

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 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 amendments, on an emergency basis, to Chapter 30 (Campaign Finance Operations: Committees, Candidates, Constituent Service Programs, Statehood Funds), Chapter 33 (Prohibition on Use of Government Resources for Campaign-Related Purposes and Interpretive Opinions), Chapter 37 (Investigation and Hearings) and Chapter 42 (Fair Elections Program) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

These amendments place the Board's regulations into conformity with the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124, 59 DCR 1862 (March 9, 2012)); as amended by the COVID-19 Response Supplemental Emergency Amendment Act of 2020, effective April 10, 2020 (D.C. Act 23-286; 67 DCR 4178 (April 17, 2020)). Emergency action is necessary because the provisions of the aforementioned Act are in effect and require supporting regulations.

The Board adopted these rules on an emergency basis at its regular monthly meeting on Wednesday, April 6, 2022. The emergency rules shall remain in effect until August 13, 2022 (one hundred and twenty (120) days from the adoption date), unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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 30, CAMPAIGN FINANCE OPERATIONS, COMMITTEES, CANDIDATES, CONSTITUENT SERVICE PROGRAMS, STATEHOOD FUNDS, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

SECTION 3001, MANDATORY TRAINING, shall be amended in its entirety to read as follows:

- 3001.1 With the exception of candidates for Advisory Neighborhood Commission (ANC) member, candidates for public office and the treasurers of any political committee, political action committee, or independent expenditure committee shall appear in-person at the Office of Campaign Finance to attend a training program conducted by the Director.
- 3001.2 Training shall be conducted in-person, or during a period of time for which the Mayor has declared a public health emergency pursuant to D.C. Official Code § 7-2034.01. or online. At the discretion of the Director, the Office of Campaign Finance may provide online training materials to supplement the in-person training program.

- 3001.3 Such training shall include content on the Fair Elections Program and the requirements under this section pertaining to business contributors, including their affiliated entities, and covered contractors.
- 3001.4 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 § 3002.2, or as otherwise scheduled by the Office of Campaign Finance.
- 3001.5 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 § 3000.25, or as otherwise scheduled by the Office of Campaign Finance.
- 3001.6 Each candidate and treasurer participating in the Office of Campaign Finance training program shall demonstrate completion by oath or affirmation to follow the District's campaign finance laws developed by the Director of Campaign Finance.
- 3001.7 The names of the participants and those participants who have not completed the training shall be prominently displayed on the website of the Office of Campaign Finance.

SECTION 3008, FINANCIAL REPORTS AND STATEMENTS, is amended as follows:

Subsections 3008.30 – 3008.37, shall be amended to read as follows:

- 3008.30 A covered contractor shall comply with all requests made by the Office of Campaign Finance for information in any inquiry initiated by the Agency pertaining to a contribution by the business entity to a prohibited recipient about the business entity and its principals, including senior officers, the president, executive director, chief executive officer, chief operating officer, or chief financial officer.
- 3008.31 The Director of Campaign Finance shall identify, for each covered contractor, whether the covered contractor has contributed to a prohibited recipient during the prohibited period.
- 3008.32 The Director of Campaign Finance shall check the publicly available lists of covered contractors maintained by the contracting authority against the Reports of Receipts and Expenditures filed with the Office of Campaign Finance, following each filing deadline, to identify any unlawful contributions by a covered contractor.
- (a) If a violation is determined, the Director will notify the covered contractor, the prohibited recipient who accepted the contribution, and the relevant contracting authority in order to allow the covered contractor and the prohibited recipient to cure the violation; and
- (b) Notify the campaign treasurers of the relevant provisions under Chapter 30 of this Title.

- 3008.33 The Director of Campaign Finance shall make any reports prepared under this chapter available online, including a biennial report summarizing the receipts and expenditures of candidate, political committees, political action committees and independent expenditure committees, during the prior two (2)-year period.
- 3008.34 The Director of Campaign Finance shall make available any necessary information to the contracting authorities and the Office of the Chief Financial Officer to facilitate compliance with this section.
- 3008.35 A covered contractor that violates the provisions of this section may be considered to have breached the terms of any existing contract with the District. At the discretion of the relevant contracting authority, any existing contract of the covered contractor may be terminated. The covered contractor may also be disqualified from eligibility for future District contracts, including the extension or modification of any existing contract, for a period of 4 calendar years after the date of determination that a violation of this section has occurred.
- 3008.36 The Director shall publish and prominently display the names of any prohibited recipients or covered contractors found to be in violation of this section and § 3011 on the webpage of the Office of Campaign Finance.
- 3008.37 The Director of Campaign Finance shall publish a biennial report by December 31st of each odd-numbered year. The report shall describe the receipts and expenditures of candidate for Mayor, Attorney General, Chairman and members of the Council, members of the State Board of Education, shadow Senator, and shadow Representative, but not to include candidates for Advisory Neighborhood Commissioner. The reports shall provide, at a minimum, the following:
- (a) A summary of each candidate's receipts, in dollar amount and percentage terms, by categories of contributors that the Director considers appropriate, such as the candidate, individuals, political committees, corporations, partnerships, labor organization and covered contractors:
 - (b) A summary of each candidate's receipts, in dollar amount and percentage terms, by the size of the contribution, including contributions of:
 - (1) Five Hundred Dollars (\$500) or more;
 - (2) Two Hundred Fifty Dollars (\$250) or more but less than \$500;
 - (3) One Hundred Dollars (\$100) or more but less than \$250; and
 - (4) Less than \$100;
 - (c) The total amount of a candidate's receipts and expenditures for primary and general elections, respectively, when applicable;

- (d) A Summary of each candidate's expenditures, in dollar amount and percentage terms, by operating expenditures, transfers to other authorized committees, loan repayments, and refunds of contributions; and
- (e) A summary of the receipts and expenditures of political committees, political action committees and independent expenditure committees using categories considered appropriate by the Director of Campaign Finance; and

SECTION 3011, LIMITATIONS ON CONTRIBUTIONS, shall be amended, as follows:

Subsection 3011.5, shall be amended to read as follows:

- 3011.5 For the purposes of the contribution limitations of this section, expenditures for candidates for office shall not be considered contributions or expenditures by or on behalf of a candidate when derived from:
- (a) Personal funds belonging to candidates; and
 - (a) Funds from any person, political action committee, or independent expenditure committee advocating the election or defeat of any candidate for office; provided, that the contributions it has received and the expenditures it has made were not controlled by or coordinated with any public official or candidate, anyone acting on their behalf, or by any political committee authorized by the candidate.
 - (b) A candidate may make expenditures to reimburse the candidate for the candidate's childcare expenses incurred for campaign purposes.

Subsections 3011.30 – 3011.36, shall be amended to read as follows:

- 3011.30 Limitations on contributions under §§ 3011.1 – 3011.26 shall not apply to initiative or referendum measures.
- 3011.31 With the exception of contributions received to retire debt, a political committee or a candidate shall not receive or accept contributions after the election or defeat of the candidate for office, or after the candidate notifies the Office of Campaign Finance of the intent to terminate the candidacy.
- 3011.32 Limitations on contributions under §§ 3011.1 – 3011.29 shall not apply to candidates seeking certification and participating candidates of the Fair Elections Program, who are subject to the limitations on contributions under § 4205.
- 3011.33 Limitations on contributions under this section shall apply to political action committees during nonelection years.
- 3011.34 The contribution limits in this section shall not apply to independent expenditure committees.

3011.35 No covered contractor shall contribute to a prohibited recipient, as defined under §§ 3011.37, 3011.38 and 3011.39, during the prohibited period, as defined by D.C. Official Code § 1-1161.01 (45C). This prohibition shall not include a contribution by a covered contractor who is also a prohibited recipient to finance his or her own election. For the purpose of this section “prohibited period” means from the date of solicitation or similar invitation, or opportunity to contract (excluding leases, surpluses and dispositions), as further defined by D.C. Official Code § 1-1161.01 (45C), for the types of contracts described under D.C. Official Code §§ 1-1161.01 (10C)(A)(ii)(I), (II), (III), and (IV).

3011.36 For the purpose of § 3011.35, “covered contractor” means any business entity, or a principal of a business entity, seeking or holding a contract or multiple contracts with the District government, with an aggregate value of \$250,000.00 or more, as further defined by D.C. Official Code § 1-1161.01 (10C) (A)(i)

New Subsections 3011.37, 3011.38, 3011.39 and 3011.40, shall be added to read as follows:

3011.37 No covered contractor who is seeking or holding a contract with, or for which the procurement process would be overseen by a District agency subordinate to the Mayor shall make a contribution to the following prohibited recipients:

- (a) The Mayor;
- (b) Any candidate for Mayor;
- (c) Any political committee affiliated with the Mayor or any candidate for Mayor; and
- (d) Any constituent-service program affiliated with the Mayor.

3011.38 A covered contractor who is seeking or holding a contract with the Office of the Attorney General shall not make a contribution to the following prohibited recipients:

- (a) The Attorney General;
- (b) Any candidate for Attorney General; and
- (c) Any political committee affiliated with the Attorney General or a candidate for Attorney General.

3011.39 A covered contractor who is seeking or holding a contract, with the Council, that must come before the Council for its approval, or otherwise be approved by the Council legislatively to take effect shall not contribute to the following prohibited recipients:

- (a) Any Councilmember;

- (b) Any candidate for Councilmember;
- (c) Any political committee affiliated with a Councilmember or a candidate for Councilmember; and
- (d) Any constituent-service program affiliated with a Councilmember.

3011.40 For the purposes of expenditures made to reimburse the candidate for the candidate's childcare expenses incurred for campaign related purposes, as prescribed under § 3011.5, each receipt for reimbursement shall include, but is not limited to:

- (a) A detailed invoice and/or receipt (including the name of the establishment/individual);
- (b) The address, phone number, and dates that the child was in care by the establishment or individual for which childcare services was provided; and
- (c) A copy of the cancelled check or the form of payment tendered to the establishment or individual who provided the childcare services.

Section 3013, LIMITATIONS ON THE USE OF CAMPAIGN FUNDS, shall be amended as follows:

Subsection 3013.2, is amended to read as follows:

3013.2 Limitations on the use of campaign funds shall include the following:

- (a) Payment or reimbursement for a candidate or staff of a campaign committee for travel expenses and necessary accommodations, except when directly related to a campaign purpose;
- (b) Payment or reimbursement for the cost of professional services unless those services are directly related to a campaign purpose;
- (c) Payment for medical expenses of a candidate; provided, that campaign funds may be used to pay employer costs of health care benefits for employees of a principal campaign committee;
- (d) Payment or reimbursement for fines and penalties, unless litigation arises directly out of a candidate's or principal campaign committee's campaign activities;
- (e) Payment or reimbursement for judgments or settlements, unless litigation or agency administrative action arises directly out of the campaign activities of a candidate or principal campaign committee;
- (f) Attorney's fees, unless legal expenses arise directly out of a candidate's or a principal campaign committee's campaign activity;

- (g) Payment or reimbursement for the purchase or lease of personal property, unless the legal title resides in, or the lessee is, the principal campaign committee, and the use of the property is directly related to a campaign purpose;
- (h) Clothing, except for specialty clothing which is not suitable for everyday use, including, but not limited to, formal wear, if the attire is used in the campaign and is directly related to a campaign purpose;
- (i) The purchase or lease of a vehicle, unless the title or lease to the vehicle is held by the campaign committee and not the candidate, and the use of the vehicle is directly related to a campaign purpose; and
- (j) Compensation to a candidate for the performance of campaign activities, except for reimbursement of out-of-pocket expenses incurred for campaign purposes, including the candidate's childcare expenses.

CHAPTER 33, PROHIBITION ON USE OF GOVERNMENT RESOURCES FOR CAMPAIGN-RELATED PURPOSES of Title 3 DCMR, ELECTIONS AND ETHICS, shall be amended as follows:

Subsection 3301 PROHIBITION ON USE OF GOVERNMENT RESOURCES FOR CAMPAIGN-RELATED PURPOSES, shall be amended in its entirety, as follows:

- 3301.1 No District of Columbia government resources shall be used to support or oppose any of the following:
- (a) A candidate for elected office, whether partisan or nonpartisan; or
 - (b) An initiative, referendum, or recall measure, or a charter amendment referendum.
- 3301.2 Resources of the District of Columbia government shall include, but not be limited to, the following:
- (a) The personal services of employees during their hours of work; and
 - (b) Nonpersonal services.
- 3301.3 Nonpersonal services shall include, but not be limited to, the following:
- (a) Supplies;
 - (b) Materials;
 - (c) Equipment;

- (d) Office space;
- (e) Facilities;
- (f) Utilities, for example, telephone, gas, and electric services; and
- (g) District government accounts, including, but not limited to the following:
 - (1) Email accounts;
 - (2) Social media accounts;
 - (3) Webpages; and
 - (4) Internet domains.

3301.4 Prohibited use, whether intended or unintended, of District government accounts, prescribed under § 3301.3(g), shall include, but not be limited to, the following:

- (a) Linking to or sharing a link to an elected candidate's or political group's website, whether partisan or nonpartisan, advocating in support or opposition of the candidate elected for office or political group; or
- (b) Tweeting or retweeting a link to an article of a candidate elected for office or political group, whether partisan or nonpartisan, in support or opposition to the candidate elected for office or political group, or
- (c) Linking to or sharing a link to a post in a social media account of a candidate elected for office or a political group; and
- (d) Posting a picture, photograph, or cartoon to a District government account of a candidate elected for office or political group, in support of opposition of the candidate or political group.

3301.5 With exception to the members of the ANC Commission, prohibition set forth in § 3301.3, shall not apply to the following public officials who may, as part of their official duties, express their views on a District of Columbia election:

- (a) The Mayor;
- (b) The Chairman of the Council;
- (a) Each Member of the Council;
- (b) The Attorney General;
- (e) The President of the State Board of Education; and
- (f) Each Member of the State Board of Education.

CHAPTER 37, INVESTIGATIONS AND HEARINGS, of Title 3 DCMR, ELECTIONS AND ETHICS, shall be amended as follows:

SECTION 3711 SCHEDULE OF FINES is amended as follows:

Subsection 3711. 4 shall be amended in its entirety to read as follows:

3711.4 Fines for violations of the regulations and statutory provisions governing the Fair Elections Program shall be imposed, as follows:

- (a) Accepting contribution in the form of cash in excess of one hundred dollars (\$100) or more: five hundred dollars (\$500);
- (b) Accepting a contribution in excess of the contribution limitations: four thousand dollars (\$4,000);
- (c) Accepting any contribution in excess of the aggregate limitations: four thousand dollars (\$4,000);
- (d) Accepting contributions from prohibited sources: four thousand dollars (\$4,000);
- (e) Accepting a contribution or making an expenditure while the office of treasurer is vacant: fifty dollars (\$50) per day;
- (f) Accepting a loan in the form of a contribution in excess of the aggregate limitations: four thousand dollars (\$4,000);
- (g) Failure to remit remaining funds in the participating candidate's campaign account for deposit to the Fair Election Fund: four thousand dollars (\$4,000);
- (h) Failure to designate a principal campaign committee: fifty dollars (\$50) per day;
- (i) Failure to designate a campaign depository: fifty dollars (\$50) per day;
- (j) Failure to file a Fair Elections Program Statement of Registration: fifty dollars (\$50) per day;
- (k) Failure to file a Statement of Organization for Principal Campaign Committee: fifty dollars (\$50) per day;
- (l) Failure to file a Fair Elections Program Report of Receipts & Expenditures: fifty dollars (\$50) per day;
- (m) Failure to place identification notice/identity of a sponsor on campaign literature: five hundred dollars (\$500);

- (n) Failure to return any unexpended base amount payments and/or matching payments to the Fair Elections Program: four thousand dollars (\$4,000);
- (o) Failure to donate campaign-purchased equipment valued \$50 or more: four thousand dollars (\$4,000);
- (p) Failure to file additional information requested by the Director: fifty dollars (\$50) per day;
- (q) Failure to disclose/amend required information on reports and statements: fifty dollars (\$50) per day;
- (r) Failure to file a Statement of Acceptance of Position of Chairperson: fifty dollars (\$50) per day;
- (s) Failure to file a Statement of Withdrawal of Candidate, Treasurer, or Chairperson: fifty dollars (\$50) per day;
- (t) Failure to file a Statement of Committee Termination: fifty dollars (\$50) per day;
- (u) Failure to file a Statement of Acceptance of Position of Treasurer: fifty dollars (\$50) per day;
- (v) Failure to maintain records required under § 3400.2: four thousand dollars (\$4,000);
- (w) Failure to attend mandatory in-person training: fifty dollars (\$50) per day;
- (x) Failure to participate in the debate requirement: four thousand dollars (\$4,000)
- (y) Failure to comply with the Fair Elections requirements: four thousand dollars (\$4,000);
- (z) Making a contribution of personal funds in excess of aggregate limitations: four thousand dollars (\$4,000);
- (aa) Making expenditures for any purpose prohibited under § 4209: four thousand dollars (\$4,000);
- (bb) Making a contribution deposit into an account not designated as a campaign depository: four thousand dollars (\$4,000);
- (cc) Making a contribution loan or transfer of funds to another candidate's political committee or to a political action committee: four thousand dollars (\$4,000);

- (dd) Using District of Columbia government resources for campaign-related activities: four thousand dollars (\$4,000);
- (ee) Failure to timely file the Fair Elections Program Request to Rescind Certification: fifty dollars (\$50) per day;
- (ff) Failure to donate campaign-purchased equipment in accordance with § 4211.4: four thousand dollars (\$4,000); and
- (gg) Using withheld public funds for any purposes not authorized under § 4711.6: four thousand dollars (\$4,000).

CHAPTER 42, THE FAIR ELECTIONS PROGRAM, OF TITLE 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

SECTION 4202, MANDATORY TRAINING, shall be amended in its entirety, as follows:

- 4202.1 The candidate for public office and the treasurer of any political committee, political action committee, or independent expenditure committee shall appear in-person at the Office of Campaign Finance to attend a training program conducted by the Director.
- 4202.2 Training shall be conducted in-person, or during a period of time for which the Mayor has declared a public health emergency pursuant to D.C. Official Code § 7-2034.01. or online. 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 Such training shall include content on the Fair Elections Program and the requirements under this section pertaining to business contributors, including their affiliated entities, and covered contractors.
- 4202.4 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, or as otherwise scheduled by the Office of Campaign Finance.
- 4202.5 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, or as otherwise scheduled by the Office of Campaign Finance.
- 4202.6 Each candidate and treasurer participating in the Office of Campaign Finance training program shall demonstrate completion by oath or affirmation to follow the District's campaign finance laws developed by the Director of Campaign Finance.

4202.7 The names of the participants and those participants who have not completed the training shall be prominently displayed on the website of the Office of Campaign Finance.

SECTION 4208, MATCHING PAYMENTS FOR QUALIFIED SMALL-DOLLAR CONTRIBUTIONS, is amended as follows:

Subsections 4208.2, 4208.4, 4208.7 and 4208.9, shall be amended 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, 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.

4208.4 The maximum amount participating candidates may receive in matching payments, shall be:

- (a) For candidates for Mayor and Council Chairman, one hundred ten percent (110%) of the average expenditures per election cycle of all candidates who were elected Mayor and Council Chairman, in the prior four (4) general election cycles for Mayor and Council Chairman;
- (b) For candidates for Attorney General, 110% of the average expenditures per election cycle of all candidates who were elected Attorney General in all prior general elections for Attorney General, until such time as four (4) election cycles have been held, after which time, 110% of the average expenditures per election cycle of candidates who were elected Attorney General, in the prior four (4) general election cycles for Attorney General;
- (c) For candidates for At-Large or Ward Councilmember, 110% of the average expenditures per election cycle of all candidates who were elected for At-Large or Ward Councilmember, in the prior two (2) general election cycles, for At-Large or Ward Councilmember; and
- (d) For candidates for At-Large or Ward member of the State Board of Education, 110% of the average expenditures per election cycle of all candidates who were elected for At-Large or Ward member of the State Board of Education, in the prior two (2) general election cycles for At-Large or Ward member of the State Board of Education.

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, the Director of Campaign Finance shall direct the Office of the Chief Financial Officer to disburse payments under this section. The Office of the Chief Financial Officer shall disburse the payments within five (5) business days after receiving direction to do so from the Director.

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 appeal the denial within ten (10) business days.

New Subsection 4208.17, shall be added to read as follows:

4208.17 Fair Election Funds shall be distributed to participating candidates under this section through the use of an electronic funds transfer or debit card.

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.