

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 5 (Voter Registration) in Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments is to clarify the obligations of the District of Columbia’s Voter Registration Agencies under the National Voter Registration Act of 1993 [52 U.S.C. § 20501 et seq.] and the enforcement process that applies in the event of noncompliance with that Act.

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 5, VOTER REGISTRATION, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 511, VOTER REGISTRATION AGENCY DATA, is amended to read as follows:

511 VOTER REGISTRATION AGENCIES AND GENERAL REQUIREMENTS

511.1 The National Voter Registration Act (NVRA) of 1993 (52 U.S. C. Sec. 20501 et seq.) requires the District of Columbia to provide voter registration opportunities through government agencies that provide public assistance and services. The intent of this requirement is to increase voter registration opportunities, encourage voter participation, and protect the integrity of the electoral process.

511.2 For purposes of this subchapter, unless otherwise provided, the following definitions shall apply:

Voter registration agency (VRA) – an entity designated under D.C. Official Code §1-1001.07(d)(1) by the Mayor of the District of Columbia or under the NVRA to perform mandatory voter registration activities. The designated Voter Registration Agencies in the District of Columbia are:

- (a) The Department of Corrections (DOC) except to the extent that the DOC is in compliance with any applicable automatic voter registration provisions of D.C. Official Code §1-1001.07;
- (b) The Department of Health;
- (c) The Department of Health Care Finance;

- (d) The Department of Human Services;
- (e) The Department of Motor Vehicles (DMV) except to the extent that the DMV is in compliance with any applicable automatic voter registration provisions of D.C. Official Code §1-1001.07;
- (f) The Department of Parks and Recreation;
- (g) The Department of Youth Rehabilitation Services;
- (h) The Department on Disability Services;
- (i) The District of Columbia Public Library;
- (j) The District of Columbia Public Schools as to students and employees;
- (k) The Health Benefit Exchange Authority;
- (l) The Office on Aging and Community Living;
- (m) Any Armed Forces Recruitment office located in the District of Columbia;
- (n) Any District of Columbia agency that provides public assistance or that operates or funds programs primarily engaged in providing services to persons with disabilities;
- (o) Any agency that administers or provides services or assistance under the following public assistance programs: the Supplemental Nutrition Assistance Program (SNAP, formerly the Food-Stamp Program), the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the Temporary Assistance for Needy Families (TANF) program (formerly the Aid to Families with Dependent Children (AFDC) program), the Medicaid program, or the State Children's Health Insurance Program (SCHIP); and
- (p) Any other agency so designated by law by the Mayor.

Voter Preference Form (VPF) -- a form that: (1) is provided by the Board to VRAs that contains all of the material contained on the Board's sample form; (2) serves to document whether persons entitled to voter registration assistance wish to exercise their option to register to vote; and (3) is retained by VRAs for at least 24 months. VPFs should not be sent to the Board unless the Board so requests.

Agency Coordinator -- any person designated by a VRA to act as liaison to the Board and to support the VRA's compliance with NVRA. Each VRA will provide

the Board with Agency Coordinator(s) names and contact information at the beginning of each calendar year.

Agency Site Coordinator -- any person designated by the VRA to support the Agency Coordinator(s) with NVRA compliance at VRA locations for providing assistance and services. Each VRA will provide the Board with Agency Site Coordinator(s) names and contact information at the beginning of each calendar year.

Chief Administrative Officer – The Board’s Executive Director who is authorized pursuant to D.C. Official Code §1-1001.07(d)(12) to seek enforcement through a D.C. Superior Court civil action for declaratory or injunctive relief with respect to NVRA noncompliance.

511.3 The head of each VRA shall be responsible, directly or through its Agency Coordinator(s), for the VRA’s compliance with the NVRA, including but not limited to:

- (a) Ensuring that every applicant who applies for, renews, or recertifies benefits or services, or who seeks to change their address, completes a VPF, regardless of whether they complete a voter registration application;
- (b) Offering an opportunity to register or to decline to register to vote to each person who applies for service or assistance with the agency, or who requests recertification, renewal, or a change of address with the VRA;
- (c) Distributing a voter registration form to each person who applies for service or assistance with the agency, or who requests recertification, renewal, or a change of address with the VRA;
- (d) Assisting persons with completing the voter registration application with the same kind of assistance already provided for completing the VRA’s own forms;
- (e) Allowing persons provided with a voter registration application to take the application, whether completed or not, offsite and to submit, on their own accord, the application to the Board;
- (f) Accepting completed voter registration applications, and sending them to the Board within 10 days or, in the case of applications received less than 10 days before the deadline to register to vote (3 DCMR 504.3), forwarding the application to the Board by such deadline. Applications received within five days of a deadline to register to vote must be forwarded to the Board within five days;

- (g) Ensuring that persons applying for services and assistance or renewal or recertification by internet, telephone, or mail are informed of the opportunity to register to vote and provided with the capability to access or instructions on how to request a voter registration form;
- (h) Providing to persons applying for services and assistance or renewal or recertification by internet, telephone or mail with a toll-free phone number, where possible, to call for information and instruction on how to complete the voter registration process;
- (i) Reviewing for completeness each voter registration application in the applicant's presence and, if the application is incomplete and/or lacks the required signature, returning the application to the applicant for completion and resubmission;
- (j) Submitting to the Board, by the 15th of each month, a monthly report on a form provided by the Board. The report shall include, with respect to the prior month, the number of completed voter registration applications sent to the Board and the number of persons: (1) served; (2) offered voter registration services; (3) already registered to vote at their current address; (4) declining to register to vote; (5) taking voter registration applications to complete offsite; and (6) completing voter registration applications onsite;
- (k) Retaining VPFs for 24 months as required by the NVRA;
- (l) Ensuring that the voter registration activities of its staff and contractors do not violate the NVRA or elections laws; and
- (m) Regularly promoting election-related information on the voter registration agencies' social media platforms, including by providing information about how to register to vote and vote.

511.4 When a VRA contracts with a private entity to administer services, the ultimate responsibility for ensuring the provision of voter registration services remains with the VRA, and the voter registration requirements under the NVRA remain the same.

Section 512, [Repealed] is amended to read as follows:

512 VOTER REGISTRATION AGENCY TRAINING

512.1 The Board shall post on its website training materials, including a manual, to assist VRAs with compliance.

512.2 Board staff designated by the Chief Administrative Officer may provide VRA training. Such training may include the following:

- (a) Review of responsibilities of employees to distribute voter registration application forms and provide VPFs;
- (b) Discussion of information which may be used to establish an applicant's age, identity, and residency;
- (c) Discussion of assistance that may be provided to an applicant;
- (d) Review of responsibilities in ensuring the accuracy and legibility of voter registration application forms and stressing responsibility for informing each applicant that the applicant is not registered to vote until the Registrar of Voters notifies the applicant of registration;
- (e) Review of application transmittal requirements;
- (f) Review of VRA monthly reporting requirements; and
- (g) Review of prohibited conduct.

Section 513, [Repealed] is amended to read as follows:

513 PROHIBITED ACTS AND ENFORCEMENT

513.1 The NVRA places restrictions on how a VRA may interact with applicants when providing the opportunity to register to vote and prescribes fines and imprisonment up to five years for violations. Improper voter registration activity may also constitute a violation of other election-related laws. Prohibited acts include but are not limited to:

- (a) seeking to influence an applicant's political party preference;
- (b) displaying any political party preference or allegiance;
- (c) making any statement or taking any action the purpose or effect of which is to discourage the applicant from registering to vote;
- (d) making any statements to an applicant or taking any action the purpose or effect of which is to lead the applicant to believe that a decision to register has any bearing on the availability of services or benefits;
- (e) providing partisan voter registration assistance to the applicant.
- (f) using information relating to a person's decision to register or to decline to register to vote other than for voter registration aggregate number reporting and other voter registration purposes;

- (g) disclosing the VRA where a voter registered; or
- (h) retaining, using or sharing any citizenship information obtained for voter registration purposes except as permitted or required by law.

513.2 An allegation of a violation of the NVRA may be made in writing filed with the Chief Administrative Officer that concisely specifies the alleged violation.

513.3 The Chief Administrative Officer shall contact the head of a VRA, by letter, if the Chief Administrative Officer believes that VRA is not complying with the requirements of these regulations and the NVRA, and direct the VRA to comply immediately. Where appropriate, the Chief Administrative Office may copy any Agency Site Coordinator on a notice of noncompliance.

513.4 Should the head of a VRA fail to comply with a Chief Administrative Officer's directive, the Chief Administrative Officer may bring a civil action in the Superior Court of the District of Columbia for declaratory or injunctive relief (see D.C. Code §1-1001.07(d)(12)).

All persons desiring to comment on the subject matter of this 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., Suite 750, 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.