**DISTRICT OF COLUMBIA BOARD OF ELECTIONS**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The District of Columbia Board of Elections, pursuant to the authority set forth in The District of Columbia Election Code of 1995, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2016 Repl.)), hereby give notice of emergency and proposed rulemaking to adopt amendments to Chapter 42 (The Fair Elections Program) and Chapter 43 (The Verification Process) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

These amendments will place the Board’s regulations into conformity with the Campaign Finance Act of 2011, effective April 27, 2012 (D.C. Law 19-124; 59 DCR 1862 (March 9, 2012)); as amended by The Fair Elections Amendment Act of 2018, effective May 5, 2018 (D.C. Law 22-94; 65 DCR 2847 (March 23, 2018)), as amended by The Fair Elections Emergency Amendment Act of 2019, enacted May 22, 2019 (expires August 20, 2019). This rulemaking is necessary because the provisions of the aforementioned Act are in effect and require supporting regulations.

The Board gives notice of its intent to take final rulemaking action to adopt these amendments in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

**Chapter 42, THE FAIR ELECTIONS PROGRAM, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:**

**Section 4201, REGISTRATION OF CANDIDATES IN THE FAIR ELECTIONS PROGRAM, is amended as follows:**

**The title of Section 4201 is renamed “REGISTRATION OF CANDIDATE.”**

**Subsection 4201.11 is amended to read as follows:**

4201.11 A candidate who has registered with the Office of Campaign Finance shall complete and file Form W-9, Request for Taxpayer Identification Number and Certification and the ACH Enrollment Form, to establish authorization for the electronic transfer of base amount and matching fund payments.

**Section 4203, PRINCIPAL CAMPAIGN COMMITTEE, is amended by amending Subsections 4203.13 and 4203.19 to read as follows:**

4203.13 A treasurer shall be required to appear in person at the Office of Campaign Finance to attend a training program pursuant to § 4202 of this chapter within fifteen (15) calendar days of submitting the Statement of Acceptance of Treasurer form in accordance with § 4203.12, or as otherwise scheduled by OCF.

…

4203.19 No expenditures may be made by a Principal Campaign committee except by check drawn or electronic transfer payable to the person to whom the expenditure is being made on the account at a bank designated by the Principal Campaign committee as its depository in its Statement of Organization.

**Section 4205, LIMITATIONS ON CONTRIBUTIONS, is amended by amending Subsections 4205.2 – 4205.16 to read as follows:**

4205.2 Each qualified small-dollar contribution from a District resident and contribution from a non-District resident individual shall be acknowledged by physical or electronic confirmation or receipt, as the candidate prefers. The candidate shall retain the information in paragraphs (a) and (b) of this section. The receipt shall include:

1. The contributor’s physical or electronic signature, or other indicia of identity (such as an affirmation checkbox), printed, or typed name, address, occupation and principal place of business, if any, and the name of the candidate to whom the contribution is made; and
2. An indication, including by clicking a check box or button that the contributor has sworn or affirmed:
3. Is making the contribution in the contributor’s own name and from the contributor’s own funds;
4. Is making the contribution voluntarily and has not received anything of value in return for the contribution;
5. In the case of a small-dollar contributor, is a District resident;
6. In the case of a contribution from a non-District resident individual, is a non-District resident individual; and

(5) Understands that a false statement is a violation of law.

4205.3 Notwithstanding § 4205.2(b), if a contributor agrees to make a contribution to a candidate that recur automatically on a periodic basis, the contributor’s initial indication made pursuant to §§ 4205.2(b) or 4205.4 is sufficient to indicate continuous assent and the contributor need not provide a new indication for each recurring contribution.

4205.4 If a contributor makes a contribution to a candidate over the phone, the indication required by § 4205.2(b) may be provided by the contributor orally.

4205.5 A candidate seeking certification and a participating candidate may accept qualified small-dollar contributions from District resident individuals and contributions from non-District resident individuals made by means of personal check, credit card, electronic payment account, or cash, provided, that contributions in the form of cash cannot, in the aggregate, exceed one hundred dollars ($100) per small-dollar contributor District resident individual or non-District resident individual per seat per covered office per election cycle.

4205.6 A candidate seeking certification and a participating candidate may accept contributions from Fair Elections Committees that do not exceed one thousand five hundred dollars ($1,500) per Fair Elections Committee, per election cycle.

4205.7 Contributions from Fair Elections Committees established, financed, maintained, or controlled by substantially the same group of individuals shall share a single contribution limitation.

4205.8 A candidate seeking certification and a participating candidate may accept qualified small-dollar contributions from District resident individuals who are minor children (individuals under eighteen (18) years of age), provided, that:

(a) The decision to contribute is made knowingly and voluntarily by the minor child;

1. The funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, or a bank account opened and maintained exclusively in the child’s name; and
2. The contribution was not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed.

4205.9 Any contribution received from a minor child, except under § 4205.8, shall be attributed to the parents or legal guardians, subject to the contribution limits under § 4205.1.

4205.10 A candidate seeking certification and a participating candidate may accept a loan or advance from the candidate or member of the immediate family of a candidate, subject to the contribution limits of § 4209.1(f) of this chapter. **“Immediate family”** means the spouse or domestic partner of a candidate and any parent, grandparent, brother, sister, or child of the candidate, and the spouse or domestic partner of any such parent, grandparent, brother, sister, or child.

4205.11 Each loan or advance from a candidate or member of the immediate family of a candidate shall be evidenced by a written instruction that fully discloses:

(a) The terms of the loan or advance;

(b) The conditions of the loan or advance;

1. The parties to the loan or advance; and
2. Documentation regarding the source of the funds when the loan or advance is from the candidate.

4205.12 The amount of each loan or advance from a candidate or member of the candidate’s immediate family shall be included in computing and applying the limitations on contributions under § 4209.1(f), upon receipt by the principal campaign committee of the loan or advance from the candidate or an immediate family member; provided, that the standards for repayment are consistent with the repayment policies of lending institutions in the District of Columbia.

4205.13 Loans made in the regular course of the lender’s business shall not be deemed a contribution by the obligor on the loan and by any other person endorsing, cosigning, guaranteeing, or otherwise providing security or collateral for the loan and subject to the limitations on contributions under § 4205.1 and § 4209.1(f).

4205.14 A loan not made in the regular course of a lender’s business shall be deemed a contribution by the lender subject to the limitations on contributions under § 4205.1 and § 4209.11(f).

4205.15 Any portion of a loan that is forgiven is a monetary contribution and any debt owed by a candidate that is forgiven or settled for less than the amount owed is a contribution, unless the debt was forgiven or settled by a creditor who has treated the outstanding debt in a commercially reasonable manner.

4205.16 Candidates seeking certification and participating candidates may not accept any contributions in excess of the applicable contributions limits or from sources prohibited under Chapter 42 of this title.

**New Subsections 4205.17 and 4205.18 are added to read as follows:**

4205.17 Except as provided in § 4207.9 of this chapter, when a candidate knows or has reason to know that he or she has accepted a contribution, contributions, or aggregate contributions from a single source in excess of the applicable contribution limit, or from a source prohibited under Chapter 42 of this title, the candidate shall promptly return the excess portion or prohibited contribution, by bank check or certified check made out to the contributor.

4205.18 Where the return of the contribution to the contributor under Section § 4205.15 is impracticable, the candidate may pay to the Fund an amount equal to the amount of the prohibited contribution or the excess portion.

**Section 4206, CERTIFICATION, REVOCATION, AND RESCISSION AS A PARTICIPATING CANDIDATE, is amended by amending Subsections 4206.3 and 4206.5 to read as follows:**

4206.3 No later than ten (10) business days after a candidate attains compliance under § 4206.1 the Director of Campaign Finance shall determine whether the candidate meets the requirements for certification as a participating candidate, and:

1. If the requirements are met, certify the candidate as a participating candidate; or
2. If the requirements are not met, the Director shall notify the candidate in writing of the specific deficiencies and (1) provide an opportunity to cure the deficiencies and, (2) appeal the Director’s determination in writing to the Board within ten (10) business days after the candidate receives the determination. An appeal of the Director’s determination to the Board shall be considered a complaint and proceed in accordance with the rules of Chapter 4 of this title.
3. The petition of appeal must state the grounds for reconsideration of the denial for certification as a participating candidate.

…

4206.5 If a certification is revoked under § 4206.3, the Director shall notify the candidate in writing of (1) the basis for the Director’s revocation; and (2) the right to appeal the revocation in writing to the Board within ten (10) business days after the candidate receives the determination. An appeal of a revocation to the Board shall be considered a complaint and proceed in accordance with the rules of Chapter 4 of this title.

**New Subsections 4206.12 and 4206.13 are added to read as follows:**

4206.12 Candidates seeking to certify as a participating candidate may file for certification pursuant to § 4206.2 and receive the base amount and initial disbursement of matching payments of which the candidate is eligible under §§ 4207 and 4208, on a rolling basis.

4206.13 Rolling certification shall occur every thirty (30) days, commencing in the year 2019 on August 31, September 30 and October 31, in the year immediately prior to the year during which an election is held for which the candidate seeks office and the committee supports a candidate for office, and thereafter on January 10, February 10, March 30, April 30, May 30, June 30, July 10, August 31 and September 30 in any year in which there is held an election for which the candidate seeks office and the committee supports a candidate for office, until certification is achieved as a participating candidate in the Fair Elections Program.

**Section 4207, BASE AMOUNT PAYMENTS, is amended by amending Subsections 4207.1, 4207.2, and 4207.6 to read as follows:**

4207.1 Within five (5) days after the participating candidate is certified, the Director shall direct the Office of the Chief Financial Officer to disburse to the candidate half of the base amount described in § 4207.3, within five (5) business days of receiving notice from the OCF.

4207.2 Within five (5) days after the participating candidate qualifies for the ballot, the Director shall direct the Office of the Chief Financial Officer to disburse to the candidate the other half of the base amount described in § 4207.3, within five (5) business days of receiving notice from the OCF.

…

4207.6 If an uncontested election becomes a contested election after a participating candidate is certified, the Director shall direct, no later than five (5) days after the uncontested election becomes a contested election the Office of the Chief Financial Officer to disburse funds to the candidate, within five (5) business days of receiving notice from the OCF as follows:

1. The first half of the base amount, if the participating candidate has not qualified for the ballot; or

(b) Both halves of the base amount, if the participating candidate has qualified for the ballot.

**Section 4208, MATCHING PAYMENTS FOR QUALIFIED SMALL-DOLLAR CONTRIBUTIONS, is amended by amending Subsections 4208.2, 4208.7, and 4208.9 to read as follows:**

4208.2 After the candidate is certified as a participating candidate, the candidate shall receive matching payments from the Fair Elections Fund for the qualified small-dollar contributions from individual District residents that the candidate received in that election cycle before certification and after certification with a value of $5 or more in an amount equal to five hundred percent (500%) of the amount of the qualified small-dollar contributions, subject to § 4208.4 of this chapter.

…

4208.7 Within five (5) days after receipt of the participating candidate’s R&E Report filed with the OCF in accordance with §§ 4212 and 4213, the Director shall direct the Office of the Chief Financial Officer to disburse payments to the participating candidate through the use of an electronic funds transfer or debit card within five (5) business days of receiving notice from the OCF.

4208.9 The Director of Campaign Finance shall provide a written explanation with respect to any denial of any payment and shall provide an opportunity to for the appeal of the denial in writing to the Board of Elections within ten (10) business days.

**Section 4210, DEBATE REQUIREMENT, is amended by adding new Subsections 4210.11 and 4210.12 to read as follows:**

4210.11Non-participating candidates who have qualified for ballot access for a covered office prescribed in § 4206.1 may participate in a debate for that covered office, pursuant to the requirements under §§ 4210.5 and 4210.6.

4210.12 If there is no other participating candidate or non-participating candidate who is willing to participate in a debate for a covered office, then the requirements under §§ 4210.5 and 4210.6 shall be waived for that covered office.

**Section 4211, REMITTING FUNDS AND TURNING OVER CAMPAIGN EQUIPMENT, is amended to read as follows:**

**4211 REMITTING FUNDS AND DONATING EQUIPMENT**

4211.1 No later than sixty (60) days after a primary election in an election cycle for which a losing participating candidate was on the ballot, the losing participating candidate shall remit to the Director of Campaign Finance, for deposit in the Fair Elections Fund, the remaining funds in the participating candidate’s campaign accounts. The losing participating candidate shall also donate any equipment purchased by the campaign in accordance with § 4211.4.

4211.2 No later than sixty (60) days after a special election or general election in an election cycle for which a participating candidate was on the ballot, the participating candidate shall remit to the Director of Campaign Finance, for deposit in the Fair Elections Fund, the remaining funds in the participating candidate’s campaign accounts. The losing participating candidate shall donate any equipment purchased by the campaign in accordance with § 4211.4.

4211.3 No later than sixty (60) days after a participating candidate’s certification is revoked under § 4206.3, the participating candidate shall remit to the Director of Campaign Finance, for deposit in the Fair Elections Fund, the remaining funds in the participating candidate’s campaign accounts. The participating candidate whose certification has been revoked pursuant to § 4206.3 shall donate any equipment purchased by the campaign in accordance with § 4211.4.

4211.4 A participating candidate, pursuant to §§ 4211.1, 4211.2 and 4211.3, shall donate any equipment purchased by the campaign to a non-profit organization, within the meaning of Section 501(c)(3) of the Internal Revenue Code that is in good standing in the District of Columbia for a minimum of one (1) calendar year prior to the date of the donation, that is unaffiliated with:

1. The candidate or the candidate’s immediate family;
2. The candidate’s principal campaign committee, including the campaign chair and treasurer and their immediate family; and
3. Any board of directors or similar governing body on which the candidate, the candidate’s immediate family, or the candidate’s campaign chair or treasurer sits in its place.

4211.5 If a participating candidate’s certification is revoked under §§ 4206.3(b), (c) or, due to fraudulent activities, § 4206.3(e), the participating candidate shall be personally liable for any expended base amount or matching payments.

4211.6 Notwithstanding §§ 4211.1, 4211.2 and 4211.3, a participating candidate may withhold funds from the amount required to be remitted for an additional one hundred eighty (180) days after the sixty (60)-day periods if the participating candidate requests an extension in writing and submits documentation of the funds to the Director of Campaign Finance no later than the last day of the sixty (60)-day period. The withheld funds shall only be used for the following purposes:

1. To repay any authorized expenditures or retire the proper debts that were incurred in connection with the participating candidate’s campaign; and

(b) To repay personal funds of the participating candidate or the participating candidate’s immediate family contributed under § 4209.1(f).

4211.7 The Office of Campaign Finance shall notify a participant in writing if it finds that the participant owes unspent campaign funds to the Program. The participant shall promptly pay to the Fund unspent campaign funds from an election; provided, however, that all unspent campaign funds for a participant shall be immediately due and payable to the Fair Elections Program Fund upon a determination by the Director that the participant has delayed the post-election audit process.

4211.8 For the purpose of this section, the term “equipment” means any furniture or electronic or battery-powered equipment purchased by a participating candidate’s campaign that cost at least fifty dollars ($50).

**Section 4212, FILING AND DEADLINES, is amended as follows:**

**The title of Section 4212 is renamed “FILING DEADLINES”.**

**Subsections 4212.2, 4212.3, and 4212.4 are amended to read as follows:**

4212.2 Reports of Receipts and Expenditures (R&E) shall be filed by candidates seeking certification and participating candidates with the Office of Campaign Finance on the following dates:

(a) March 10th, June 10th, August 10th, October 10th, and December 10th in the seven (7) months preceding the date on which an election is held for which the candidate seeks office and the committee supports a candidate for office;

(b) March 10th, April 10th, May 10th, June 10th, August 10th, October 10th, and December 10th, and the eight (8th) day next preceding the date of any primary, general or special election, in any year in which there is held an election for which the candidate seeks office and the committee supports a candidate for office;

(c) January 31st of each year; and

(d) July 31st of each year in which there is no election.

4212.3 Candidates seeking certification only may also file R&E Reports until certification is achieved as a participating candidate in the Fair Elections Program, on the following dates:

(a) August 31st, September 30th, and October 31st in the year immediately prior to the year during which an election is held for which the candidate seeks office and the committee supports a candidate for office, and;

(b) January 10th, February 10th, March 30th, April 30th, May 30th, June 30th, July 10th, August 31st, and September 30th, in any year in which there is held an election for which the candidate seeks office and the committee supports a candidate for office.

4212.4 Participating candidates may after certification, also file R&E Reports on the following dates:

(a) February 10th, March 30th and April 30th in any year in which there is held a primary election for which the candidate seeks office and the committee supports a candidate for office; and

(b) July 10th, August 31st, and September 30th in any year in which there is held a general election for which the candidate seeks office and the committee supports a candidate for office.

**Section 4213, REPORTING AND DISCLOSURE REQUIREMENTS, is amended by amending Subsections 4213.6 and 4213.7 to read as follows:**

4213.6 The candidate shall report and itemize in each disclosure statement for each receipt of five dollars ($5.00), or more in the coverage period, the following information:

1. The name, address, occupation (including self-employed, retired, homemaker, or unemployed) and principal place of business, amount of contribution, and date of receipt of each qualified small contribution from an individual District resident;
2. The name, address, occupation (including self-employed, retired, homemaker, or unemployed) and principal place of business, amount of contribution, and date of receipt of each small dollar contribution from a non-resident individual;
3. The receipt of public funds, identifying the type, base amount or matching payments, the amount, and date of payment;
4. The receipt of contributions from Fair Election Committees/Member organizations; and
5. The receipt of contributions or loans from the candidate or the candidate’s immediate family member, reporting the date of receipt, amount, name, address, occupation, and principal place of business.

4213.7 The candidate shall report and itemize in each disclosure statement each expenditure made of five dollars ($5.00) or more during the reporting period:

(a) The name and address of each person, including the candidate, who has made purchases on behalf of the committee during the reporting period with the expectation of being reimbursed by the committee;

1. The date and amount of each such purchase;
2. The name and address of the person or entity form whom the purchase has been made;
3. The form of the purchase;
4. The purpose of the purchase;
5. The name of each person, including the candidate, whom the committee reimbursed for purchases made on behalf of the committee during the reporting period, each purchase being reimbursed, and the amount and form of each reimbursement; and

(g) Such other information as the Director may require.

**Section 4214, RECORDKEEPING, is amended by amending Subsection 4214.5 to read as follows:**

4214.5 All records, under this chapter, shall be made available for review and audit no later than fifteen (15) days after receipt of a written request by the Director, or thirty (30) days after receipt in the case of a full audit.

**Chapter 43, THE VERIFICATION PROCESS, is amended as follows:**

**Section 4302, SUPPORTING DOCUMENTATION, is amended by amending Subsection 4302.3 to read as follows:**

4302.3 The required documentation of payment by instrument type; must include:

1. Check – copy of cancelled check and contribution card;
2. Cash – copy of contribution card;
3. Money Order – copy of money order and contribution card;
4. Credit Card processed online – copy of processing documentation and contribution card information;
5. Credit Card processed by the Campaign – copy of credit card contribution card and card processing documentation; and
6. Debit Card processed by the Campaign – copy of debit cards contribution and card processing documentation.

**Section 4306**, **AFFIRMATION REQUIREMENTS, is amended by amending Subsection 4306.3 to read as follows:**

4306.3 Claims for matching funds will not be matched if the affirmation statement is not included in the campaign’s website where credit card contributions are processed online and on any third party fundraising sites used by the campaign.

**Section 4307, DISPOSITION OF PUBLIC FINANCING EQUIPMENT, is amended to read as follows:**

**4307 REQUIREMENTS FOR DONATING EQUIPMENT**

4307.1 All equipment purchased with matching funds shall be donated to a non-profit organization pursuant to § 4307.2, within sixty (60) days after a General or Special Election in an election cycle for which a participating candidate was on the ballot. Equipment is defined as any furniture or electronic or battery powered equipment purchased by a participating candidate’s campaign that costs at least fifty dollars ($50).

4307.2 Campaign equipment and surplus property shall be donated to a non-profit organization, within the meaning of Section 501(c)(3) of the Internal Revenue Code and operating in good standing in the District for minimum of one (1) calendar year prior to the date of the donation, which satisfies the following requirements:

1. Is unaffiliated with the candidate, the candidate’s immediate family; the principal campaign committee; the committee chair and treasurer and their immediate family; and
2. Any board of directors or similar governing body on which the candidate, the candidate’s immediate family, or committee chair or treasurer sits in its place.

All persons desiring to comment on the subject matter of this proposed rulemaking should file written comments by no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, Board of Elections, 1015 Half Street S.E., Washington D.C. 20003. Please direct any questions or concerns to the Office of the General Counsel at 202-727-2194 or ogc@dcboe.org. Copies of the proposed rules may be obtained at cost from the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.