

**THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD
NOTICE OF NOTICE OF EMERGENCY RULEMAKING
AND PROPOSED RULEMAKING**

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in D.C. Official Code §3-1306, District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments to Chapters 5,6 and 9 of Title 30 DCMR, "Lottery and Charitable Games." These emergency rules were necessary to introduce the D.C. Daily 6™ game. These emergency rules amend and replace the emergency and proposed rules that were published in the D.C. Register on September 2, 2005 at 52 DCR 8276 and are necessary to avoid the significant loss of revenue and other financial loss, to the District and loss of goodwill to the District of Columbia Lottery and Charitable Games Control Board. These emergency rules were adopted on November 15, 2005 and became effective on that date. These emergency rules will expire one hundred twenty (120) days from the effective date or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Executive Director gives notice of her intent to take final rulemaking action to adopt these rules in not less than fifteen (15) days from the date of publication of this notice in the D.C. Register.

AMEND CHAPTER 5. "LOTTERY TICKET"

Amend subsection 501.2 by substituting the following:

501.2 In addition to the persons identified in § 501.1, none of the following persons shall purchase a POWERBALL®, Hot Lotto™ ticket or win or be paid a POWERBALL® or Hot Lotto™ prize:

- (a) A Multi-State Lottery Association ("MUSL") employee, officer, or director;
- (b) A contractor or consultant under agreement with MUSL to review the MUSL audit and security procedures;
- (c) An employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the office of the firm located at the MUSL draw site or in the District of Columbia; or
- (d) A parent, stepparent, child, stepchild, spouse, or sibling of an individual described in §§ 501.2(a), (b) and (c).

Amend subsections 503.1 and 503.4 by substituting the following:

503.1 A ticket which is printed in error for the Lucky Numbers and DC-4 game(s) may be cancelled only on the date purchased and prior to the drawing break. The

tickets shall be voided only by the issuing agent and the terminal that printed the ticket, and the player may request a refund or a replacement ticket. If for any reason the terminal that issued the ticket is inoperable prior to the drawing break, the player's sole recourse shall be a refund of the ticket price.

503.4 A ticket for POWERBALL[®], KENO, Hot Lotto[™], DC Daily 6[™], Rolling Cash 5[™], Quick Cash[™], and HOT FIVE[™] tickets shall not be voided or cancelled.

AMEND CHAPTER 6. "CLAIMS AND PRIZE PAYMENTS"

Amend subsection 605.1 by substituting the following:

- 605.1 In addition to the validation requirements of § 603, an on-line game ticket shall not be valid unless all of the following conditions are met:
- (a) The ticket validation number shall be presented and shall correspond in its entirety, using the computer validation file, to the selected numbers printed on the ticket for the date printed on the ticket;
 - (b) For the POWERBALL[®], Hot Lotto[™] and Rolling Cash 5[™] games, the player selected numbers on the ticket shall be in individual groups of prescribed numbers each associated with a single letter "A," "B," "C," "D," or "E";
 - (c) For the Quick Cash[™] game, the player selected numbers on the ticket shall be in individual groups of prescribed numbers each associated with a single letter "A," "B," and "C." The requisite number and the associated letters constitute a single lettered game board play;
 - (d) For the DC Daily 6[™] game, the player selected numbers on the ticket shall be in individual groups of prescribed numbers each associated with a single letter "A" and "B." The requisite number and the associated letters constitute a single lettered game board play;
 - (e) The ticket data shall have been recorded on the central computer system on magnetic tape or disk prior to the drawing, and the ticket data shall match this computer record in every respect;
 - (f) The player selected numbers, the validation number data and the drawing data of an apparent winning lottery ticket shall appear on the official file of winning tickets, and a ticket with that exact data shall not have been previously paid; and
 - (g) The Agency shall not pay tickets that cannot be processed for validation purposes by the terminal except as provided in § 503.7.

Amend subsection 611.1 by substituting the following:

- 611.1 Payment of any prize, including a POWERBALL[®] or Hot Lotto[™], or a prize awarded pursuant to Chapter 10 of this title, shall discharge the District of Columbia, the Agency, the Multi-State Lottery Association, and their members, product groups, officers, employees, agents and attorneys, representatives, and contractors of all liability for payment of the prize.

Amend Chapter 9 by deleting sections 900 and 901 in their entirety and replace with the following:

900. DESCRIPTION OF THE DC Daily 6TM GAME

- 900.1 The Agency may offer a game known as DC Daily 6TM.
- 900.2 The DC Daily 6TM game is a six (6) out of thirty-nine (39) on-line lottery game. A bonus ball shall be drawn from the remaining thirty-three (33) numbers after the initial six (6) winning numbers are drawn. DC Daily 6TM pays the top prize in accordance with these rules. To play the DC Daily 6TM game, a player shall select six (6) numbers from 1 to 39 for input into a terminal. The holder of a winning DC Daily 6TM game ticket may win in only one prize category per game board.
- 900.3 The price of a DC Daily 6TM game ticket shall be two (2) boards for one dollar (\$ 1) or any other price designated by the Executive Director from a price schedule adopted by the Agency.
- 900.4 The bonus ball, which is chosen after the initial six (6) winning numbers are drawn may not be used to claim the top prize and shall only pay according to the prize structure in § 901.1.
- 900.5 If a single ticket contains more than one (1) winning play on separate game boards, the prize amounts shall be added together and shall be paid in accordance with the prize payment limits set forth in §§ 900.6 and 901.1.
- 900.6 The holder of a winning DC Daily 6TM ticket may win in only one prize category per board in connection with the winning numbers drawn, and shall be entitled only to the prize for the highest prize category won by those numbers.
- 900.7 A ticket subject to the validations requirements of this title shall be the only proof of a wager.

901 DC Daily 6TM PRIZE STRUCTURE AND PROBABILITY OF WINNING

901.1 The DC Daily 6TM game is a fixed payout game which pays prizes based on a one dollar (\$1) bet are as follows:

Number of Matches Per Play

- | | |
|--|-----------|
| (a) All six (6) winning numbers on a single lettered game board | \$250,000 |
| (b) Any five (5) winning numbers plus the bonus ball on a single lettered game board | \$5,000 |
| (c) Any five (5) winning numbers and no bonus ball on a single lettered game board | \$ 500 |

- (d) Any four (4) winning numbers plus the bonus ball on a single lettered game board \$ 250
- (e) Any four (4) winning numbers and no bonus ball on a single lettered game board \$ 10
- (f) Any three (3) winning numbers plus the bonus ball on a single lettered game board \$ 5
- (g) Any three (3) winning numbers and no bonus ball on a single lettered game board \$ 2

901.2 There shall be a \$1,000,000 prize cap to be paid out on a pari-mutuel basis on the DC Daily 6TM top prize for each draw. The DC Daily 6TM top prize is \$250,000 unless there are five (5) or more top prizewinners for any one draw. If there are more than five (5) DC Daily 6TM top prizewinners for any draw, the \$1,000,000 prize cap will be shared by each of the top prizewinners on a pari-mutuel basis.

901.3 The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in DC Daily 6TM game.

Number of Matches Per Ticket	Probability Distribution	Number of Winners	Probable Set Prize Amount
All six (6) winning numbers on a single lettered game board	1: 1,631,311.50	1	\$250,000
Any five (5) winning numbers plus the bonus ball on a single lettered game board	1: 271,885.25	6	\$5,000
Any five (5) winning numbers and no bonus ball on a single lettered game board	1: 8,496.41	192	\$500
Any four (4) winning numbers plus the bonus ball on a single lettered game board	1: 3,398.57	480	\$250
Any four (4) winning numbers and no bonus ball on a single lettered game board	1: 219.26	7,440	\$10
Any three (3) winning numbers plus the bonus ball on a single lettered game board	1: 164.45	9,920	\$5
Any three (3) winning numbers and no bonus ball on a single lettered game board	1: 16.44	99,200	\$2
Overall	1: 13.91	117,239	

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than fifteen (15) days from the date of publication of this notice in the Register. Comments should be filed with the Executive Director, District of Columbia Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020. Copies of these proposed rules may be obtained at the address stated above.

**THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD
NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in D.C. Official Code §3-1306, District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments to Chapter 9 of Title 30 DCMR, "Lottery and Charitable Games." The emergency rules are necessary to introduce the Rolling Cash 5TM game that will start on November 20, 2005. These emergency rules amend and replace the proposed rules that were published in the D.C. Register on October 14, 2005 at 52 DCR 9168 and are necessary to avoid the significant loss of revenue and other financial loss, to the District and loss of goodwill to the District of Columbia Lottery and Charitable Games Control Board. The effective date of these emergency rules is November 15, 2005. These emergency rules will expire one hundred twenty (120) days from the effective date or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Executive Director gives notice of her intent to take final rulemaking action to adopt these rules in not less than fifteen (15) days from the date of publication of this notice in the D.C. Register.

AMEND CHAPTER 9. "DESCRIPTION OF ON-LINE GAMES"

Amend Chapter 9 by amending sections 920 and 921 in their entirety and replace with the following:

920. DESCRIPTION OF THE ROLLING CASH 5TM GAME

920.1 The Agency may offer a game known as Rolling Cash 5TM.

920.2 The Rolling Cash 5TM game is a five (5) out of thirty-five (35) on-line lottery game that pays set prizes for matching two (2), three (3) or four (4) of the five (5) selected numbers. Rolling Cash 5TM pays a parimutuel jackpot prize for matching five (5) out of five (5) of the Agency selected numbers. The Jackpot prize is a rolling jackpot with a guaranteed minimum.

920.3 To play the Rolling Cash 5TM game, a player shall select five (5) numbers from one (1) to thirty-five (35) for input into a terminal. The Agency shall select five (5) out of thirty-five (35) numbers in a Rolling Cash 5TM drawing. The holder of

a winning Rolling Cash 5™ game ticket may win in only one prize category per game board.

920.4 The price of a Rolling Cash 5™ game ticket shall be one (1) board for one dollar (\$ 1) or any other price designated by the Executive Director from a price schedule adopted by the Agency.

920.5 If a single ticket contains more than one (1) winning play on separate game boards, the prize amounts shall be added together and shall be paid in accordance with the prize payment limits set forth in §§ 920.6 and 921.2.

920.6 The holder of a winning Rolling Cash 5™ ticket may win in only one prize category per board in connection with the winning numbers drawn, and shall be entitled only to the prize for the highest prize category won by those numbers.

920.7 A ticket subject to the validations requirements of this title shall be the only proof of a wager.

921 ROLLING CASH 5™ PRIZE POOL, PRIZE STRUCTURE AND PROBABILITY OF WINNING

921.1 The prize pool for all prize categories shall consist of fifty-seven percent (57%) of each drawing period sales.

921.2 The Rolling Cash 5™ game with a rolling jackpot and fixed payout game for lower tier prizes, which pays prizes based on a one-dollar (\$1) bet are as follows:

Number of Matches Per Play

(a) All five (5) winning numbers on a single lettered game board	Jackpot
(d) Any four (4) winning numbers on a single lettered game board	\$ 100
(f) Any three (3) winning numbers on a single lettered game board	\$ 10
(g) Any two (2) winning numbers on a single lettered game board	\$ 1

921.3 The Rolling Cash 5™ Jackpot prize shall be determined on a parimutuel basis for each draw and shall consist of forty-five point twenty percent (45.20%) of the prize pool.

- 921.4 If the Rolling Cash 5TM Jackpot is not won in a drawing, the prize money allocated for the Jackpot prize shall roll over and be added to the next Rolling Cash 5TM Jackpot prize pool for the next drawing and the process is repeated until there is a Rolling Cash 5TM Jackpot prizewinner.
- 921.5 If there are more than one Rolling Cash 5TM Jackpot prizewinners for any draw, then the Jackpot amount will be shared by each Jackpot prizewinners on a parimutuel basis.
- 921.6 The Agency may offer guaranteed minimum jackpot prize amounts or minimum increases in the Jackpot prize between drawings or make other changes in the allocation of prize money where the Agency finds that it would be in the best interest of the game.
- 921.7 The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in Rolling Cash 5TM game.

Number of Matches Per Ticket	Probability Distribution	Number of Winners	Probable Set Prize Amount	Percentage Allocation to Prize
Any five (5) winning numbers on a single lettered game board	1: 324,632	1	Jackpot	45.20%
Any four (4) winning numbers on a single lettered game board	1: 2,164	150	\$100	8.29%
Any three (3) winning numbers on a single lettered game board	1: 75	4,320	\$10	24.05%
Any two (2) winning numbers on a single lettered game board	1: 8	40,600	\$1	22.45%
Overall	1: 7.20	45,101		100%

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than fifteen (15) days from the date of publication of this notice in the Register. Comments should be filed with the Executive Director, District of Columbia Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020. Copies of these proposed rules may be obtained at the address stated above.

D.C. OFFICE OF PERSONNEL**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2005-73, dated May 5, 2005; and in accordance with D.C. Act 16-179, the Criminal Background Checks for the Protection of Children Clarification Emergency Amendment Act of 2005, and any similar succeeding legislation (Act), effective October 4, 2005, hereby gives notice of the adoption of the following emergency rules. The Act amended section 205 (c)(5) of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Act 15-759), to clarify that persons convicted of certain crimes are not automatically excluded from working as employees or unsupervised volunteers of District government agencies considered "covered child or youth services providers," and provide applicants a right to appeal a denial of employment or volunteer status based on a finding that they pose a present danger to children or youth. Finally, the Act added a new section 207a, Assessment of Information Obtained from Criminal Background Check, providing that the information obtained from a criminal background check shall not create a disqualification or presumption against employment or volunteer status of an applicant unless the Mayor determines that the applicant poses a present danger to children or youth, and listing the factors to be considered in making such a determination. Because D.C. Law 15-353 requires that rules be issued to implement the provisions of the title, and to ensure the preservation of the welfare of the public in general and the welfare of children and youth in particular, action was taken on November 1, 2005 to adopt the following rules on an emergency basis effective November 8, 2005. As a result, the following changes were made to Chapter 4, Organization for Personnel Management, of Title 6 of the District of Columbia Municipal Regulations (DCMR): sections 412.1, 412.3, 412.21, 412.24 through 412.26, 412.28 through 412.31, 412.35, and 412.37 were amended; a new section 412.38 was added to the chapter; section 412.38 was renumbered as 412.39 and amended; and sections 412.42 and 412.43 were renumbered as 412.43 and 412.44, respectively. These emergency rules will remain in effect for up to one hundred twenty (120) days from November 1, 2005, unless earlier superseded by another rulemaking notice.

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000 and Mayor's Order 2005-73, dated May 5, 2005; and in accordance with D.C. Act 16-179, the Criminal Background Checks for the Protection of Children Clarification Emergency Amendment Act of 2005 (Act), effective October 4, 2005, hereby gives notice of the intent to adopt the following rules in no less than thirty (30) days from the publication of this notice in the *D.C. Register*. The Act amended section 205 (c)(5) of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Act 15-759), to clarify that persons convicted of certain crimes are not automatically excluded from working as employees or unsupervised volunteers of District government agencies considered "covered child or youth services providers," and provide applicants a right to appeal a denial of employment or volunteer status based on a finding that they

pose a present danger to children or youth. Finally, the Act added a new section 207a, Assessment of Information Obtained from Criminal Background Check, providing that the information obtained from a criminal background check shall not create a disqualification or presumption against employment or volunteer status of an applicant unless the Mayor determines that the applicant poses a present danger to children or youth, and listing the factors to be considered in making such a determination. Because D.C. Law 15-353 requires that rules be issued, the purpose of these rules is to implement the provisions of the Act by making the following changes to Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR: sections 412.1, 412.3, 412.21, 412.24 through 412.26, 412.28 through 412.31, 412.35, and 412.37 were amended; a new section 412.38 was added to the chapter; section 412.38 was renumbered as 412.39 and amended; and sections 412.42 and 412.43 were renumbered as 412.43 and 412.44, respectively. Upon adoption, these rules will amend Chapter 4, Organization for Personnel Management, of Title 6 of the DCMR, published at 32 DCR 75 (January 4, 1985) and amended at 33 DCR 4447 (July 25, 1986), 51 DCR 928 (January 23, 2004), 51 DCR 11591 (December 24, 2004), and 52 DCR 6646 (July 15, 2005).

CHAPTER 4

ORGANIZATION FOR PERSONNEL MANAGEMENT

Section 412 of Chapter 4 of the D.C. personnel regulations is amended as follows:

**412 CRIMINAL BACKGROUND CHECK AND TRAFFIC RECORD
CHECK REQUIREMENTS – DISTRICT GOVERNMENT AGENCIES
CONSIDERED CHILD OR YOUTH SERVICES PROVIDERS**

Section 412.1 is amended to read as follows:

- 412.1 Pursuant to Title II of D.C. Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005, as amended on an emergency basis by D.C. Act 16-179, the Criminal Background Checks for the Protection of Children Clarification Emergency Act of 2005, and any similar succeeding legislation (jointly referred to as “the Act”), effective October 4, 2005, and as specified in this section, the Mayor and other personnel authorities shall be required to conduct criminal background checks and traffic record checks to investigate certain employees, volunteers, and persons being considered for employment with District government agencies that are “covered child or youth services providers,” as that term is defined in section 202 (3) of the Act and section 499 of this chapter.
- 412.2 Pursuant to section 211 (1) of the Act, District government agencies considered covered child or youth services providers shall begin conducting criminal background checks within forty-five (45) days of the publication in the D.C. Register of the notice of final rulemaking implementing the criminal background check requirements of the Act. The requirement for the criminal

background checks shall apply not only to new appointees to paid and voluntary positions covered under the Act, but also to employees occupying positions covered under the Act. Such employees will be subjected to an initial criminal background check within the timeframe specified in this subsection and, subsequent to that, to periodic checks as specified in section 412.3 of this section.

Section 412.3 is amended to read as follows:

- 412.3 Pursuant to section 203 (g) of the Act, each employee or volunteer described in section 412.11 (c) and (d) of this section occupying a covered position shall be required to submit to periodic criminal background checks while employed by, or volunteering at, a District government agency considered a covered child or youth services provider. The provisions for periodic criminal background checks are specified in sections 412.36 through 412.39 of this section.
- 412.4 The following subordinate agencies shall be considered covered child or youth services providers subject to the criminal background check and traffic record check provisions of the Act. The standard for determining that an agency is subject to the Act is that as part of its mission, the agency, as a whole or certain components thereof, provides the types of direct services to children or youth, or for the benefit of children or youth, encompassed in the duties and responsibilities listed in section 412.13 of this section:
- (a) Department of Human Services;
 - (b) Department of Health;
 - (c) Department of Parks and Recreation;
 - (d) Fire and Emergency Medical Services Department;
 - (e) Metropolitan Police Department;
 - (f) State Education Office within the Executive Office of the Mayor;
 - (g) Department of Youth Rehabilitation Services;
 - (h) Department of Mental Health; and
 - (i) Child and Family Services Agency.
- 412.5 A District government agency designated by the Mayor or independent personnel authority as a child or youth services provider subject to the Act, may challenge such a designation and the requirement to comply with the Act, by submitting a challenge of the designation, in writing, to the appropriate

personnel authority, within five (5) days of the publication in the D.C. Register of the notice of final rulemaking implementing the criminal background check requirements of the Act. The submission shall include information and documentation deemed appropriate by the agency to challenge the designation. The personnel authority will evaluate the information and documentation submitted by the agency and respond in writing within five (5) days of the receipt of the agency's challenge.

- 412.6 Pursuant to section 204 (b)(2) of the Act, traffic record checks shall be conducted on employees and supervised and unsupervised volunteers of District government agencies considered covered child or youth services providers who are, or on appointees who would be, required to drive motor vehicles to transport children or youth in the course of performing their duties. Traffic record checks shall be obtained from the traffic records maintained by the D.C. Department of Motor Vehicles.
- 412.7 Pursuant to section 205 (a) and (b) of the Act, criminal background checks will be conducted in accordance with Federal Bureau of Investigations (FBI) policies and procedures and in a FBI-approved environment, by means of fingerprint and National Criminal Information Center checks.
- 412.8 Agencies subordinate to the Mayor that are subject to the Act, and independent District government agencies that are subject to the Act, shall cover the costs for criminal background checks and traffic record checks required under the Act.
- 412.9 The Director, D.C. Office of Personnel, shall enter into a Memorandum of Understanding (MOU) with the Chief, Metropolitan Police Department (MPD) stating that the MPD will conduct the criminal background checks under the Act, including fingerprinting, and develop internal operating procedures to conduct the checks, for agencies under the personnel authority of the Mayor.
- 412.10 Personnel authorities shall be responsible for conducting traffic record checks pursuant to the Act, and for developing internal operating procedures for conducting the checks.
- 412.11 Except as specified in section 412.12 of this section, criminal background checks pursuant to this section will be required for the following persons:
- (a) Each person being considered for paid employment with a District government agency considered a covered child or youth services provider, in a position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities;
 - (b) Each person being considered for voluntary service in a District government agency considered a covered child or youth services provider,

in an unsupervised position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities;

- (c) Each paid employee of a District government agency considered a covered child or youth services provider, who occupies a position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities; and
- (d) Each volunteer in a District government agency considered a covered child or youth services provider in an unsupervised position with duties and responsibilities as described in section 412.13 of this section or similar duties and responsibilities.

412.12 Criminal background checks are not required for the following persons:

- (a) A person being considered for compensated or voluntary employment with a District government agency considered a covered child or youth services provider that will not bring the person in direct contact with children or youth;
- (b) A volunteer in a District government agency considered a covered child or youth services provider who has only supervised contact with children or youth; however, if applicable, such person will be required to submit to a traffic record check pursuant to section 204 (b)(2) of the Act; and
- (c) A person being considered for compensated or voluntary employment with a District government agency considered a covered child or youth services provider who has an active federal security clearance.

412.13 Upon consulting with the head of a District government agency considered a covered child or youth services provider, the appropriate personnel authority shall identify and determine which positions in the agency shall be covered under the Act. In identifying the covered positions, the personnel authority shall ensure that the duties and responsibilities of each position require the provision of direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth, including but not limited to, at least one (1) of the following duties and responsibilities:

- (a) Childcare duties;
- (b) Recreational activities;
- (c) Delinquency prevention and control services, including custody, security, supervision, and residential and community support services for committed and detained juvenile offenders;

- (d) Educational activities;
- (e) Individual counseling;
- (f) Group counseling;
- (g) Assessment, case management and support services;
- (h) Psychiatric and psychological assessment services;
- (i) Developmental, speech, and language evaluation services;
- (j) Diagnostic evaluation and treatment services;
- (k) Childhood development services;
- (l) Medical or clinical services;
- (m) Therapeutic services; including individual and group therapy, and play therapy;
- (n) Prevention and intervention services;
- (o) Mentoring services;
- (p) Youth care services;
- (q) Healthcare services, including medical, behavioral, mental health, dental, vision, nutrition, or developmental services;
- (r) Cultural enrichment services;
- (s) Public safety services, including counseling or education intervention services about safety, crime prevention, fire safety, youth problem-solving; or
- (t) Driving a motor vehicle to transport children or youth.

412.14 The following standards shall be applied in identifying positions, compensated or not, which shall be subject to the criminal background check requirement or the traffic record check requirement under the Act:

- (a) The underlying guiding standard to be applied in identifying positions that shall be subject to the criminal background check requirement and traffic record check requirement shall be one of reasonableness, coupled with the

standards outlined in section 412.14 (b) through (k) of this section, as applicable.

- (b) A determination that a position is covered under the Act and subject to the criminal background check requirement shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties contains at least one (1) of the duties and responsibilities listed in section 412.13 of this section or similar duties and responsibilities and that any incumbent of the position will perform the duties and responsibilities personally and routinely.
- (c) The single fact that a position is located in a District government agency considered a covered child or youth services provider does not automatically make the position or its incumbent subject to the criminal background check requirement or the traffic record check requirement of the Act.
- (d) Strictly tangential, casual, or occasional contact with children or youth does not automatically make an employee or volunteer subject to the criminal background check requirement or traffic record check requirement of the Act.
- (e) Administrative, clerical, or technical support positions within the immediate office of the head of a District government agency considered a covered child or youth services provider as well as within other components, units, or divisions of the agency that provide non-operational support services shall not be subject to the criminal background check requirement unless the position descriptions or statements of duties, as applicable, contain at least one (1) of the duties and responsibilities listed in section 412.13 of this section, or similar duties and responsibilities related to the direct provision of services to children or youth, and a determination is made that any incumbents of the positions will perform the duties and responsibilities personally and routinely. Such positions may include, but are not limited to the head of the agency, special assistants, administrative officers, staff assistants, and secretaries.
- (f) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall be subject to an initial criminal background check upon the personnel action being effected and to periodic criminal background checks while detailed, temporarily promoted, or temporarily reassigned.
- (g) A volunteer whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to an initial criminal background check upon being moved to the covered

assignment and to periodic criminal background checks while in the covered assignment.

- (h) A determination that a position is subject to the traffic record check requirement under the Act shall be based on a comprehensive analysis of the position description or statement of duties, as applicable. The purpose of the analysis shall be to determine if the position description or statement of duties requires that any incumbent of the position drive a motor vehicle to transport children or youth in the course of performing his or her duties.
- (i) An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a position that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the detail, temporary promotion, or temporary reassignment shall be subject to an initial traffic record check upon the personnel action being effected.
- (j) A volunteer whose assignment changes from non-covered duties and responsibilities to duties and responsibilities that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the voluntary assignment shall be subject to an initial traffic record check requirement upon being moved to the covered assignment.
- (k) Except as specified in section 412.12 of this section, any position subject to the traffic record check requirement shall also be subject to the criminal background check requirement.

412.15 District government agencies considered covered child or youth services providers may submit information and documentation to the appropriate personnel authority to challenge the designation of a position as subject to a criminal background check or traffic record check. The personnel authority shall evaluate any information and documentation submitted by an agency, and promptly determine whether the original designation shall stand or be changed.

412.16 Vacancy announcements for positions identified and designated as requiring a criminal background check or traffic record check, or both, shall include statements informing each applicant that:

- (a) The position for which he or she is applying has been identified and designated as requiring a criminal background check or traffic record check, or both;
- (b) If tentatively selected for the position, a criminal background check or traffic record check, or both, as appropriate, will be conducted; and

- (c) The employing agency may offer employment to the appointee to the position contingent upon receipt of a satisfactory criminal background check or traffic record check, or both.
- 412.17 In the case of non-competitive recruitment for a position requiring a criminal background check or traffic record check, or both, the appropriate personnel authority shall inform the person being considered for employment, in writing, of the requirements specified in section 412.16 of this section.
- 412.18 The Director, D.C. Office of Personnel (or his or her designee), shall publish the list of positions in agencies under the personnel authority of the Mayor that are subject to a criminal background check or traffic record check, or both, in the District Personnel Manual (or any other procedural manual developed). The list shall be published on an annual basis.
- 412.19 An appointee to a compensated position with a District government agency considered a covered child or youth services provider may be offered employment contingent upon receipt of a satisfactory criminal background check or traffic record check, or both, and begin working in a supervised setting, prior to receiving the results of the checks, and prior to the employing agency making a determination that the appointee meets the requirements of the Act. Upon making a determination to allow the appointee to begin working prior to receiving the results of the check or checks, the employing agency shall so inform the appropriate personnel authority.
- 412.20 An appointee to an unsupervised volunteer position with a District government agency considered a covered child or youth services provider will not be allowed to begin volunteering in an unsupervised setting until the results of the criminal background check or traffic record check, or both, are received and a determination is made that the appointee meets the requirements of the Act.

Section 412.21 is amended to read as follows:

- 412.21 Prior to a criminal background check being conducted, the appropriate personnel authority will inform each appointee, employee, or unsupervised volunteer subject to the check of the location of the office where the check will be conducted, when to report for fingerprinting, and provide each appointee, employee, or unsupervised volunteer with a form or forms to be utilized for the following purposes:
- (a) To authorize the MPD or other entity, as appropriate, to conduct the criminal background check and confirm that the appointee, employee, or unsupervised volunteer has been informed that the employing agency is authorized to conduct a criminal background check;
- (b) To affirm whether or not the appointee, employee, or unsupervised volunteer has been convicted of a crime, has pleaded nolo contendere, is

on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in another state or territory:

- (1) Murder, attempted murder, manslaughter, or arson;
 - (2) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
 - (3) Burglary;
 - (4) Robbery;
 - (5) Kidnapping;
 - (6) Illegal use or possession of a firearm;
 - (7) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;
 - (8) Child abuse or cruelty to children; or
 - (9) Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance;
- (c) To acknowledge in writing that the appointee, employee, or unsupervised volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;
- (d) To acknowledge that the employing agency may choose to deny the appointee employment or an unsupervised volunteer position, or to terminate an employee or volunteer, based on the outcome of the criminal background check;
- (e) To provide any additional identification that is required, such as name, social security number, date of birth, and gender; and
- (f) To inform the appointee or employee that a false statement on the form or forms may subject them to criminal penalties.

- 412.22 Upon receiving and completing the form or forms specified in section 412.21 of this section, the appointee or employee shall report to the designated location to be fingerprinted.
- 412.23 Upon completing each criminal background check, the designated MPD representative, or the representative for any other entity conducting the check, shall forward the check to the appropriate employing agency. The employing agency shall forward a copy of the check to the personnel authority upon completing the review and determination process pursuant to sections 412.24 through 412.32 of this section.

Section 412.24 is amended to read as follows:

- 412.24 Pursuant to section 207a (a) of the Act, the information obtained from a criminal background check will not immediately disqualify or create a presumption against employment or volunteer status of an appointee, employee, or unsupervised volunteer subject to the check, unless the Mayor determines that the appointee, employee, or volunteer poses a present danger to children or youth. The Mayor's authority to make such a determination is delegated to the head of each agency covered under the Act. The head of an agency covered under the Act may sub-delegate this authority to agency officials as appropriate.

Section 412.25 is amended to read as follows:

- 412.25 Except as provided in section 412.26 of this section, the heads of covered District government agencies shall consider the following factors to determine if an appointee subject to a criminal background check poses a present danger to children and youth that would make him or her ineligible for paid employment or unsupervised voluntary service:
- (a) The specific duties and responsibilities necessarily related to the employment sought;
 - (b) The bearing, if any, the criminal offense for which the appointee was previously convicted will have on his or her fitness or ability to perform one (1) or more of the duties or responsibilities of the position;
 - (c) The time which has elapsed since the occurrence of the criminal offense;
 - (d) The age of the person at the time of the occurrence of the criminal offense;
 - (e) The frequency and seriousness of the criminal offense;
 - (f) Any information produced by the appointee, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense; and

- (g) The public policy that is beneficial generally for ex-offenders to obtain employment.

Section 412.26 is amended to read as follows:

- 412.26 Notwithstanding the factors listed in section 412.25 of this section, a covered District government agency shall not employ or permit to serve as an unsupervised volunteer an appointee who has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.
- 412.27 Records of traffic infractions shall be judged on an individual basis for appointees whose duties would include driving a motor vehicle to transport children or youth as described in the Act. A pattern of disregard for existing traffic regulations, particularly where there has been a conviction for driving under the influence of intoxicants or drugs, may make the appointee ineligible for employment or voluntary service, if the appointee could be required to drive a motor vehicle to transport children or youth in the course of performing his or her duties.

Section 412.28 is amended to read as follows:

- 412.28 Based on the outcome of the criminal background check and application of the factors listed in section 412.25 of this section, each covered employing agency shall determine whether or not the appointee poses a present danger to children or youth, and whether a final offer of appointment should be made or denied or, when the appointee to a compensated position was allowed to begin working in a supervised setting prior to receiving the results of the check, if he or she will be retained or employment will be terminated.

Section 412.29 is amended to read as follows:

- 412.29 If the determination is to deny the final offer of appointment or terminate employment, the employing agency shall do all of the following:
- (a) Send the appointee a written notification of the determination. The written notification shall inform the appointee of the specific basis for the determination, and of his or her right to obtain a copy of the criminal background check report and challenge the accuracy and completeness of the report or the basis for denying the final offer of appointment stated by the employing agency, in writing, within ten (10) days of receiving the written notification; and
 - (b) Send the personnel authority a copy of the written notification.

Section 412.30 is amended to read as follows:

- 412.30 In challenging the results of a criminal background check report or the basis for denying the final offer of appointment stated by the employing agency, the appointee may present information and documentation to clarify any errors in the report resulting from mistakes in identity, and any mitigating circumstances that may exist concerning the report.

Section 412.31 is amended to read as follows:

- 412.31 Upon receiving a challenge, the appropriate employing agency shall promptly make a determination on the case and notify the appointee of the decision, in writing, with a copy to the personnel authority. In accordance with section 207a (c) of the Act, if employment is denied or terminated because the appointee, employee, or unsupervised volunteer, as applicable, poses a present danger to children or youth, the written notification shall inform the individual in writing that he or she may appeal the denial to the Superior Court of the District within thirty (30) days of the date of the written notification.
- 412.32 If the determination is that a final offer of appointment should be made to an appointee who did not begin working prior to the employing agency receiving the results of the check, the employing agency shall promptly notify the personnel authority.
- 412.33 Upon receiving the employing agency's determination that a final offer of appointment should be made to an appointee, the appropriate personnel authority shall promptly issue a final offer letter to the appointee. If the determination is to terminate employment, the personnel authority will process the action to terminate the employment within ten (10) days of receiving the employing agency's determination.
- 412.34 An appointee under this section who intentionally provides false information that is material to the application in the course of applying for a position shall be subject to prosecution pursuant to section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405) (2001).

Section 412.35 is amended to read as follows:

- 412.35 A volunteer in an unsupervised position may use the same successful criminal background check conducted on him or her for a period of two (2) years when applying for multiple unsupervised volunteer positions, if the volunteer provides a signed affirmation stating whether or not he or she has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for

any of the felony offenses listed in section 412.21 (b)(1) through (9) of this section, or their equivalent in any other state or territory, since the date of the most recent check.

- 412.36 Periodic criminal background checks for current employees and unsupervised volunteers shall be conducted when:
- (a) Derogatory information about the employee or unsupervised volunteer, of a nature that will impact the employee's or unsupervised volunteer's suitability to continue performing the duties of the covered position, is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority; or
 - (b) Information about a criminal offense committed by the employee or unsupervised volunteer, such as the criminal offenses listed in section 412.21 of this section, is disclosed to the employing agency or personnel authority by a credible source or sources, or is independently discovered by the employing agency or personnel authority.

Section 412.37 is amended to read as follows:

- 412.37 An employee who fails a periodic criminal background check may be subject to administrative action up to and including removal. In determining the type of administrative action to be taken, the employing agency shall consider the factors listed in section 412.25 of this section as well as any other similar factors and variables, except that a criminal background check reflecting that an employee has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor shall result in removal.

A new section 412.38 is added to read as follows:

- 412.38 In addition to, or in the place of administrative action, and at the employing agency's discretion, an employee who fails a periodic check may be reassigned to a non-covered position, except that this option shall not be available for an employee whose criminal background check reflects that he or she has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.

Section 412.38 is renumbered as 412.39 and amended to read as follows:

- 412.39 An unsupervised volunteer who fails a periodic criminal background check may be terminated or moved to another volunteer assignment that does not include the provision of direct services to children or youth. In determining the

type of action to be taken, the employing agency shall consider the factors listed in section 412.25 of this section, except that a criminal background check reflecting that the unsupervised volunteer has been convicted of, has pleaded nolo contendere, is on probation before judgment of a case upon a stet docket, or has been found not guilty for reason of insanity for any sexual offenses involving a minor shall result in the termination of the voluntary services.

Sections 412.39 and 412.40 are renumbered as 412.40 and 412.41, respectively:

412.40 In the case of an agency that violates any of the provisions of the Act, the Mayor (or his or her designee) or independent personnel authority may take administrative action, or direct that administrative action be taken, against the agency head or other agency official who violated the particular provision or provisions of the Act.

412.41 Criminal background check records obtained under this section shall be confidential and shall be for the exclusive purpose of making employment-related determinations under this section. The records shall not be released or otherwise disclosed to any person, except when:

- (a) Required as one component of an application for employment with a District government agency considered a covered child or youth services provider;
- (b) Requested by the personnel authority during an official inspection or investigation;
- (c) Ordered by a court;
- (d) Authorized by the written consent of the person being investigated; or
- (e) Utilized for an administrative action in a personnel proceeding, including but not limited to, disciplinary actions under Chapter 16 of these regulations.

Section 412.41 is renumbered as 412.42 and amended to read as follows:

412.42 An individual who discloses confidential information in violation of any of the provisions in section 412.41 of this section shall be guilty of a criminal offense and, upon conviction, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one hundred eighty (180) days, or both.

Sections 412.42 and 412.43 are renumbered as 412.43 and 412.44, respectively:

412.43 Each personnel authority with agencies considered covered child or youth services providers shall prepare compliance reports every six (6) months

beginning on the date that these regulations are effective. Each report shall be submitted to the Mayor and shall include:

- (a) The number of criminal background checks and traffic record checks conducted for appointees, the number of appointees who were hired upon completion of the check, and the number rejected; and
- (b) The number of periodic criminal background checks conducted for employees and unsupervised volunteers, and any administrative action initiated or taken upon completion of the periodic checks.

412.44 Agencies covered under the Act shall submit, to the Mayor, a list of positions subject to the criminal background check requirement on an annual basis by December 1st of every year.

Comments on these proposed regulations should be submitted, in writing, to Lisa R. Marin, SPHR, Director of Personnel, 441 4th Street, N.W., Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the D.C. Register. Additional copies of these proposed regulations are available from the above address.