

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in the District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2016 Repl.)), hereby gives notice of proposed rulemaking action 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 Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; 59 DCR 1862 (May 18, 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)). 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 added in its entirety to read as follows:

CHAPTER 42 THE FAIR ELECTIONS PROGRAM

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4200 THE FAIR ELECTIONS PROGRAM

4200.1 The provisions of this chapter shall govern the procedures of the Office of Campaign Finance for the public financing of political campaigns provided by the Fair Elections Amendment Act of 2018 (the Fair Elections Act), as amended, and known as the Fair Elections Program.

4200.2 The Fair Elections Program established in the Office of Campaign Finance is voluntary.

4200.3 The Fair Elections Program applies to candidates for the covered offices of Mayor, Attorney General, Chairman of the Council, member of the Council, and member of the State Board of Education.

4200.4 Candidates seeking to participate in the Fair Elections Program must meet the threshold requirements under § 4205 of this chapter.

4201 REGISTRATION OF CANDIDATE

4201.1 An individual shall be considered a candidate when he or she:

- (a) Receives a campaign contribution;
- (b) Makes a campaign expenditure;
- (c) Obtains nominating petitions;
- (d) Authorizes any person to perform any of the above acts; or
- (e) Fails to disavow in writing to the Director any of the above acts by any other person within ten (10) days after written notification by the Director.

4201.2 Each candidate shall, within five (5) days after becoming a candidate under § 4201.1, file a Statement of Candidacy form that indicates:

- (a) Whether a principal campaign committee will be designated; and
- (b) Whether the candidate intends to seek certification as a participating candidate of the Fair Elections Program.

4201.3 Each candidate who indicates on the Statement of Candidacy that a principal campaign committee will be designated on his or her behalf shall provide the following information on the Statement of Candidacy form:

- (a) The name of the principal campaign committee;

- (b) The names of any other authorized committees in § 3000.7; and
 - (c) The names of the national bank(s) located in the District of Columbia that have been designated as the candidate's campaign depository.
- 4201.4 The candidate shall commence filing personal Reports of Receipts and Expenditures (R&E Report) in accordance with § 4212, unless reporting is otherwise exempted or waived pursuant to § 4201.5, and certify by oath or affirmation, subject to penalties of perjury, the following statements:
- (a) The candidate has used all reasonable diligence in the preparation of the report and the report is true and complete to the best of the candidate's knowledge; and
 - (b) The candidate has used all reasonable due diligence to ensure that the candidate and the candidate's principal campaign committee are in compliance with the Fair Elections Program's requirements, and the authorized committees under § 3000.7 have advised their contributors of the obligations imposed on those contributors by the Fair Elections Act.
- 4201.5 A candidate who has designated a principal campaign committee may apply, on a Request for Candidate Waiver form, for a waiver from filing reports separate from the candidate's committee.
- 4201.6 The Director may grant a waiver of the filing and reporting requirements upon certification by a candidate that, within five (5) days after personally receiving any contribution, the candidate shall surrender possession of the contribution to the principal campaign committee without expending any of the proceeds from the contribution.
- 4201.7 A candidate who is granted a waiver shall not make any non-reimbursed expenditures for the campaign except in accordance with § 4201.8.
- 4201.8 A candidate may use personal funds to make an expenditure to the candidate's designated principal campaign committee. The principal campaign committee shall report the expenditure as a contribution received from the candidate and, if accompanied by a written instrument attesting thereto, as a loan pursuant to § 4209.3.
- 4201.9 The waiver from filing and reporting shall continue in effect as long as the candidate complies with the conditions under which it was granted.
- 4201.10 Each individual who ceases to become a candidate seeking certification or a participating candidate shall immediately file a Statement of Candidate Withdrawal form upon termination of the candidacy.

4202 MANDATORY TRAINING

- 4202.1 The candidate and the treasurer of the candidate's principal campaign committee shall appear in person at the Office of Campaign Finance to attend a training program conducted by the Director.
- 4202.2 At the discretion of the Director, the Office of Campaign Finance may provide online training materials to supplement the in-person training program.
- 4202.3 Each candidate shall attend the Office of Campaign Finance training program within fifteen (15) calendar days of submitting the Statement of Candidacy form in accordance with § 4201.
- 4202.4 The treasurer of the candidate's principal campaign committee shall attend the Office of Campaign Finance training program within fifteen (15) calendar days of submitting the Statement of Acceptance of Treasurer form in accordance with § 4203.9.
- 4202.5 Each candidate and treasurer participating in the Office of Campaign Finance training program shall affirm by signature and oath to follow the District's campaign finance laws at the conclusion of the training program.
- 4202.6 The Director shall publish the names of all training program participants on the Office of Campaign Finance website for public viewing.

4203 PRINCIPAL CAMPAIGN COMMITTEE

- 4203.1 Candidates seeking certification and participating candidates of the Fair Elections Program shall designate one (1) principal campaign committee, per covered office, per election cycle.
- 4203.2 Only a candidate's designated principal campaign committee and its authorized committees shall accept contributions or make expenditures on behalf of that candidate.
- 4203.3 A candidate's designation of a committee on the candidate's Statement of Candidacy form filed under § 3002.2 constitutes agreement to form a political committee.
- 4203.4 Any political committee designated by a candidate on the Statement of Candidacy form filed under § 4201.2 to receive contributions or make expenditures on behalf of the candidate, shall include the name of the candidate for elective office in the District of Columbia in its name.

- 4203.5 Each Principal Campaign committee shall file a Statement of Organization form, prescribed by the Director of the Office of Campaign Finance (the Director) (OCF), within ten (10) days of organization.
- 4203.6 A Principal Campaign committee shall amend its Statement of Organization within ten (10) days of any change in the information previously reported on its Statement of Organization.
- 4203.7 If a Principal Campaign committee that has filed at least one (1) Statement of Organization disbands or determines that it will no longer receive contributions or make expenditures during a calendar year, it must so notify the Director immediately and file a final Report of Receipts & Expenditures (R&E Report).
- 4203.8 A Principal Campaign committee shall have a chairperson and a treasurer, and may elect to list a designated agent, in the Statement of Organization filed pursuant to § 4203.5.
- 4203.9 No person may simultaneously serve as the chairperson and treasurer of a Principal Campaign committee, except a candidate.
- 4203.10 A chairperson shall be required to file a Statement of Acceptance of Position of Chairperson form with the Director within five (5) days of assuming the office.
- 4203.11 A chairperson shall be required to file a Statement of Withdrawal of Position of Chairperson form with the Director within five (5) days of vacating the office.
- 4203.12 A treasurer shall be required to file a Statement of Acceptance of Position of Treasurer form with the Director within forty-eight (48) hours of assuming the office.
- 4203.13 A treasurer shall be required to appear in person at the Office of Campaign Finance to attend a training program pursuant to § 3001 of Chapter 30, and § 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.
- 4203.14 A treasurer shall be required to file a Statement of Withdrawal of Position of Treasurer form with the Director within forty-eight (48) hours of vacating the office.
- 4203.15 When either the office of chairperson or treasurer is vacant, the Principal Campaign committee shall:
- (a) Designate a successor chairperson or treasurer within five (5) days of the vacancy; and

- (b) Amend its Statement of Organization within ten (10) days of the designation of the successor; provided that the successor officer agrees to accept the position.
- 4203.16 The treasurer of a Principal Campaign committee shall obtain and preserve receipted bills and records in accordance with § 3400.2 of Chapter 34 of this title.
- 4203.17 A Principal Campaign committee shall neither accept a contribution nor make an expenditure while the office of treasurer is vacant, and no other person has been designated and agreed to perform the functions of treasurer.
- 4203.18 Each expenditure made for, or on behalf of, a Principal Campaign committee shall be authorized by either:
- (a) The chairperson;
- (b) The treasurer; or
- (c) Their designated agent, as listed on the Statement of Organization filed under § 4203.5
- 4203.19 No expenditures may be made by a Principal Campaign committee except by check drawn 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.
- 4203.20 A detailed account of each contribution or expenditure received or made on behalf of a Principal Campaign committee shall be submitted to the treasurer of such committee within five (5) days of the receipt of the contribution or the making of the expenditure upon the treasurer's demand.
- 4203.21 The detailed account submitted pursuant to § 4203.20 shall include:
- (a) The amount of the contribution or expenditure;
- (b) The name and address (including the occupation and principal place of business, if any) of the contributor or the person (including a business entity) to whom the expenditure was made;
- (c) The date of the contribution; and
- (d) In the case of an expenditure, the office sought by the candidate on whose behalf the expenditure was made, if applicable.
- 4203.22 All funds of a Principal Campaign committee shall be segregated from, and may not be commingled with, the candidate's, or anyone's personal funds.

- 4203.23 Each Principal Campaign committee accepting contributions or making expenditures shall:
- (a) Designate one or more national banks located in the District of Columbia as the committee's depository or depositories;
 - (b) Maintain a checking account or accounts at such depository or depositories; and
 - (c) Deposit any contribution received by the committee into that account or accounts.
- 4203.24 The principal campaign committee shall process contributions in the following manner:
- (a) Contributions received by check, money order, or other written instrument shall be cosigned directly to the principal campaign committee;
 - (b) All monetary contributions must be accepted and deposited, or rejected and returned to a contributor, within twenty (20) business days after receipt except contributions made in the form of cash must be accepted and deposited, or rejected and returned to a contributor, within ten (10) business days after receipt;
 - (c) All contributions that are accepted and deposited are subject to the contribution limit and prohibitions and must be reported to the Office of Campaign Finance. If a candidate returns a contribution after it is deposited, the return must be reported to the Office of Campaign Finance;
 - (d) The proceeds of any monetary instruments listed in subsection (a) that have been cashed or redeemed by the candidate pursuant to § 4201.5 shall be disallowed by the principal campaign committee and returned by the candidate to the donor.
- 4203.25 No contributions shall be commingled with the candidate's personal funds or accounts
- 4203.26 Except as provided in § 4203.1, an existing committee shall not be designated as the principal campaign committee of a candidate for public office, including the designation of any previously designated principal campaign committee of a candidate, or a slate of candidates for election as officials of a political party, in any future election.

4204 MANDATORY ELECTRONIC FILING

- 4204.1 All Reports of Receipts and Expenditures filed with the Director of the Office of Campaign Finance shall be filed electronically at the OCF website, www.ocf.dc.gov, except as provided in § 3006.2. A paper filing of an R&E Report shall not be accepted and will be considered a failure to file.
- 4204.2 The Director may grant an exception to the electronic filing requirement in either of the following circumstances:
- (a) The filer submits a statement of actual hardship to the OCF at the time of registration demonstrating that the hardship will continue through the duration of the election cycle;
 - (b) The filer submits a statement of actual hardship to the OCF no less than fifteen (15) days before the applicable filing deadline; or
 - (c) The filer submits a statement to the OCF describing an emergency that occurred on or before the filing deadline preventing the electronic filing. The request for an exception based on emergency does not delay any reporting deadlines. If a penalty is imposed for failure to file or timely file, the penalty may be set aside or reduced in accordance with § 3711.2(f).
- 4204.3 The Director shall review and respond in writing to an application for an exception within three (3) business days after its receipt.
- 4204.4 The Office of Campaign Finance shall provide log-in information, including a Personal Identification Number (PIN), for access to the OCF Electronic Filing and Disclosure System to the following registrants:
- (a) Each candidate who files the Statement of Registration form unless a waiver from the filing and reporting requirements is granted pursuant to §§ 3004 and 4200;
 - (b) The treasurer of each candidate's principal campaign committee which files the Statement of Organization form pursuant to §§ 3000.1 and 4203.5.
- 4204.5 The filer of the Report of Receipts and Expenditures shall electronically verify each R&E Report through the use of the confidential PIN Number assigned by the Office of Campaign Finance.
- 4204.6 Each treasurer of a candidate's principal campaign committee who files the R&E Report shall electronically verify that the filer used all reasonable due diligence in

the preparation of the report and to the best of their knowledge, the report is true and complete.

4204.7 Each candidate who files the R&E Report shall electronically verify on each R&E Report the statements contained in §§ 3002.5 and 4201.4.

4205 LIMITATIONS ON CONTRIBUTIONS

4205.1 A candidate seeking certification as a participating candidate or a participating candidate in the Fair Elections Program may only accept a qualified small-dollar contribution from a District resident or a contribution from a non-District resident individual, that, when aggregated with all other contributions received from that small-dollar District resident contributor or contributions received from that non-District resident individual, does not exceed, per election cycle:

- (a) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for Mayor, \$200;
- (b) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for Council Chairman or Attorney General, \$200;
- (c) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for member of the Council elected at-large, \$100;
- (d) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for member of the Council elected from a ward or for member of the State Board of Education elected at-large, \$50; and
- (e) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for member of the Council elected from a ward or for member of the State Board of Education elected from a ward, \$20.

4205.2 Each qualified small-dollar contribution from a District resident and contribution from a non-District resident individual shall be acknowledged by a physical or digital receipt to the contributor, with a copy to be retained by the candidate. The receipt shall include:

- (a) The contributor's digital or physical signature, printed name, home address, telephone number, occupation and principal place of business, if any, and the name of the candidate to whom the contribution is made; and
- (b) A written and signed oath or affirmation declaring that the contributor:

Is making the contribution in the contributor's own name and from the contributor's own funds;

- (1) Is making the contribution voluntarily and has not received anything of value in return for the contribution;
- (2) In the case of a small-dollar contributor, is a District resident;
- (3) In the case of a contribution from a non-District resident individual, is a non-District resident individual; and
- (4) Understands that a false statement is a violation of law.

4205.3 A candidate seeking certification and a participating candidate may accept qualified small-dollar contributions from District residents 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 \$100 per small-dollar contributor or non-District resident individual per seat per covered office per election cycle.

4205.4 A candidate seeking certification and a participating candidate may accept contributions from Fair Elections Committees that do not exceed \$1,500 per Fair Elections Committee, per election cycle.

4205.5 Contributions from Fair Elections Committees established, financed, maintained, or controlled by substantially the same group of individuals shall share a single contribution limitation.

4205.6 A candidate seeking certification and a participating candidate may accept qualified small-dollar contributions from 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;
- (b) 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
- (c) The contribution was not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed.

4205.7 Any contribution received from a minor child, except under § 4205.6 shall be attributed to the parents or legal guardians, subject to the contribution limits under § 4205.1.

- 4205.8 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. “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.
- 4205.9 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;
 - (c) The parties to the loan or advance; and
 - (d) Documentation regarding the source of the funds when the loan or advance is from the candidate.
- 4205.10 The amount of each loan or advance from a 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 an immediate family member; provided, that the standards for repayment are consistent with the repayment policies of lending institutions in the District of Columbia.
- 4205.11 Loans made in the regular course of the lender’s business shall be deemed, to the extent not repaid to the lender by the date of the next election, a contribution by the obligor on the loan and by any other person endorsing, cosigning, guaranteeing, collateralizing, or otherwise providing security for the loan and subject to the limitations on contributions under §§ 4205.1 and 4209.1(f).
- 4205.12 A loan not made in the regular course of the lender’s business shall be deemed, to the extent not repaid to the lender by the date of the next election, a contribution by the lender subject to the limitations on contributions under §§ 4205.1 and 4209.11 (f).
- 4205.13 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.
- 4205.14 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.

4205.15 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.

4205.16 Where the return of the contribution to the contributor under Subsection § 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.

4206 CERTIFICATION AS A PARTICIPATING CANDIDATE

4206.1 To be certified by the Director of Campaign Finance as a participating candidate for a seat for a covered office in an election cycle, a candidate shall, during the qualifying period:

- (a) Obtain the following:
 - (1) For a candidate for Mayor, qualified small-dollar contributions from at least 1,000 small-dollar contributors, which in the aggregate, total \$40,000 or more;
 - (2) For a candidate for Attorney General, qualified small-dollar contributions from at least 500 small-dollar contributors, which, in the aggregate, total \$20,000 or more;
 - (3) For a candidate for Council Chairman, qualified small-dollar contributions from at least 300 small-dollar contributors, which, in the aggregate, total \$15,000 or more;
 - (4) For a candidate for an At-Large Council seat, qualified small-dollar contributions from at least 250 small-dollar contributors, which, in the aggregate, total \$12,000 or more;
 - (5) For a candidate for a Ward Council seat and the At-Large State Board of Education seat, qualified small-dollar contributions from at least 150 small-dollar contributors, which, in the aggregate, total \$5,000 or more; or
 - (6) For a candidate for a Ward State Board of Education seat, qualified small-dollar contributions from at least 50 small-dollar contributors, which, in the aggregate, total \$1,000 or more; and

- (b) The candidate shall file an affidavit with the Director of Campaign Finance, signed by the candidate and the treasurer of the candidate's principal campaign committee declaring that the candidate:
- (1) Has complied with and, if certified, will continue to comply with the Fair Elections Program requirements;
 - (2) If certified, will only run in that election cycle as a participating candidate;
 - (3) If certified will only run during that election cycle for the seat for the covered office for which the candidate is seeking certification, including in both the primary and general elections, as applicable;
 - (4) Has otherwise qualified, or will take steps to qualify, for ballot access in accordance with the procedures required by the Elections Board pursuant to Section 8 of the Election Code, such as by filing a declaration of candidacy under 3 DCMR § 3002 and a nominating petition containing the required number of valid signatures under 3 DCMR § 1605;
 - (5) Is current with respect to any fines or penalties owed for a violation of this Act; and
 - (6) Has responded and will respond to all inquiries of the Elections Board and the Director of Campaign Finance in a timely manner.

4206.2 No later than five (5) 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:

- (a) If the requirements are met, certify the candidate as a participating candidate; or
- (b) If the requirements are not met, provide an opportunity to cure any deficiencies in the filing, and to request or appeal to the BOE of the determination in writing to the Director within five (5) business days.

4206.3 The Director shall revoke a certification under § 4206.2 if a participating candidate:

- (a) Fails to qualify for ballot access pursuant to the nominating petition process;
- (b) Does not continue to run as a participating candidate in that election cycle;

- (c) Does not run for the seat for the covered office for which the candidate was certified during that election cycle, including both the primary and the general elections, as applicable;
 - (d) Terminates his or her candidacy; or
 - (e) Fails to comply with the Fair Elections Program’s requirements.
- 4206.4 If a certification is revoked under § 4206.3, the Director shall provide the candidate with the opportunity to request or appeal to the BOE of the revocation in writing to the Director within five (5) business days.
- 4206.5 The participating candidate whose certification has been revoked shall remit to the Fair Elections Fund the remaining funds in the participating candidate’s campaign accounts pursuant to § 4211.
- 4206.6 The Director shall revoke the certification of a participating candidate who has been finally disqualified following the reconsideration of a revocation pursuant to § 4206.4, or whose designation or nomination petitions have been finally declared invalid by the Board of Elections or a court of competent jurisdiction, and the candidate is thereafter prohibited from spending program funds for any purpose other than the payment of previous liabilities incurred in qualified campaign expenditures.
- 4206.7 All program funds in excess of such liabilities previously incurred shall be promptly repaid to the Program; the amount to be repaid shall be determined by the Office of Campaign Finance. A repayment made shall not preclude a determination that an additional repayment is required pursuant to that or any other provision of the Act.
- 4206.8 If a participating candidate is disqualified by a court of competent jurisdiction on the grounds that he or she committed fraudulent acts in order to obtain a place on the ballot, and such decision is not reversed: (1) the Director shall revoke the candidate’s certification; (2) The candidate shall pay to the Program an amount equal to the total program funds paid to the candidate; and (3) the payments required under this section shall be made upon the final determination.
- 4206.9 For the purpose of this section, the term “qualifying period” means: (1) the period beginning on the day after the most recent general election for the covered office that the candidate is seeking and ending on the last day to file nominating petitions for the primary election, or for the general election for the covered office sought; or (2) the period beginning on the day the special election is called and ending on the last day to file nominating petitions for the covered office sought.

- 4206.10 A candidate who does not file a certification under § 4206 or who rescinds his or her certification prior to the rescission deadline by filing a certification rescission form, shall be deemed to be a non-participant.
- 4206.11 A non-participant shall not be eligible to receive program funds and shall not be subject to the expenditure limitations under § 4209.
- 4206.12 A non-participant may accept contributions from sources other than those prescribed under § 4209.1.

4207 BASE AMOUNT PAYMENTS

- 4207.1 Within five (5) business days after the participating candidate is certified, the participating candidate shall receive half of the base amount described in § 4207.3.
- 4207.2 Within five (5) business days after the participating candidate qualifies for the ballot, the participating candidate shall receive the other half of the base amount described in § 4207.3.
- 4207.3 The base amount shall be payable only in contested elections in the following amounts:
- (a) \$160,000 for the office of Mayor;
 - (b) \$40,000 for the office of Attorney General;
 - (c) \$40,000 for the office of Council Chairman;
 - (d) \$40,000 for the office of Councilmember elected At-Large and from a Ward; and
 - (e) \$10,000 for the office of State Board of Education elected at-large and from a ward.
- 4207.4 In an uncontested election, the participating candidate shall:
- (a) Not receive the base amount described in § 4207.1 except as provided in § 4207.6; and
 - (b) Be eligible to receive matching payments for qualified small-dollar contributions in accordance with § 4208.
- 4207.5 If an uncontested election becomes a contested election after a participating candidate is certified, the participating candidate shall receive, no later than five (5) days after the uncontested election becomes a contested election:

- (a) 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.
- 4207.6 If a contested election becomes an uncontested election after the participating candidate has received the first, but not the second half of the base amount, the participating candidate may retain any unspent base amount funds to repay:
 - (a) Any authorized expenditures or the proper debts that were incurred in connection with the participating candidate's campaign; and
 - (b) Personal funds of the participating candidate or funds the candidate's immediate family contributed in accordance with § 4209.1(f).
- 4207.7 If a contested election becomes an uncontested election, a participating candidate who has not yet qualified for the ballot shall not receive the second half of the base amount upon ballot qualification.
- 4207.8 Funds shall be distributed to the participating candidate through the use of an electronic funds transfer or debit card.
- 4207.9 After a participating candidate has received base amount payments and matching payments from the Fair Elections Fund for an election, the candidate may not return a contribution, unless instructed by the Director to do so, until any required repayments to the Program have been made, except if the contribution:
 - (a) Exceeds the contribution limit;
 - (b) Is otherwise illegal;
 - (c) Is returned because the contribution was received from a prohibited source or intermediary; or
 - (d) Was commingled in an account not belonging to the campaign committee.
- 4207.10 The Director shall notify a participating candidate in writing if funds paid to the candidate were in excess of the aggregate amount for which the candidate qualified, and such candidate shall repay to the Fund an amount equal to the amount of the excess payments.

4208 MATCHING PAYMENTS FOR QUALIFIED SMALL-DOLLAR CONTRIBUTIONS

- 4208.1 Qualified small-dollar contributions received in an election cycle before a candidate is certified as a participating candidate under § 4206.2 shall not be matched until the candidate is certified.
- 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 that the candidate received in that election cycle before certification and those qualified small-dollar contributions received after certification, in an amount equal to 500% of the amount of the qualified small-dollar contributions, subject to § 4208.4 of this chapter.
- 4208.3 Contributions from a non-District resident individual shall not be matched.
- 4208.4 The maximum amount participating candidates may receive, shall be:
- (a) For candidates for Mayor and Council Chairman, 110% of the average expenditures of the winning candidates for that covered office, respectively, in the prior four (4) election cycles (not including special elections);
 - (b) For candidates for Attorney General, 110% of the average expenditures of the winning candidates for that covered office in all prior election cycles, until such time as four (4) election cycles have been held, after which time, 110% of the average expenditures of the winning candidates for that covered office, in the prior four (4) election cycles (not including special elections); and
 - (c) For candidates for At-Large or Ward Councilmember and candidates for At-Large or Ward member of the State Board of Education, 110% of the average expenditures of all winning candidates for that covered office, respectively, in the prior two (2) election cycles (not including special elections).
- 4208.5 Contributions received after the participating candidate has reached the aggregate qualified small-dollar contribution limit for a seat for a covered office under § 4205.1 shall not be matched.
- 4208.6 The Director of Campaign Finance shall determine the maximum amount participating candidates may receive in matching payments for qualified small-dollar contributions after commencement of the qualifying period in an election cycle.

- 4208.7 Payments shall be made no later than five (5) business days after receipt of the participating candidate's R&E Report filed with the OCF in accordance with §§ 4212 and 4213 and shall be distributed to participating candidates through the use of an electronic funds transfer or debit card.
- 4208.8 The Director shall notify a participating candidate in writing if public funds paid to the candidate were in excess of the aggregate amount for which the candidate qualified, and such candidate shall repay to the Director an amount equal to the amount of the excess payments
- 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 request or appeal to the BOE of a denial in writing to the Director within five (5) business days.
- 4208.10 A participating candidate may petition the Board in writing for reconsideration of the denial of any payment.
- 4208.11 The petition must state the grounds for reconsideration.
- 4208.12 The Board shall review the determination that is the subject of the petition for review within five (5) business days of the filing of such petition.
- 4208.13 In the event the Board is unable to convene within five (5) business days, the Board may delegate to the chair of the Board or his or her designee authority to make a determination regarding the petition.
- 4208.14 If the petition is denied, the Board's notice shall inform the participant of the right to appeal the Board's determination.
- 4208.15 The participating candidate and his or her principal committee shall not include in any such petition any documentation or factual information not submitted to the Board prior to the determination under review unless the participating candidate can demonstrate good cause for the previous failure to submit such documentation or information and for any failure to communicate on a timely basis with the Board.
- 4208.16 The participating candidate may submit a petition for review of a payment or non-payment determination after the issuance of the participant's final audit report within thirty (30) days of issuance of the final audit report and only upon submission of information and/or documentation that was unavailable to the Board previously and is material to such determination, and a showing that the participant had good cause for the previous failure to provide such information and/or documentation.

**4209 LIMITATIONS ON THE USE OF FAIR ELECTION PROGRAM FUNDS
AND EXPENDITURES**

4209.1 Except as provided in § 4209.5(b), a candidate seeking certification and a participating candidate shall not receive or expend any contribution in that election cycle other than:

- (a) Qualified small-dollar contributions;
- (b) Contributions from non-District resident individuals that comply with the limitations in § 4205.1;
- (c) Contributions from Fair Elections Committees that do not exceed \$1,500 per Fair Election Committee, per election cycle;
- (d) Base amount payments distributed by the Fair Elections Program;
- (e) Matching payments distributed by the Fair Elections Program; and
- (f) Personal funds of a candidate or the candidate's immediate family in the form of a contribution or loan that does not exceed, in the aggregate:
 - (1) For a candidate for Mayor, \$5,000; or
 - (2) For a candidate for Attorney General, Council Chairman, member of the Council, or member of the State Board of Education, \$2,500.

4209.2 The amounts described in § 4209.1(f) shall be adjusted by the Director of Campaign Finance each election cycle by the percentage increase in the Consumer Price Index for the Washington-Baltimore Metropolitan Area for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, or any successor index for the prior calendar year.

4209.3 A candidate seeking certification who accepts a contribution from sources other than those described in § 4209.1 before the date the candidate is certified may not participate in the Fair Elections Program, unless within ten (10) days after certification, the participating candidate:

- (a) Returns the unexpended contribution to the contributor;
- (b) Remits the unexpended contribution to the Fair Election Fund; or
- (c) If the contribution has been expended, and:
 - (1) The election is a contested election, the Office of Campaign Finance shall subtract the total amount of the expended

contributions from the base amount to which the candidate would be eligible under § 4207; or

- (2) The election is an uncontested election, the Office of Campaign Finance shall subtract the total amount of the expended contributions from the matching payments to which the candidate would be eligible under § 4208.

4209.4 A candidate seeking certification who expends contributions from sources other than those described in § 4209.1 in excess of the base amount to which a candidate for the seat for that covered office would be eligible under § 4207.3 may not participate in the Fair Elections Program.

4209.5 A participating candidate shall not make expenditures for the following:

- (a) Legal expenses not directly related to acts taken under this act or the Elections Code;
- (b) Payment of any penalty or fine imposed pursuant to Federal or District law;
- (c) Compensation to the participating candidate or a member of the participating candidate's immediate family, except for reimbursement of out-of-pocket expenses incurred for campaign purposes;
- (d) Clothing and other items or services related to the participating candidate's personal appearance;
- (e) Contributions, loans, or transfers to another candidate's political committee or a political action committee;
- (f) Gifts, which, for the purposes of this paragraph, shall not include printed campaign materials such as signs, brochures, buttons, or clothing; and
- (g) Any other purpose that does not support the nomination of election to office of the participating candidate.

4209.6 Fair Elections Program funds may not be used for:

- (a) An expenditure for any purpose other than the furtherance of the participating candidate's nomination or election;
- (b) An expenditure not incurred during the calendar year of the election; and
- (c) An expenditure in violation of any law.

4209.7 An expenditure for the purpose of promoting or facilitating the nomination or election of a candidate, which is determined not to be an independent expenditure, is a contribution to, and an expenditure by, the candidate.

4209.8 In determining whether an expenditure is independent, the Director may consider, but not limited to, the following factors:

- (a) Whether the person or entity making the expenditure is also an agent of a candidate;
- (b) Whether any person authorized to accept receipts or make expenditures for the person or entity making the expenditure is also an agent of a candidate;
- (c) Whether a candidate has authorized, requested, suggested, fostered, or otherwise cooperated in any way in the formation or operation of the person or entity making the expenditure;
- (d) Whether the person or entity making the expenditure has been established, financed, maintained, or controlled a political committee authorized by the candidate;
- (e) Whether the candidate shares or rents space for a campaign-related purpose with or from the person or entity making the expenditure;
- (f) Whether the candidate has solicited or collected funds on behalf of the person or entity making the expenditure, during the same election cycle in which the expenditure is made;
- (g) Whether the candidate, or any public or private office held or entity controlled by the candidate, including any governmental agency, division, or office, has retained the professional services of the person making the expenditure, or a principal member or managerial employee of the entity making the expenditure, during the same election cycle in which the expenditure is made; and
- (h) Whether the candidate and the person or entity making the expenditure have each consulted or otherwise been in communication with the same third party or parties, if the candidate knew or should have known that the candidate's communication or relationship to the third party or parties would inform or result in expenditures to benefit the candidate.

4210 DEBATE REQUIREMENT

4210.1 The Director of Campaign Finance shall conduct at least one debate for each contested primary, special, and general election in an election cycle for the covered offices of Mayor, Attorney General, Council Chairman, member of the

Council elected at-large, and member of the State Board of Education elected at-large.

4210.2 For a contested primary election for a covered office prescribed in § 4210.1, all partisan participating candidates in that primary election shall participate in the debate.

4210.3 For a contested special election or general election for a covered office prescribed in § 4210.1, all participating candidates shall participate in the debate.

4210.4 If there is no other participating candidate, or other candidate who is not a participating candidate, willing to participate in a debate for a covered office, then the requirements of § 4210.1 shall be waived for that covered office.

4211 REMITTING FUNDS AND TURNING OVER CAMPAIGN 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 turn over any equipment purchased by the campaign to the Office of Campaign Finance.

4211.2 No later than 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 also turn over any equipment purchased by the campaign to the Office of Campaign Finance.

4211.3 No later than 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 also turn over any equipment purchased by the campaign to the Office of Campaign Finance.

4211.4 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.

4211.5 Notwithstanding §§ 4211.1, 4211.2 and 4211.3, a participating candidate may withhold funds from the amount required to be remitted for an additional 180 days after the 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 60-day period. The withheld funds shall only be used for the following purposes:

- (a) 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).

4211.6 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.

4211.7 The Office of Campaign Finance shall accept any equipment given to it by participating candidates.

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 \$50. Include rules to address § 1-1163.321(a)(2) the storage, use or disposition of property remitted to OCF.

4212 FILINGS AND DEADLINES

4212.1 The Director of Campaign shall establish a schedule for candidates seeking certification and participating candidates to submit reports of qualified small-dollar contributions from District residents and contributions from non-District resident individuals that include the information required under § 3008.

4212.2 Reports of Receipts and Expenditures (R&E Report) shall be filed with the Office of Campaign Finance on the following dates:

- (a) March 10, June 10, August 10, October 10, and December 10 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) January 31, March 10, June 10, August 10, October 10, December 10, and the eighth (8th) day next preceding the date of any 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;

4212.3 Participating candidates shall also file R&E Report in accordance with the following schedule:

- (a) On the tenth (10th) day of the second (2nd) month preceding the date of any election for a seat for a covered office;
- (b) On the tenth (10th) day of the first (1st) month preceding the date of any election for a seat for a covered office; and
- (c) Fourteen (14) days immediately preceding the date of any special or general election for a seat for a covered office.

4212.4 All R&E Reports shall contain all financial transactions through and including the fifth (5th) day preceding the filing deadline for each R&E Reports; provided, that the reporting period for the next R&E Reports shall commence on the day following the closing date of the prior R&E Report.

4212.5 All R&E Reports filed with the Director of the Office of Campaign Finance shall be filed electronically at the OCF website www.ocf.dc.gov, except as provided in § 3006.2. A paper filing of an R&E Report shall not be accepted and will be considered a failure to file.

4213 REPORTING AND DISCLOSURE REQUIREMENTS

4213.1 Disclosure statements serve several different purposes:

- (a) They provide comprehensive disclosure of a candidate's campaign finances for prompt examination by the voting public and permit integration into the Office of Campaign Finance Online Filing System for purposes of additional disclosure, monitoring of campaign finances, and analysis mandated by the Act;
- (b) They enable the Office of Campaign Finance to monitor candidate compliance with the Fair Elections Program requirements; and
- (c) They enable candidates to make claims for public funds.

4213.2 The financial records of each committee of a candidate are subject to review by the Office of Campaign Finance for purposes of monitoring the candidate's compliance with the requirements of the Program.

4213.3 Each disclosure statement shall include the following information about the committee involved in the election:

- (a) The cash balance at the beginning and end of the reporting period;
- (b) Total itemized and unitemized contributions, loans, and other receipts accepted during the reporting period; and

- (c) Total itemized and unitemized expenditures made during the reporting period.
- 4213.4 A separate disclosure statement shall be submitted for each committee involved in the election.
- 4213.5 All data reported in disclosure statements, amendments, and resubmissions shall be accurate as of the last day of the reporting period.
- 4213.6 The candidate shall report in each disclosure statement:
- (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;
 - (b) The date and amount of each such purchase;
 - (c) The name and address of the person or entity from whom the purchase has been made;
 - (d) The form of the purchase;
 - (e) The purpose of the purchase;
 - (f) 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.
- 4213.7 Matchable contribution claims on contributions shall be invalid unless the participant has reported the contributor's occupation, employer, and business address.
- 4213.8 If the candidate makes an expenditure to a consultant or other person or entity who or which subcontracts for finished goods or services on behalf of the candidate, the disclosure statement shall include:
- (a) Expenditures made by the candidate to the consultant or other person or entity during the reporting period; and
 - (b) For subcontracted goods and services, the name and address of the person or entity providing the services or goods, the amount(s) expended to that person or entity for subcontracted goods or services, and the purpose(s) of

those goods and services; provided that, this disclosure shall be made in the manner provided by the Director.

4213.9 The candidate or treasurer shall verify that the disclosure statement is true and complete to the best of his or her knowledge, information and belief. The disclosure statement shall contain such signatures as may be required by the Director; provided that, to the extent a candidate is permitted to submit a disclosure statement in a non-electronic format, such disclosure statement will only be accepted by the Director if it contains an original signature from the candidate or the treasurer.

4213.10 The Director may, include in the public disclosure file any document submitted with a disclosure statement, or requested by the Director, including, but not limited to copies of report filings, and submissions made by candidates after an election cycle.

4214 PENALTIES

4214.1 Penalties for any violations of this chapter shall be imposed pursuant to § 3711 of Chapter 37 of this title.

Chapter 43, THE VERIFICATION PROCESS, of Title 3 DCMR, ELECTIONS AND ETHICS, is added in its entirety to read as follows:

CHAPTER 43 THE VERIFICATION PROCESS

- 4300 THE VERIFICATION PROCESS**
- 4301 DISCLOSURE STATEMENTS**
- 4302 SUPPORTING DOCUMENTATION**
- 4303 CONTRIBUTION CARDS**
- 4304 CREDIT CARDS**
- 4305 INVALID CLAIMS**
- 4306 AFFIRMATION REQUIREMENTS**
- 4307 DISPOSITION OF PUBLIC FINANCING EQUIPMENT**

4300 THE VERIFICATION PROCESS

4300.1 The provisions of this chapter shall govern the verification process of contributions received by committees electing to participate in the public financing program.

4300.2 The Fair Election Division is tasked with reviewing disclosure statements filed by campaigns. The unit has created a verification process that is used during the review of disclosure statements.

4300.3 The verification process is used to uncover instances of noncompliance with the Fair Elections Amendment Act of 2018. The process detects possible fraud and prevents improper payment of public funds.

4301 DISCLOSURE STATEMENTS

4301.1 Disclosure statements shall include (1) a report of the campaign's transactions during the reporting period; and (2) documentation of the activity.

4301.2 Statement reviews shall be conducted to uncover non-compliance. The scope of statement reviews shall include the review of all contributions.

4301.3 Payment reviews shall be conducted with the objective of validating claims for matching funds. The scope of payment reviews shall include the examination of all contributions claimed for matching funds and the review of reports and documentation submitted by committees.

4301.4 Criteria for Valid Matching Claims

- (a) Reported correctly, completely and timely
- (b) Must be a permissible source
- (c) Properly and completely documented
- (d) Compliant with applicable limits
- (e) No other issues have been detected.

If a contribution claimed for matching is invalid for any of the reasons listed above, an invalid code is applied. A campaign will only be paid on valid claims.

4302 SUPPORTING DOCUMENTATION

4302.1 The payment review process includes the review of reports and documentation submitted by committees. The documentation supports claims for public matching funds; documentation includes copies of checks, contribution cards, credit card processing documents, etc.

4302.2 Initial review of reports and accompanying documentation to validate payment requests. A second level review is completed and initial reviewer comments are addressed.

4302.3 Required documentation by instrument type:

- (a) Check – copy of check

- (b) Cash – copy of contribution card
- (c) Money Order – copy of money order and contribution card
- (d) Credit Card processed online – copy of processing documentation
- (e) Credit Card processed by the Campaign – copy of credit card contribution card and card processing documentation

4302.4 If the check is a starter check, and the signature does not appear to be the reported contributor name, the committee will be required to submit a contribution card. A contribution card is also required for contributions made via e-check. Bank/cashier's/certified checks are to be treated as regular checks.

4303 CONTRIBUTION CARDS

4303.1 Required Elements of a contribution card:

- (a) Committee Name
- (b) Instrument Code
- (c) Dedicated place for contributor name and address
- (d) Dedicated place for contributor employer and occupation information
- (e) The affirmation statement
- (f) Dedicated place for signature and date
- (g) Doing Business information

4304 CREDIT CARDS

4304.1 Required Elements for Credit Card documentation:

- (a) Contribution card, if necessary
- (b) Correct credit card affirmation statement (either online webpage affirmation or signed contribution card)
- (c) “Approved” or “Settled Successfully”
- (d) Street and Zip Code match
- (e) Last 4 digits of the credit card number

- (f) The merchant account name is the name of the committee OR the campaign has provided documentation to link the two together.

4304.2 Credit card contributions that are processed manually must provide a contribution card.

4304.3 Credit card contributions made online do not require a contribution card.

4305 INVALID CLAIMS

4305.1 Claims for matching funds will not be approved if:

- (a) Impermissible Source
- (b) Lack of Documentation
- (c) Improper Reporting
- (d) Contribution Exceeds Limits
- (e) Contribution is not from an individual
- (f) Individual contributor is not a resident of the District of Columbia

4306 AFFIRMATION REQUIREMENTS

4306.1 Contributor must sign an affirmation statement as required by the Fair Elections Program.

4306.2 Claims for matching funds will not be matched if the affirmation statement is not included in the contribution card.

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.

4306.4 Claims for matching funds will not be matched when the affirmation statement deviates from the exact prescribed language.

4306.5 Contributions made via check, cash, money order or credit cards processed by a campaign committee require the contributor's signature.

4307 DISPOSITION OF PUBLIC FINANCING EQUIPMENT

4307.1 All equipment purchased with matching funds must be returned to the Office of Campaign Finance 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 \$50.

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.