

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of final rulemaking action to adopt the following amendments to 3 DCMR Chapter 4, "Hearings," 3 DCMR Chapter 5, "Voter Registration," and 3 DCMR Chapter 7, "Election Procedures."

The District of Columbia Board of Elections and Ethics took final action to adopt the following amendments to 3 DCMR Chapters 4, 5, and 7 at a special board meeting which was held on Wednesday, December 17, 2003. The amendments will alter the Board's administrative complaint procedures so as to accommodate complaints which allege violations of Title III of the Help America Vote Act of 2002 ("the Act"); situate in the Board's regulations the circumstances specified in the Act which would require an individual to vote by special ballot, as well as the procedures by which to appeal the Board's special ballot determinations; outline new voter registration requirements as set forth in the Act, and other purposes.

No comments were received, and no changes were made to the text of the proposed rules as published in the Notice of Proposed Rulemaking (50 DCR 9581, November 14, 2003).

Amend Section 400 by deleting Subsection 400.1 in its entirety and substituting the following in its place:

400.1 The provisions of this chapter shall govern the procedures of the Board in all cases involving petition challenges; alleged violations of the District of Columbia Election Act, as amended; alleged violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, as amended; alleged violations of Title III of the Help America Vote Act of 2002; and petitions requesting the promulgation, amendment, or repeal of any regulation of the Board.

Amend Section 408 by:

- 1) Deleting Subsection 408.1 in its entirety and substituting the following in its place:

"408.1 An action before the Board shall be commenced by the filing of a written complaint which shall be signed and sworn by the complainant and notarized."

- 2) Adding a new Subsection 408.6 to read follows:

“408.6 The Board may consolidate complaints alleging violations of Title III of the Help America Vote Act of 2002 if they relate to the same actions or events or raise common questions of law or fact.”

Amend Section 428 by adding the following subsections:

428.6 If the Board determines that there is a violation of any provision of Title III of the Help America Vote Act of 2002, the Board shall provide the appropriate remedy.

428.7 If the Board determines that there is no violation of Title III of the Help America Vote Act of 2002, the Board shall dismiss the complaint and publish the results of the hearing on the Board's website.

428.8 The Board shall render final determinations with respect to complaints alleging violations of Title III of the Help America Vote Act of 2002 prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

428.9 If the Board fails to meet the deadline applicable under Subsection 428.8, the complaint shall be resolved within 60 days under alternative dispute resolution procedures established pursuant to Section 431 of this chapter. The record and other materials from any proceedings conducted under standard Board complaint procedures shall be made available for use under the alternative dispute resolution procedures.

Add a new Section 432 to read as follows:

“432 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR HELP AMERICA VOTE ACT COMPLAINTS

432.1 On or before the 5th business day after a final Board determination with respect to a Help America Vote Act Title III complaint is due, the respondent shall designate in writing to the complainant the name of an arbitrator to serve on a panel to resolve the complaint.

432.2 Within 3 business days after the complainant receives the designation of an arbitrator, the complainant shall designate in writing to the respondent the name of a second arbitrator.

432.3 Within 3 business days after the complainant's designation of a second arbitrator, the two arbitrators designated shall select a third arbitrator to complete the panel.

432.4 The arbitration panel may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing

and any briefs or memoranda, but may not receive additional testimony or evidence. In exceptional cases, however, the panel may request that the parties present additional briefs or memoranda.

- 432.5 The arbitrators shall determine the appropriate resolution of the complaint by a majority vote, and issue a written resolution within 60 days after the final Board determination was due under Subsection 428.8 of this chapter. The 60-day period may not be extended.
- 432.6 The final resolution of the panel shall be published on the Board's website, and mailed to the complainant, each respondent, and any other interested person who has asked in writing to be advised of the final resolution.
- 432.7 The final resolution of the arbitration panel is the final resolution of the complaint."

Amend Section 500 by:

- 1) Deleting the word "and" at the end of Paragraph 500.4(d);
- 2) Deleting the phrase "May provide applicant's political party affiliation, if any." in Paragraph 500.4(e) And replacing it with the phrase, "Applicant's political party affiliation, if any (optional); and";
- 3) Adding the following Paragraph to Subsection 500.4:
“(f) Applicant's driver's license number in the case of an applicant who has been issued a current and valid driver's license, or the last 4 digits of the applicant's social security number in the case of an applicant who has not. If an applicant for voter registration has not been issued a current and valid driver's license or a social security number, the Board shall assign the applicant a unique identifier which shall serve to identify the applicant for voter registration purposes.”; and;
- 4) Deleting Subsection 500.8 in its entirety and substituting the following Subsection in its place:
“500.8 If an applicant for voter registration fails to properly complete the mail voter registration form, the Board's registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election.”

Amend Section 510 by adding new subsections to read as follows:

- "510.9 Individuals who have not previously voted in a federal election in the District and who register to vote by mail shall present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows the name and address of the voter.
- 510.10 Subsection 510.9 shall not apply to:
- (a) Individuals whose registration application includes either a driver's license number or at least the last 4 digits of his or her social security number, and with respect to whom the Board has been able to match the provided information with an existing identification record bearing the same number, name, and date of birth as provided in such registration application; and
 - (b) Individuals entitled to vote otherwise than in person under Federal law."

Amend Section 703 by:

- 1) Deleting the final period in Subsection 703.1 and inserting in its place the phrase, "except in instances when the time established for closing the polls is extended pursuant to a Federal or District of Columbia court order or any other order.";
- 2) Deleting the phrase, "at 8:00 p.m." in Subsection 703.2 and inserting the phrase "at the close of polls" in its place, and;
- 3) Deleting the phrase, "At 8:00 p.m." in Subsection 703.3 and inserting the phrase "At the close of polls" in its place.

Amend Subsection 710.4 by:

- 1) Amending Subsection 710.4 by inserting the phrase ", or provisional ballot, as it is termed in the "Help America Vote Act of 2002" (Public Law 107-252)," between the words "ballot," and "because";
- 2) Deleting the word "or" at the end of Paragraph 710.4(h);
- 3) Deleting the period (".") at the end of Paragraph 710.4(i) and replacing it with a semi-colon (";"), and;
- 4) Adding the following paragraphs:
- (j) Votes in an election for Federal office as a result of a Federal or District of Columbia court order or any other order extending the time established for

closing the polls by a District law in effect 10 days before the date of that election; or

- (k) Has not previously voted in a Federal election in the District and who registers to vote by mail and fails to present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows his or her name and address.

Amend Section 722 by:

- 1) Deleting Subsection 722.2 in its entirety and substituting the following in its place:

“722.2: At the time of voting, the Board shall provide the voter with written notice that indicates the manner by which he or she may learn whether the Board has decided to count or reject the voter’s special ballot, and of the dates scheduled for hearings for voters whose special ballots are rejected to contest the Board’s preliminary determination if they petition to do so.”;

- 2) Deleting current Subsections 722.4 through 722.6 in their entirety, and;

- 3) Adding new Subsections 722.4 through 722.7 to read as follows:

“722.4 Not earlier than eight (8) days and not later than ten (10) days after the date of any election, the Board shall, upon petition of the voter, conduct a hearing for the voter to contest the Board’s preliminary determination to reject the voter’s special ballot.

722.5 At the hearing, the voter may appear and give testimony on the question of the decision to reject the special ballot.

722.6 The Board shall make a final determination to either count or reject the voter’s special ballot within two (2) days after the date of the hearing.

722.7 The voter may appeal an adverse decision of the Board to the Superior Court of the District of Columbia within three (3) days after the date of the Board’s decision. The decision of the court shall be final and not appealable.”

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL 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 in accordance with Title IX of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Official Code § 1-609.01 *et seq.*) (2001), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 9, *D.C. Personnel Regulations*, Excepted Service, to modify § 912, Performance Incentives for Excepted Service. Specifically, § 912.2 has been amended to provide that a performance incentive under this chapter shall be paid only once in a fiscal year; delete § 912.4; renumber §§ 912.5 through 912.8 as §§ 912.4 through 912.7; and amend renumbered § 912.7 to provide that the amount of a performance incentive shall not be adjusted upward to cover applicable income or social security taxes. No comments were received under the notice of proposed rulemaking published at 50 DCR 9764 (November 14, 2003). Final rulemaking action was taken on December 17, 2003.

CHAPTER 9**EXCEPTED SERVICE**

Section 912 of the D.C. Personnel Regulations is amended to read as follows:

912 PERFORMANCE INCENTIVES

- 912.1 A personnel authority may authorize performance incentives for exceptional service by an employee in an Excepted Service policy position under § 903 (a) of the CMPA (D.C. Official Code § 1-609.03(a)) (2003 Supp.).
- 912.2 A performance incentive shall be paid only once in a fiscal year, and only when the employee is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the employee has exceeded contractual expectations in the year for which the incentive is to be paid.
- 912.3 When there is no annual performance contract as described in § 912.2, the employee's annual individual performance plan pursuant to Chapter 14 of these regulations shall be considered the annual performance contract for the purpose of authorizing a performance incentive.
- 912.4 A performance incentive shall not exceed ten percent (10%) of the employee's rate of basic pay. For the purposes of determining the percentage of a performance incentive,

the amount of the incentive shall be calculated based on the employee's scheduled rate of basic pay during the performance rating period in which the exceptional service occurred, pursuant to Chapter 19 of these regulations. The percentage scale provided in Chapter 19, and the documentation required therein, shall also apply to performance incentives pursuant to this section.

- 912.5 Excepted Service employees are eligible for incentive awards pursuant to Chapter 19 of these regulations, except for monetary awards.
- 912.6 Performance incentives shall be submitted, processed and approved in accordance with Chapter 19 of these regulations.
- 912.7 A performance incentive awarded under this section shall not be considered base pay for any purpose, and shall be subject to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable. The amount of a performance incentive shall not be adjusted upward to cover these taxes.

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL 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 in accordance with Title X-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Official Code § 1-610.51 *et seq.*) (2001), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 10, *D.C. Personnel Regulations*, Executive Service, to modify § 1005, Performance Incentives. Specifically, § 1005.2 has been amended to provide that a performance incentive under this chapter shall be paid only once in a fiscal year; delete § 1005.3; renumber §§ 1005.4 through 1005.6 as §§ 1005.3 through 1005.5; and add a new § 1005.6 to provide that a performance incentive shall be subject to the withholding of federal, District of Columbia, and State income taxes, if applicable, and that the amount of a performance incentive shall not be adjusted upward to cover applicable income or social security taxes. No comments were received under the notice of proposed rulemaking published at 50 DCR 9766 (November 14, 2003). Final rulemaking action was taken on December 17, 2003.

CHAPTER 10**EXECUTIVE SERVICE**

Section 1005 of the D.C. Personnel Regulations is amended to read as follows:

1005 PERFORMANCE INCENTIVES

- 1005.1 The Mayor may authorize performance incentives for exceptional service by a subordinate agency head.
- 1005.2 A performance incentive shall be paid only once in a fiscal year, and only when the agency head is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the agency head has exceeded contractual expectations in the year for which the incentive is to be paid.
- 1005.3 The amount of a performance incentive shall be determined by the Mayor and shall not exceed ten percent (10%) of the employee's rate of basic pay in any year.
- 1005.4 A performance incentive pursuant to this section shall be approved in accordance with Chapter 19 of these regulations.

- 1005.5 An agency head shall not be eligible to receive monetary awards pursuant to Chapter 19 of these regulations.
- 1005.6 A performance incentive awarded under this section shall not be considered base pay for any purpose, and shall be subject to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable. The amount of a performance incentive shall not be adjusted upward to cover these taxes.