expertise based on his or her educational background or experience, as long as the outside activity has touched *generally* on a subject within the employing agency’s areas of responsibility. In other words, the phrase “devoted substantially” in the subsection has been viewed as proscribing the use of “inside information” in paid outside activities. *Cf.* Rule II(b)(2) of the Council Code (“The information used by an employee engaging in outside employment or

Subsection (e) of the section contains two specific restrictions on outside representational activities. The first prohibits covered individuals from representing others, having a personal interest or financial interest in, or providing assistance in prosecuting a claim against the District in any regulatory, adjudicatory, or quasi-judicial agency, or court of the District. The second prohibits representing others in matters in which the District is a party or has a direct and substantial interest. However, the subsection does provide exceptions to these prohibitions. If not inconsistent with the performance of their duties, covered individuals are able to engage without compensation in representational activities in connection with disciplinary proceedings and with certain nonprofit groups.⁴¹

Subsection (h) of the section adds to existing practice by providing a specific exclusion for faculty members of the University of the District of Columbia David A. Clark School of Law who teach or supervise students in the school's law clinics and clinical programs.⁴² Several considerations prompted the Board to add the provision.

First, teaching or supervising law students in the school's clinical programs is not an *outside* activity for faculty members. The programs are part of the school's core curriculum. See section 501(2) of the Authorization for the Establishment of a Public School of Law for the District of Columbia Amendment Act of 1986, effective February 24, 1987 (D.C. Law 6-177; D.C. Official Code § 38-1205.01(2)) (providing that one purpose in establishing public law school was "[t]o ensure that the programs and clinical operations of the School of Law of Antioch University, in operation as of February 24, 1987, are adopted initially as the programs and clinical operations of the public School of Law for the District of Columbia"); see also 8-A DCMR § 1400.2 ("Faculty employees shall be responsible for teaching, law clinics and clinical programs, research, and public service activities essential to the mission of the School of Law.").

Second, the exclusion is not unconditional. Faculty members teaching or supervising students in the clinical programs must, in doing so, abide by the District of Columbia Rules of Professional Conduct and applicable regulations. Significantly, the regulations recognize that, "[a]s an agency of the District of Columbia, the School of Law must be aware of the potential

activities shall not draw on official data or ideas that are not public information, unless the employee has written authorization from the employee's supervisor to use such information.").

⁴¹ In addition, subsection (f) of section 223g allows covered individuals to act, even with compensation, in a personal fiduciary capacity for family members, others, and estates, except in those matters in which they have participated personally and substantially as District government employees. Such representation can only be undertaken with supervisory approval and otherwise not be inconsistent with the performance of official duties.

⁴² Subsection (h) also excludes covered individuals from giving testimony under oath or making statements required to be made under penalty of perjury. Cf. 18 U.S.C. § 203(f) (providing similar exclusion).

for inherent conflicts between the mission and operation of the School of Law and the operation of the government of the District of Columbia,” 8-A DCMR § 208.1, and, accordingly, provide that “prior to undertaking significant claims or actions against the District of Columbia which could lead to substantial expenditures of funds from the District budget, or which could lead to substantial involvement by the court in the management, policies, or financial decisions and priorities of another District agency,” potential cases undergo review by the Director of Clinical Programs and the Dean to determine whether representation should be undertaken. *Id.* at § 208.1(a) – (c).⁴³

Section 223h (Gifts from outside sources)

Section 223h contains standards that prohibit a covered individual from soliciting or accepting a gift from a prohibited source⁴⁴ or a gift given because of the individual’s official position unless the item or benefit is excluded from the definition of “gift”⁴⁵ or falls within one of the exceptions in the section.

Subsection (a) of the section is based on 6B DCMR § 1803.2 and sets out the general rule that a covered individual cannot, except as provided in section 223i, solicit, accept, or agree to solicit or accept, either directly or indirectly, a gift from a prohibited source⁴⁶ or one given because of the individual’s official position or duties. The Ethics Board will apply this general rule strictly, together with section 223r(e)(1), which prohibits a lobbyist, or anyone acting on behalf of a lobbyist, from offering or giving a gift to an official in the legislative or executive branch or to a member of the official’s staff.

⁴³ *Cf. In re Determination of Executive Commission on Ethical Standards*, 116 N.J. 216, 229, 561 A.2d 542, 549 (N.J. 1989) (“Given the educational purposes of the [clinical legal program], and that the State University would be academically and educationally disadvantaged by the contrary interpretation, we hold that a Rutgers University professor in a teaching clinic of this type is not to be regarded as a State employee for purposes of the conflicts-of-interest law.”).

⁴⁴ The term “prohibited source” is defined by section 101(46) of the BEGA Act, as amended by section 2(b)(21) of the bill, and means, generally, a person or organization that has or is seeking business with the District government or that conducts operations or activities subject to regulation by the District government.

⁴⁵ The term “gift” is defined by section 101(23) of the BEGA Act, as amended by section 2(b)(14) of the bill, as meaning, generally, anything “having monetary value, unless consideration of equal or greater value is given.” The term is discussed in the section of this analysis summarizing the definitions contained in section 223a.

⁴⁶ *Cf.* Rule III(a) of the Council Code (providing that, with certain exceptions, “employees shall not solicit or accept, either directly or indirectly, any gift from a prohibited source”).

Subsections (b) and (c) of the section provide, respectively,⁴⁷ the standards for determining when a gift is solicited or accepted because of a covered individual's official position or duties and when a gift is solicited or accepted indirectly.

Subsection (d) of the section is based principally on 6B DCMR § 1803.5 and contains the exceptions to accepting gifts from outside sources. One exception allows a covered individual to accept unsolicited gifts having a market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person cannot exceed \$50 in a calendar year and, provided further, that the offer of the gift cannot appear to a reasonable person to be intended to influence the covered individual in his or her official duties. This exception raises two considerations worth noting.

First, the market value of \$20 or less per source per occasion requirement is consistent with the definition of "nominal" in section 101(34A) of the BEGA Act, as added by section 2(b)(19) of the bill.⁴⁸

Second, the \$20 per source per occasion and \$50 aggregate calendar year market value limits represent what the Ethics Board considers to be a reasonable compromise between the respective \$10 and \$20 limits in 6B DCMR § 1803.5(a) and the \$50 and \$100 limits in Rule III(c)(8)(A) in the Council Code.

The other exceptions in subsection (d) of section 223h include accepting gifts that are clearly motivated by family relationships or pre-existing *bona fide* personal friendships, as well as gifts accepted pursuant to the Acceptance and use of gifts by District Entities Act of 2000 ("Donations Approval Act"), effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 1-329.01).⁴⁹

Closely tracking Rule III(e) of the Council Code, subsection (e) of the section contains specific restrictions on accepting gifts from outside sources.⁵⁰ The restrictions prohibit soliciting or accepting gifts directly or indirectly in return for, among other things, the performance of any official act, being influenced to commit or aid in committing any fraud on the District government, and being induced to omit doing any act in violation of official duty.

⁴⁷ The subsections are, respectively, based on 6B DCMR § 1803.4(c) and (d).

⁴⁸ The term is defined as meaning "an individual cash donation of no more than twenty dollars (\$20) or an individual voluntary gift of no more than twenty dollars (\$20) in market value."

⁴⁹ The Donations Approval Act is a constituent part of the current Code of Conduct. *See* current section 101(7)(G) of the BEGA Act.

⁵⁰ The restrictions also reflect the criminal bribery-related provisions of 18 U.S.C. § 201(b)(2), which apply to District government employees.

The subsection also prohibits a covered individual from accepting gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the individual is using his or her public office for private gain.

Subsection (f) of the section is based on 6B DCMR § 1803.7 and provides that a covered individual who receives a gift that cannot be accepted under the provisions of the section must inform the donor that District government ethics rules do not permit its acceptance. The individual must also take one of several forms of action, including, for example, returning the gift to the donor, donating it to a tax exempt organization, or, if the gift is perishable and would not be practical to return, sharing it with the office staff. However, subsection (f)(5) makes it clear that a covered individual may take any of these actions one time only with respect to any donor.⁵¹

Section 223i (Conferences, widely attended gatherings, and training)

The prohibitions against accepting gifts from outside sources do not apply to gifts accepted by covered individuals when attending or participating in conferences, widely attended gatherings, and training in accordance with the provisions of section 223i.

Subsection (a) of the section, which is based on 6B DCMR § 1803.5(d), authorizes a covered individual to accept an offer of free attendance⁵² at a conference or similar event when he or she participates as a speaker or otherwise to present information on behalf of his or her agency. The offer of free attendance must come from the event sponsor, and its acceptance is limited to the day of the covered individual's participation.⁵³

Subsections (b) and (c) of section 223i combine to authorize a covered individual to accept an unsolicited gift of free attendance at a widely attended gathering from either the event sponsor or, if more than fifty people are expected to attend and the gift of free attendance has a

⁵¹ In contrast, Rule III(b) of the Council Code does not contain a "one bite" provision, nor does it require a covered individual to explain why he or she cannot accept the gift.

⁵² The term "free attendance" is not defined in either the DCMR or the Council Code. Therefore, the Ethics Board looked for guidance in similar federal regulations and found, in 5 C.F.R. § 2635.204(g)(4), the basis for the definition in section 223a(8), which provides that the term "[may] include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. Free attendance does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees."

⁵³ Technically, accepting the offer of free attendance at a conference or similar event is not a gift at all. *See* 6B DCMR § 1803.5(d) ("The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.").

market value of \$350 or less,⁵⁴ from a person other than the sponsor.⁵⁵ Other conditions for accepting the gift apply as well. For example, the covered individual's attendance at the event must be in the interest of his or her agency, a large number of people must be expected to attend the event, and those attending must represent a diversity of views or interests within a given industry, profession, or subject matter.⁵⁶

Under subsection (d) of the section, an agency may authorize a covered individual to accept an unsolicited invitation of free attendance to an accompanying guest to participate in all or part of a conference or widely attended gathering. Such authorization may be granted when others in attendance will generally be accompanied by a guest, and the invitation must be extended by the same person who invited the covered individual.⁵⁷ To that extent, the subsection seeks to standardize the practice across the government. Currently, while Rule IV(b)(1)(B) of the Council Code permits free attendance for an accompanying guest, the DCMR does not for those in the executive branch.

Subsection (f) of the section authorizes a covered individual to accept gifts of contributions and awards incident to training,⁵⁸ as well as payment of travel, food, and other expenses incident to training. Acceptance must be in accordance with the Donations Approval Act and with 5 U.S.C. § 4111. The federal statute, which applies to District government

⁵⁴ The minimum of fifty expected attendees and the \$350 market value limit on an unsolicited gift from a non-sponsor are based on the provisions of 6B DCMR § 1803.5(e). The Ethics Board finds those provisions to be reasonable, especially given that Rule IV(b)(1)(A) of the Council Code contains no market value limit and permits attendance at gatherings of as few as twenty-five people. *Cf.* 5 C.F.R. § 2635.204(g)(2) (providing for acceptance of unsolicited gift from non-sponsor "if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$375 or less").

⁵⁵ Subsection (e) of section 223i does prohibit a covered individual from accepting a gift bag at a conference or widely attended gathering, if the event sponsor is a prohibited source, unless the contents of the bag are materials integral to the event or otherwise meet the requirements of section 223h.

⁵⁶ *See* federal Office of Government Ethics Memorandum 07 x 14, at 3-4 (Dec. 5, 2007) (explaining basic purposes of widely attended gatherings provisions) ("We believe that there are certain instances where an agency may have a legitimate interest in permitting attendance at certain group events where food is served so that employees may be able to meet on a less formal basis and have an interchange of ideas with a variety of individuals, including members of nongovernmental groups, legislators and other Government agency personnel, who are interested in but may have divergent positions on the same issues.") (citation omitted).

⁵⁷ However, the market value of the gift of free attendance, as between the covered individual and the accompanying guest, must be aggregated. In other words, the limit on the market value of the gift for both of them is \$350.

⁵⁸ The term "training" is defined by section 223a(21) as meaning "the process of providing for and making available to a covered individual, and placing or enrolling the individual in, a planned, prepared, and coordinated program or course of instruction or education in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals." The definition is based on 5 U.S.C. § 4101(4).

employees, requires that the donor of a training-related gift be a non-profit, tax-exempt organization. The subsection also allows a spouse or domestic partner to share lodging with the covered individual who is attending a training program, but requires the spouse or domestic partner to pay market value for any accepted travel, food, or other expenses incidental to the training.

Subsection (g) of the section sets out the reporting and publication requirements related to accepting gifts under the section. The subsection is based on 6B DCMR § 1803.6, Rule IV(e)(1) and (2) of the Council Code, and 5 C.F.R. § 410.503, one of the regulations implementing 5 U.S.C. § 4111.

Section 223j (Gifts between covered individuals)

Section 223j pertains to gifts between covered individuals, including those in subordinate-official superior relationships. Subsections (a) through (e) of the section are based on 6B DCMR § 1804 and Rule V of the Council Code. There is only one noteworthy difference between those provisions and the section. Subsection (d)(1) limits the aggregate market value of gifts (other than cash) that a subordinate can occasionally give to an official superior.⁵⁹ The subsection caps the value at \$20. The Ethics Board considers that amount to be a reasonable compromise between the \$10 limit in 6B DCMR § 1804.6(a)(1) and the \$50 limit in Council Rule V(c)(1), especially because the section does not expressly define “occasional basis.”⁶⁰

Section 223j does contain two new provisions. The first, subsection (f), caps at \$300 the aggregate market value of gifts that official superiors may receive from a group of subordinates, regardless of the number of contributing individuals. The \$300 limit is based on Department of Defense (DoD) Joint Ethics Regulation 2-203(a) (November 17, 2011) and applies to gifts appropriate to certain occasions, such as marriages and retirements, permitted under subsection (e). The Ethics Board looked to the DoD regulation as reflecting a best practice in establishing a reasonable monetary limit on the group expression of good wishes for official superiors even on special occasions.

The second new provision is subsection (g), which allows the Director of Government Ethics, upon written request, to authorize covered individuals to solicit voluntary support for victims, including other covered individuals, in cases of emergencies and disasters. For

⁵⁹ The lead in language of subsection (d) states that certain gifts may be given by a subordinate to an official superior “[o]n an occasional basis, including any occasion on which gifts are traditionally given or exchanged,” such as birthdays and holidays.

⁶⁰ *Cf.* 5 C.F.R. § 2635.304(a)(1) (providing cap of aggregate market value of \$10 or less per occasion).

purposes of the provision, the phrase “emergencies and disasters” means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the world.”

Subsection (g) is based on a similar provision in the regulations related to the Combined Federal Campaign that will go into effect on January 1, 2016.⁶¹ To the extent that the subsection permits monetary donations as a form of support, the Ethics Board respectfully suggests that the Mayor rescind Mayor’s Order 88-194, dated August 23, 1988,⁶² and issue a new One Fund-related Mayor’s Order, in which there is express recognition of the authority of the Director of Government Ethics to permit solicitations of executive branch employees, outside the One Fund, in support of victims of emergencies and disasters.

Section 223k (Use of government resources, prestige of office, and letters of recommendation)

Subsection (a) of the section is based on 6B DCMR § 1808.1 and sets out the general rule that covered individuals have the duty to protect and conserve government resources and must not use such resources, or allow their use, for other than authorized purposes.⁶³ “Government resources” is a defined term⁶⁴ and includes any form of real or personal property in which a government agency has an ownership, leasehold, or other property interest, as well as any right or other intangible interest that is purchased with government funds, including personal services of an employee or contractor during his or her hours of work. The term includes equipment and material of any kind, including office supplies, telephone and other telecommunications equipment and services, and the government mails and email system. The Ethics Board purposefully includes the definition, which is adapted from that in 6B DCMR § 1808.2(a), to highlight the fact that a covered individual’s work email address is a form of government property and, as such, must be used only for authorized purposes.⁶⁵

⁶¹ 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. § 950.102(a)(2)).

⁶² Mayor’s Order 88-194 established the Office of the District of Columbia One Fund.

⁶³ The term “authorized purposes” is defined by section 223a(3) as meaning “those purposes for which government resources are made available to members of the public or those purposes authorized by an agency head in accordance with law or regulation.” In a similar vein, subsection (c) of section 223k is based on Rule VI(b) of the Council Code and authorizes covered individuals to accept any material, article, or service that is available as part of any District government program or provided free to District residents or visitors.

⁶⁴ See section 223a(9).

⁶⁵ See 2014 Best Practices Report at 25 (December 31, 2014) (available at <http://www.bega-dc.gov/reports/bega-best-practices-report-december-2014>) (“Employees in all District government agencies entities should have dc.gov email addresses and be required to use them – and only them – to conduct official business.”); see also Mayor’s

Subsection (b) of section 223k sets out two specific government resources-related prohibitions. The first reflects 18 U.S.C. § 1913, which applies to District government employees, and proscribes using government resources to influence in any manner a member of the Council or other public official. The second is based directly on section 336(a) of the Campaign Finance Act of 2011 (D.C. Official Code § 1-1163.36(a)) and prohibits using government resources to support or oppose any candidate for elected office, whether partisan or nonpartisan, or to support or oppose any initiative, referendum, or recall measure, including a charter amendment referendum.⁶⁶

Based on Rule VI(c)(1) of the Council Code, subsection (d)(1) of the section generally prohibits covered individuals from knowingly using the prestige of office for their own private gain or that of another. However, subsection (d)(2) makes clear that the performance of usual and customary constituent services,⁶⁷ without additional compensation, is not prohibited under subsection (d)(1).⁶⁸

Subsection (e) of the section authorizes the Mayor, Councilmembers, and the Attorney General to express support for or serve as the honorary chair or as an honorary member of a nonprofit entity's fundraising event, provided that the entity for which funds are raised supports a nongovernmental bona fide charitable activity and that the public official's name or title is not used in solicitations directly to individual contributors. With the exception of its extension of authority to the now elected Attorney General, the provision operates to continue the practice allowed for the Mayor and Councilmembers, respectively, under 6B DCMR § 1805.10 and Rule VI(c)(4) of the Council Code.

Subsection (f) is new and was suggested after numerous queries from District agencies wishing to engage in public/private partnerships for various purposes. These partnerships may include such endeavors as fundraising for the needy, events that raise public awareness of important societal issues, or initiatives that advance an agency's overall mission, such as providing services to the elderly or homeless.

Order 2012-102, dated July 10, 2012, at 2 ("It is the policy of the District of Columbia that District employees are strongly discouraged from using private email accounts to transact public business and should do so only in rare instances where access to their District provided email account is, for practical reasons, not available.").

⁶⁶ Cf. section 223n(d)(1) (prohibiting certain political activities for purpose of all elections).

⁶⁷ The term "usual and customary constituent services" is defined by section 223a(22). The definition is based directly on that in Rule VI(e)(2) of the Council Code.

⁶⁸ See also Advisory Opinion issued *sua sponte* by Director of Government (Aug. 29, 2013) (available at <http://www.bega-dc.gov/advisory-opinions/constituent-services>).

The longstanding interpretation of whether public/private partnerships are permissible is that, absent implied or express statutory authorization to do so, agencies may not engage in such activities in such a way that lends the prestige of the government to private causes. There are currently only two agencies that have express authority to do so – the Department of Parks and Recreation⁶⁹ and the Office of the State Superintendent of Education.⁷⁰ The concern with lending the government’s prestige to private entities is the risk that such entities will profit privately at the government’s expense. There is also a risk that governmental agencies, through their employees, may be in a position to show favoritism to one charitable organization over another without any formalized selection process, creating the appearance of preferential treatment. On the other hand, it is certainly in the District’s interest to engage in these arrangements when doing so benefits and assists the District in providing expanded services to its constituent residents and service recipients.

There are generally two types of charitable organizations that are at issue. The first are organizations that function solely to provide support to a particular government agency. Examples include the Police Foundation, the Library Association, and the David A. Clark School of Law Alumni Association. Each of these entities exists for one reason only – to raise funds and support the interested agency. These entities are also often times comprised of current or former District employees. The new provision in subsection (f)(1) of section 223k expressly recognizes these entities as those that are already so closely aligned with the corresponding agencies that the risks discussed above are minimal or non-existent. For these select few entities, then, the provision allows the agency wide latitude to promote, endorse, co-sponsor, and collaborate with them.

The other types of charitable entities are those that are engaged in activities where, from time to time, there may be an alignment of goals or interests with a particular District agency, and it makes sense that the District and the entity join efforts to work toward a common goal. An example might be the American Association of Retired Persons, which may wish to partner with the D.C. Office of Aging to co-sponsor an event for the elderly. In those instances, there really should be separate legislation authorizing the agency to engage in the type of activities set aside for those closely aligned entities discussed above. However, this is not to say that some joint efforts would not be permitted. Subsection (f)(2) allows such arrangements, but only when the District serves as a “participant,” rather than as a co-sponsor or promoter of the event. The Ethics Board believes that this approach strikes the necessary balance between lending the prestige of government to private activities and the need for flexibility when attempting to address the needs of the public.

⁶⁹ See section 5(a) of the Recreation Act of 1995, effective March 23, 1995 (D.C. Law 10-246; D.C. Official Code § 10-304(a)).

⁷⁰ See sections 4032 - 4033 of the State Athletic Activities, Programs, and Office Fund Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 38-2671 and -2672).

Subsection (g) of section 223k is new and expressly authorizes covered individuals to organize and participate in the annual One Fund fundraising drive and related activities as authorized by the Mayor in consultation with the Director of Government Ethics to ensure compliance with ethics best practices.

Subsection (h) of the section contains provisions regarding letters of recommendation, letters of reference, and letters of support. The subsection is based on Rule VI(d) of the Council Code and guidance provided in the Advisory Opinion issued *sua sponte* by Director of Government on November 19, 2014.⁷¹

Section 223l (Use of privileged, confidential, protected, and non-public information)

Subsection (a) of section 223l is based on Rule VII of the Council Code and prohibits covered individuals from willfully or knowingly disclosing or using privileged or confidential information, information protected from disclosure by the Freedom of Information Act of 1976, or information that is otherwise non-public, without authorization or unless required by law to do so.

Subsection (b) of the section authorizes the Mayor and the Council Chairman to grant a waiver of the prohibition when disclosure would be in the interest of the District government and not otherwise prohibited by law.

Section 223m (Post-governmental employment conflicts of interest)

Subsections (b) and (c) of section 223m parallel the provisions in subsections (a) and (b) of Rule VIII of the Council Code and, respectively, set out certain permanent and two-year post-employment prohibitions for former covered individuals with respect to particular matters in which the District is either a party or has a substantial interest. Former covered individuals who personally and substantially participated in such particular matters are prohibited permanently from knowingly making, with the intent to influence, any communication to, or appearance before, any officer or employee of any component of the District government on behalf of any other person (except the District) in connection with those matters. Former covered individuals also are prohibited, for two years, from knowingly making, with the intent to influence, any communication to, or appearance before, any officer or employee of any component of the District government on behalf of any other person (except the District) in connection with any such particular matters which they know, or reasonably should know, were

⁷¹ The Advisory Opinion is available at <http://www.bega-dc.gov/advisory-opinions/1040-001-advisory-opinion-letters-recommendation>.

actually pending under their official responsibility⁷² within a period of one year before their termination of employment.⁷³

These permanent and two-year prohibitions mirror 18 U.S.C. § 207(a)(1) and (2), federal criminal post-employment provisions that are among those ethics laws that apply to District government employees.⁷⁴ The substantive parallel is drawn purposefully, so as to eliminate the “disconnect” between the federal statute and its implementing regulations. While 18 U.S.C. § 207 applies to District government employees, its implementing regulations do not. *See* 5 C.F.R. § 2641.104, which defines “employee” to mean, “for purposes of determining the individuals subject to 18 U.S.C. 207, any officer or employee of the executive branch or any independent agency that is not a part of the legislative or judicial branches. *The term does not include* the President or the Vice President, an enlisted member of the Armed Forces, or *an officer or employee of the District of Columbia.*” (Emphasis added.)⁷⁵ Therefore, incorporating the standards of 18 U.S.C. § 207(a)(1) and (2) into section 223m advances the goal of subjecting District government employees to one set of ethics standards rather than multiple and, sometimes, conflicting standards.

Very similar considerations underlie the one-year “cooling-off” period for senior employees,⁷⁶ as provided in subsection (g) of the section. The subsection prohibits former executive branch senior employees (other than special government employees who serve for fewer than 130 days in a calendar year) for one year from having any transactions with their former agency that are intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party. Inasmuch as this provision

⁷² The term “official responsibility” is defined in section 223a(12) as meaning “the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, personally or through subordinates, to approve, disapprove, or otherwise direct governmental action.”

⁷³ Based on 6B DCMR § 1811.8, subsection (e) of section 223m contains another two-year restriction on former covered individuals, prohibiting them from knowingly aiding, counseling, advising, consulting, or assisting in representing any other person (except the District) as to particular matters in which they participated personally and substantially before terminating employment.

⁷⁴ Subsection (a) of section 223m, accordingly, mandates that covered individuals are to comply with the federal provisions.

⁷⁵ *See also* Part 2635, 5 C.F.R. (setting out regulations applicable to standards of ethical conduct for federal executive branch employees). However, section 2635.102(a) defines “agency” to exclude “the Government of the District of Columbia.”

⁷⁶ The term “senior employee” is defined in section 223a(19) as meaning “an individual required to file a public financial disclosure statement pursuant to section 223o.” The term is discussed in the text below as it relates to section 223m. The significance of the definition itself – which is different from the definition for the same term used in prior post-employment “cooling-off” period regulations – is discussed in the section of this analysis summarizing the definitions contained in section 223a.

represents a departure from the current one-year “cooling-off” period applicable to all former District government employees, some discussion is required.

Effective April 11, 2014, the Department of Human Resources (“DCHR”) amended the District Personnel Manual (“DPM”)⁷⁷ in its entirety. *See* 61 DCR 3799. The Notice of Final Rulemaking stated that “[t]he main purpose of amending the rules [was] to ensure the [DPM] provisions reflect changes resulting from” the enactment of the BEGA Act and certain amendments to the MPA.⁷⁸ *Id.* The Notice also stated that “[a]dditional changes were made throughout the [DPM].” *Id.*

In extending the one-year “cooling-off” prohibition to all former District government employees, 6B DCMR § 1811.10 clearly represents one of the “additional changes.” The prohibition had, for almost thirty years prior to the DCHR rulemaking, applied only to senior employees. *See* 6B DCMR § 1814.12 (33 DCR 6794 (October 31, 1986)). Significantly, the prior rule also tracked a similar provision applicable to former senior federal employees. *See* 18 U.S.C. § 207(c).⁷⁹

DCHR gave no explanation for the change, and none can otherwise be found in the legislative histories of the BEGA Act or the MPA Amendment Act, neither of which amended the DPM. Furthermore, while the Ethics Board, through the Director of Government Ethics, provided comments in response to the Notice of Proposed Rulemaking, only “non-substantive changes” came as a result. *See* Notice of Final Rulemaking at 61 DCR 3799. In short, DCHR’s overhauling of the DPM, a constituent part of the Code of Conduct,⁸⁰ occurred outside of the Ethics Board’s authority, serving to highlight a concern expressed by the Council as recently as last year. *See* Report of the Committee on Government Operations on Bill 20-412, *supra*, at 5 (“Because the District Department of Human Resources could amend [the DPM] at any point, such a significant change could take place without the Council’s or [the Ethics Board’s] involvement. Some District employees could then be governed by a different and conflicting set of ethics rules than others.”).

⁷⁷ The DPM is codified in Title 6B of the DCMR.

⁷⁸ *See* District of Columbia Government Comprehensive Merit Personnel Amendment Act of 2012 (“MPA Amendment Act”), effective March 14, 2012 (D.C. Law 19-115; 59 DCR 461).

⁷⁹ Section 207(c) prohibits a former federal senior employee from “knowingly mak[ing], with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency[.]”

⁸⁰ *See* current section 101(7)(E) of the BEGA Act.

The DCHR rulemaking experience combined with other considerations to lead the Ethics Board to decide, with subsection (g) of section 223m, to make the one-year “cooling-off” prohibition apply to former senior employees only.⁸¹

First, the rationale for the “cooling-off” period – to prohibit the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business – more readily applies to former senior employees than to all employees generally. Notably, this view has long been recognized by the federal Office of Government Ethics in enforcing 18 U.S.C. § 207(c). *See, e.g.*, federal Office of Government Ethics Informal Advisory Letter 96 x 8 (April 4, 1996) (“Congress imposed a ‘cooling off’ period in section 207(c) to provide former senior employees and their agencies a period of time to adjust to new roles and to help diminish the appearance that Government decisions may be affected by the improper use of the senior employee’s former position.”).

Second, adapting the provisions of 18 U.S.C. § 207(c) furthers the Board’s general goal of achieving “clearer precedent and more consistent and predictable enforcement” by incorporating into the Comprehensive Code the standards of relevant federal ethics laws.⁸² To that end, section 223m(g) represents one significant counter to what the Council has observed on a more general scale as a “continued lack of uniformity and cohesion in the District’s ethics laws.” Report of the Committee on Government Operations on Bill 20-412, *supra*, at 4.

Subsection (j) of the section covers former senior Council employees. Rule VIII(c) of the Council Code contains specific language that imposes a one-year cooling off period for employees who were employed by an individual Councilmember. However, the Rule does not address central staff of the Council, as that term is defined in the MPA (codified at D.C. Official Code § 1-604.6(b)(3)(A)(i)), or officers or Legal Service employees, for whom the personnel authority is the Council Chairman. Further, both the federal Office of Government Ethics and the D.C. Office of Campaign Finance (“OCF”) have previously determined that 18 U.S.C. § 207 (a)(1) and (2) apply to Council employees. OCF specifically applied the District’s post-employment rules to a former Councilmember.⁸³ As a practical matter, it is

⁸¹ Section 223m allows for exceptions to the one-year “cooling-off” prohibition, as well as to the permanent and two-year post-employment prohibitions. *See* subsections (k) through (o).

⁸² *See* 2014 Best Practices Report at 6; *see also* BEGA Act Committee Report at 5 (“As a federal enclave, the District has, and continues to be, subject to a host of federal ethics laws ... To a large degree these laws substantially mirror local ethics laws and criminal laws. Where they are not echoed, federal law controls and sets a base standard on which District law builds.”).

⁸³ *See* federal Office of Government Ethics Advisory Opinions 86 x 18 (The Council of the District of Columbia and 18 U.S.C. § 207; December 8, 1997) and 97 x 9 (Letter to a Former City Council Member; May 21, 1997); *see also* OCF Interpretive Opinions 97-5 and 97-9 at, respectively, <http://ocf.dc.gov/node/1004862> and <http://ocf.dc.gov/node/1004832> (last visited April 24, 2015).

unlikely that the permanent or two-year ban on transactions with former colleagues would apply to former Council employees, because legislative measures do not typically constitute particular matters involving specific parties. One example of when those bans might apply would be with tax relief measures that affected specific parties and parcels of land, or contract approvals. The more specific language in subsection (j) prohibiting a former employee from seeking action by a Councilmember or Council employee in their official capacity is necessary, therefore, to reach a wider range of former Council employees. The language is similar to that used in the Senate Ethics Rules⁸⁴ that impose a one-year cooling off period on senior employees, and the same concept is found in Rule VIII(c) of the Council Code.

Section 223n (Political activities)

Section 223n is based on sections 2, 3, and 4 of the Local Hatch Act (D.C. Official Code §§ 1-1171.01, - 1171.02, and - 1171.03).⁸⁵ Subsection (b) of the section states that, generally, an employee⁸⁶ may take an active part in political management or in political campaigns unless his or her activity violates the restrictions in subsection (c) or (d) of the section.

The restrictions in subsection (c) of section 223n apply to District-regulated elections. The restrictions include prohibitions on soliciting or receiving political contributions, except if the employee has filed as a candidate for political office,⁸⁷ being a candidate for election to a partisan political office, and soliciting or discouraging participation in any political activity.⁸⁸

⁸⁴ See http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=1aec2c45-aadf-46e3-bb36-c472bcbcd20f (last visited April 24, 2015).

⁸⁵ The purpose of the Local Hatch Act was “to advance Home Rule by establishing local restrictions on the political activities of District government employees.” Report of the Committee on Government Operations and the Environment on Bill 18-460, the Prohibition on Government Employee Engagement in Political Activity Act of 2010, at 2 (Council of the District of Columbia, November 16, 2010). Violations of the Local Hatch Act constitute violations of the current Code of Conduct as defined in current section 101(7)(E-i) of the BEGA Act and are enforceable by the Ethics Board. See section 5 of the Local Hatch Act (D.C. Official Code § 1-1171.04).

⁸⁶ The definition of “employee” set out in section 223n(a)(2) is to be distinguished from the definition of the same term in section 101(18) of the BEGA Act, as amended by section 2(b)(12) of the bill. Inasmuch as the Local Hatch Act does not apply to court employees, elected officials, or members of certain boards and commissions – some number of whom, collectively, are otherwise District government employees – the two definitions are necessary.

⁸⁷ Subsection (e) of the section authorizes the Mayor and members of the Council to designate, under certain conditions, one employee while on leave to solicit or accept political contributions on their behalf.

⁸⁸ Subsection (a)(7) of the section defines “political activity” as meaning, in pertinent part, “any activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.”

Subsection (d) contains restrictions that apply to all elections, whether or not they are held in the District. The restrictions include prohibitions on engaging in political activity while on duty or in any facility of the District government, using official authority to interfere with, or affect the result of, an election or a nomination for office, and coercing any subordinate employee to engage in political activity.

Section 223o (Financial disclosures)

Section 223o, based on current sections 224 and 225 of the BEGA Act,⁸⁹ covers public and confidential financial disclosures. Subsection (a) of the section sets out provisions related to the requirement for public officials – other than ANCs, members of the Washington Metropolitan Area Transit Authority (“WMATA”) Board of Directors, and candidates – to file annual public financial disclosure statements. Subsection (b) contains provisions related to the requirement of certain covered individuals,⁹⁰ other than public officials, and WMATA Board members to file annual confidential financial disclosure statements. Subsection (c) sets out the requirements of what information must be supplied in the disclosure statements themselves. Subsection (d) requires ANCs and candidates who do not otherwise have to file a public financial disclosure statement to file, instead, the annual financial certification required by subsection (c)(1)(F) of the section. The certification, which tracks current section 224(a)(1)(G) of the BEGA Act, calls for the filer to certify, for example, that he or she has filed and paid income and property taxes and has reported known illegal activity to the appropriate authorities, and that he or she not accepted any bribes or placed title to property in another’s name to avoid having to make disclosure.

Section 223o draws on almost three years of the Ethics Board’s operational experience by reflecting several recommendations made in the 2014 Best Practices Report. First, subsections (a)(2) and (d)(2) require the filers of annual public financial disclosure statements and annual financial certifications to make their respective filings online via the Ethics Board’s website.⁹¹ The intent of the electronic filing requirement is to make information more readily available to the public as a result of a more efficient and error-free filing process, although both

⁸⁹ See also 6B DCMR § 1810 (“implement[ing] the financial interest disclosure requirements” in BEGA Act).

⁹⁰ These covered individuals are referred to as “designated filers” in the section. A designated filer is a covered individual “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 [his or her] agency head.”

⁹¹ The electronic filing requirement is authorized by section 211(8) of the BEGA Act (“The Director of Government Ethics, approved by the Ethics Board, shall have the power to ... “[r]equire any person to submit through an electronic format or medium a report required pursuant to [the BEGA Act].”).

subsections do allow for waivers in those cases where good cause can be shown to the Director of Government Ethics.

Second, subsection (a)(4) provides that a public official may, in writing and for good cause shown, request the Director of Government Ethics to extend for up to thirty days the time in which to submit his or her annual public financial disclosure statement. Granting the Director express authority in the Comprehensive Code to approve extension requests is preferable to the practice up to now, which has been based on two regulatory provisions.⁹²

Third, subsection (b)(2) establishes a 30-day service requirement for filers of confidential financial disclosure statements. The provision parallels the same requirement for public filers that is contained in subsection (a)(6) of the section. To date, the Ethics Board has interpreted the 30-day service requirement to extend to all filers except candidates, but including an express requirement in the Comprehensive Code for confidential filers would allow the Board's staff to refer to a specific provision when explaining the requirement,⁹³ especially to those agency personnel who assist in designating confidential filers.

Fourth, subsection (b)(5) requires agency heads, by June 1st of each year, to report to the Director of Government Ethics the names of those covered individuals who did not file a confidential financial disclosure statement. Currently, the BEGA Act requires agency heads to provide only a list of confidential filers by May 1st of each year. The new deadline to require reporting non-filers is intended to assist the Board's staff in its enforcement efforts.

Last, and also for enforcement-related reasons, subsection (b)(9) authorizes the Ethics Board, before June 15th of each year, to publish in the *D.C. Register* the name of each agency whose head failed to report the names of confidential non-filers, along with the list of those public officials who failed to file public financial disclosure statements.

Section 223p (Limitations on honoraria and royalties)

Section 223p is based on current section 226 of the BEGA Act and prohibits the Mayor, the Attorney General, the Chairman of the Council, members of the Council, members of the State Board of Education, as well as members of their immediate families, from receiving honoraria exceeding \$10,000 in the aggregate during any calendar year. The term

⁹² See 3 DCMR § 5702.4 (“A public official may request the Director, in writing, for an extension of up to thirty (30) days in which to submit the FDS.”); 3 DCMR § 5702.5 (“The Director may extend the period of time for submission of the FDS by a public official, for good cause shown.”).

⁹³ Current section 225 of the BEGA Act lacks such a requirement.

“honorarium” is defined to mean “payment of money or anything of value for an appearance, speech, or article.”

The section also prohibits the Chairman of the Council, the Mayor, the Attorney General, as well as members of their immediate families, from accepting royalties for works of the Chairman, the Mayor, or the Attorney General that exceed \$10,000 in the aggregate during any calendar year.⁹⁴

Section 223q (Ethics training and ethics counseling)

Section 223q requires all covered individuals to complete a government ethics training course developed by the Ethics Board within three months of beginning their District service. Reflecting best practices, the training requirement draws on Rule XI(b)(1) of the Council Code, which requires all new Council staff and Councilmembers to complete “a mandatory ethics-training course within 2 months of beginning employment with the Council,” rather than section 1801(a-2)(2) of the MPA (D.C. Official Code § 1-618.01(a-2)(2)), which requires only those new employees who are required to file public or confidential financial disclosure statements⁹⁵ to certify that they have undergone ethics training. However, the section does expand a parallel MPA provision to the extent that it requires all covered individuals to certify on a biannual basis that they have completed at least four hours of government ethics training courses, either developed by the Ethics Board or approved by the Director of Government Ethics, within the previous two years.⁹⁶

The section borrows directly from the MPA and the BEGA Act for two of its other substantive provisions. First, the section provides that, notwithstanding the penalty provisions of the MPA, any public official who knowingly violates the training or certification requirements may be subject to an adverse performance action, but not termination.⁹⁷ Second, the section provides safe harbor to any covered individual who relies in good faith upon an advisory opinion of the Director of Government Ethics requested by the individual, provided

⁹⁴ Subsection (c) of the section provides an exception to the \$10,000 aggregate limits on honoraria and royalties to the extent that “any royalty or part of a royalty, or any honorarium or part of an honorarium, paid to a charitable organization by or on behalf of a public official [is not to] be calculated as part of an aggregate total; provided, that the public official shall not be an officer or board member of, or otherwise exercise any control over, the organization.”

⁹⁵ See current sections 224 and 225 of the BEGA Act.

⁹⁶ Section 1801(a-2)(3) of the MPA (D.C. Official Code § 1-618.01(a-2)(3)) requires financial disclosure statement filers to “certify on an annual basis that they have completed at least one ethics training program within the previous year.”

⁹⁷ See section 1801(a-3) of the MPA (D.C. Official Code § 1-618.01(a-3)).

that he or she, in seeking the advisory opinion, makes full and accurate disclosure of all relevant circumstances and information.⁹⁸

Section 223r (Lobbyists)

Except for reflecting several of the Ethics Board’s recommendations in the 2014 Best Practices Report, section 223r tracks all but one provision of Part E (Lobbyists) of the BEGA Act.⁹⁹

Subsection (a) of the section contains the requirements of those who must register to lobby.¹⁰⁰ The subsection generally follows current section 227 of the BEGA Act, but paragraph (4) is new, prohibiting a person from filing an annual lobbyist registration form, if he or she owes the Ethics Board unpaid fines, penalties, or fees, or any past due activity reports. The provision, reflecting the Board’s view that registrants should have clean hands, would operate in similar fashion to D.C. Official Code § 47-2862, which prohibits the District from issuing licenses or permits to any applicant who owes more than \$100 to the District for certain fines, penalties, assessed interest, past due taxes, or service fees.

Subsection (b) of the section sets out those persons who are excepted from the registration requirement.¹⁰¹

⁹⁸ See section 219(d) of the BEGA Act.

⁹⁹ There are no provisions in the section based on section 232 of the BEGA Act, which covers penalties, prohibition from serving as a lobbyist, and citizen suits. The Ethics Board believes that those subjects are better addressed outside the Comprehensive Code itself, which seeks to reflect the standards of government ethics, rather than to provide specific sanctions for violations.

¹⁰⁰ Section 101(32)(A) of the BEGA Act, as amended by section 2(b)(16) of the bill, defines the term “lobby” or “lobbying” as meaning “communicating directly with any official in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision.” “Legislative action” is defined by section 101(31) of the BEGA Act as including “any activity conducted by an official in the legislative branch in the course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council.” The term “administrative decision” is defined by section 101(1) of the BEGA Act, as amended by section 2(b)(1) of the bill, as meaning “any activity directly related to action by an official in the executive branch, but does not include proceedings related to a contested case conducted under the Administrative Procedure Act.”

¹⁰¹ See also section 101(32)(B) of the BEGA Act (excluding certain activities from the definition of “lobbying”); section 101(33)(B) of the BEGA Act, as amended by section 2(b)(18) of the bill (“Public officials communicating directly or soliciting others to communicate with other public officials shall not be deemed lobbyists for the purposes of section 223r; provided, that a public official does not receive compensation in addition to his or her salary for such communication or solicitation and makes such communication and solicitation in his or her official capacity.”).

Subsection (c) of the section contains the requirements regarding the lobbyist registration form itself. The one departure from current section 229 of the BEGA Act is the provision in paragraph (1) of the subsection requiring that the registration form be filed online via the Ethics Board's website. The intent of the electronic filing requirement is the same as that in section 223o for public financial disclosure statements – making information more readily to the public as the result of a more efficient and error-free filing process¹⁰² – but, in similar fashion, the subsection makes allowance for waivers of the requirement where good cause can be shown to the Director of Government Ethics.¹⁰³

Subsection (d) of the section generally parallels current section 230 of the BEGA Act, covering the requirements related to filing lobbyist activity reports. However, several provisions are new, incorporating Ethics Board recommendations or coming as a result of recent Council action.

First, paragraph (1) requires that lobbyist activity reports have to be filed between the 1st and 15th day of July and January of each year, reflecting the Board's recommendation that the time for filing the reports be extended from the 10th day of each of those months.¹⁰⁴ The recommendation is based on the Board's experience with enforcing the filing requirement, including its having to respond to requests for waivers of the penalties imposed on late filers. Both filing periods are shortened by federal holidays, even with the extended deadline, and current section 230 of the BEGA Act currently makes no provision for granting extensions.¹⁰⁵

Second, paragraph (1)(G) requires that the activity reports include all bundled¹⁰⁶ contributions in accordance with rules promulgated by the Ethics Board. The Campaign Finance Reform Act is the source of this reporting requirement, which is intended to address

¹⁰² See Report of the Committee on Government Operations on Bill 20-76, the Campaign Finance Reform and Transparency Amendment Act of 2013, at 15 (Council of the District of Columbia, October 22, 2013) (“There is a definite need to enhance the accessibility of all information provided on both [lobbyist] Activity Report Forms and Registration Forms.”).

¹⁰³ The same electronic filing and waiver provisions apply in subsection (d) of the section for lobbyist activity reports.

¹⁰⁴ This recommendation is also reflected in legislation pending before the Council. See section 2(g) of the Ethics Reform Amendment Act of 2015, as introduced on March 3, 2015 (D.C. Bill 21-124).

¹⁰⁵ To round out the recommendation, paragraph (5) of the subsection authorizes the Director of Government Ethics, upon a written showing of good cause, to grant a registrant an extension of up to 30 days to file his or her activity report.

¹⁰⁶ The term “bundled” is defined by section 101(3A) of the BEGA Act as meaning, in pertinent part, “to forward or arrange to forward two or more contributions from one or more persons by a person who is not acting with actual authority as an agent or principal of a committee.”

what the Council saw as a major flaw in the District’s campaign finance laws.¹⁰⁷ For its part, the Board has recently undertaken the rulemaking necessary to implement the requirement.¹⁰⁸ *See* 62 DCR ____.

Third, paragraph (2) is based on the Ethics Board’s recommendation that current section 230(c) of the BEGA Act be amended to clarify that a registrant is required to file an activity report, even if he or she engaged in no lobbying activity during the reporting period.¹⁰⁹ Clarifying the filing requirement is intended to obviate the argument, raised by several late filers, that section 230(c) only requires activity reports to be filed if activity during the reporting period has occurred. Accepting that argument would make it impossible for the Board’s auditors to distinguish between non-compliant lobbyists and those who did no lobbying for a given reporting period without contacting each person for confirmation.

Subsection (e) of the section covers lobbying-related prohibited activities. The subsection is based principally on current section 231 of the BEGA Act, but two of its provisions warrant some discussion.

First, paragraph (1) prohibits a registrant, or anyone acting on his or her behalf, to offer or give a gift to an official in the legislative or executive branch or to a member of his or her staff. The ban on gifts¹¹⁰ is a change from section 231(a) of the BEGA Act, which currently permits such gifting up to an aggregate of \$100 in any calendar year. However, the ban stems from the Ethics Board’s view that lobbyists are in the very business of attempting to influence legislative or executive action. Accordingly, paragraph (1) reflects best practices in prohibiting

¹⁰⁷ *See* Report of the Committee on Government Operations on Bill 20-76, at 12-13 (“Most lacking in the District’s campaign finance laws is sufficient transparency related to the campaign contributions of registered lobbyists and their employers. This bill provides that those lobbyists – along with their employers – required to register with [the Ethics Board] must disclose any bundling of campaign contributions.”).

¹⁰⁸ The Council saw the disclosure requirement going into effect fairly immediately. *See id.* at 15 (“[The requirement to disclose bundled contributions] will go into effect immediately and will practically be applied as of the first activity reporting period following the effective date of [D.C. Law 20-79] (likely July 2014.”). However, while the law became effective on February 22, 2014, it did not become applicable until March 13, 2015, when the Chief Financial Officer’s certification of the inclusion of its fiscal effect in an approved budget and financial plan was published at 62 DCR 2988. *See* section 3 (applicability) of D.C. Law 20-79.

¹⁰⁹ Section 230(c) currently provides that “[e]ach registrant who does not file a report required by [section 230] for a given period is presumed not to be receiving or expending funds that are required to be reported under this part.”

¹¹⁰ Paragraph (1) does track current section 231(a) of the BEGA Act in providing that the gift ban will not be construed to restrict in any manner contributions authorized in sections 333, 334, and 338 of the Campaign Finance Act (D.C. Official Code §§ 1-1163.33, 1-1163.34, and 1-1163.38). *See also* subparagraphs (A) through (N) of section 101(23) of the BEGA Act, as amended by section 2(b)(14) of the bill (exclusions to definition of “gift”).

gifts from lobbyists and their employers, no matter the value. Other jurisdictions take this approach.¹¹¹

Second, paragraph (6)(B) authorizes a public official to lobby in his or her personal capacity while serving on a board or commission that does not regulate or license the activities of any person who employs the official to lobby.¹¹² The provision represents something of a change in the Ethics Board's position, taken in its 2013 Best Practices Report, that lobbyists should be prohibited from serving on any boards and commissions that perform quasi-judicial or rulemaking functions or exercise certain other types of authority, such as licensing, contracting, or grant-making. Behind the change is the D.C. Circuit's decision in *Autor v. Pritzker*, 740 F.3d 176 (D.C. Cir. 2014), in which the court held, among other things, that federally registered lobbyists pled a viable First Amendment claim regarding the President's ban on lobbyists serving on advisory committees.¹¹³ Therefore, informed by the court's decision, the Council's viewpoint,¹¹⁴ public comment,¹¹⁵ and similar practices in other jurisdictions,¹¹⁶ the Board now sees the way clear for a lobbyist to serve in his or her personal capacity on a board or commission, as long as the particular body does not regulate or license

¹¹¹ See, e.g., Ark. Const. art.19, § 30; Colo. Const. art. XXIX, § 3(4); Minn. Stat. § 10A.071, subdiv. 2.

¹¹² Current section 231(f) of the BEGA Act currently provides that “[n]o public official shall be employed as a lobbyist while acting as a public official, except as provided in section 228.” In turn, section 228(a)(1) of the BEGA Act provides that a public official “need not register” to lobby if acting within his or her official capacity. Paragraph 6(A) of subsection (e) of section 223r is based on section 228(a)(1).

¹¹³ See 740 F.3d at 182 (“[R]egistered lobbyists are protected by the First Amendment right to petition. See *Liberty Lobby, Inc. v. Pearson*, 390 F.2d 489, 491 (D.C. Cir.1968) (holding lobbying is protected by the right to petition government).”).

¹¹⁴ See Report of the Committee on Government Operations on Bill 20-76, at 12 (“The act of lobbying, whether by a registered lobbyist or an advocate, is an exercise of the constitutional right to petition the government and can have the effect of magnifying underrepresented voices.”).

¹¹⁵ On October 13, 2013, the Board held a symposium on government ethics and transparency best practices. Members of the public were invited to participate, either in person or by submitting written comments. Of those individuals who expressed an opinion on whether lobbyists should be barred from serving on boards and commissions, most were opposed. As one person said, “Categorical restrictions or an outright ban on allowing lobbyists (or even former lobbyists) to serve – even in instances when no conceivable conflict of interest can be shown – only serves to limit getting the best people on those boards.” Visit <http://www.bega-dc.gov/meeting-minutes/public-symposium-government-ethics-and-transparency-best-practices> for minutes of the symposium and copies of all the written comments that were submitted.

¹¹⁶ See, e.g., N.C. Gen. Stat. § 120C-304(e) (“A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person or governmental unit that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist’s registration representing that person or governmental unit.”); Tenn. Code Ann. § 3-6-304(m) (“No lobbyist shall serve as a member of any board, commission or governmental entity of state government having jurisdiction to regulate the business endeavors or professional activities of any employer of the lobbyist[.]”).

the lobbyist's employer. As a member of such a board or commission, the lobbyist would be subject to the Comprehensive Code, generally,¹¹⁷ and the conflicts of interest provisions of section 223c, in particular.¹¹⁸

Section 223s (Additional standards)

Section 223s is based on 6B DCMR § 1809 and authorizes the Council and each subordinate and independent agency to adopt additional standards of ethical conduct and reporting requirements that are appropriate to their respective functions. The section also prescribes the procedures to be followed in seeking approval of and publishing any additional standards.

(r) Repeals sections 224, 225, 226, 227, 228, 229, 230, and 231 of the BEGA Act, the provisions of which sections are reenacted in amended fashion in sections 223o, 223p, 223q, and 223r.

Section 3 contains conforming amendments and repealers.

(a) Repeals sections 1801, 1802, and 1804 of the MPA (D.C. Official Code §§ 1-618.01, 1-618.02, and 1-618.04), the provisions of which sections are reenacted in amended fashion in sections 223c, 223f, and 223q.

(b) Repeals the Local Hatch Act, the provisions of which are reenacted in amended fashion in section 223n.

(c) Repeals section 3 of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 21, Resolution of 2015, effective January 2, 2015 (Res. 21-1; 62 DCR 493) (“Sec. 3. The document entitled ‘Council of the District of Columbia, Code of Official Conduct, Council Period 21,’ attached and made a part of this resolution shall be the Code of Official Conduct of the Council of the District of Columbia.”).

(d) Amends Rule 202(c) of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 21, is amended by striking the phrase “Code of Official Conduct of the Council” and inserting the phrase “Comprehensive Code of Conduct” in its place.

¹¹⁷ See section 223b(a).

¹¹⁸ This approach is consistent with subsection (b)(2) of section 223r, which provides that a person who is exempt from lobbyist registration, other than a public official acting in his or her official capacity, may be a registrant for other purposes, provided that “no activity engaged in by the person shall constitute a conflict of interest under 223c.” Subsection (b)(2) of section 223r is based directly on current section 228(b) of the BEGA Act.

(e) Repeals Chapter 18 (Employee conduct) of Title 6B of the DCMR, many provisions of which are incorporated throughout the Comprehensive Code.

Section 4 contains the fiscal impact statement.

Section 5 contains the effective date.