Fair Elections Program Was Well-Run but Program Controls Can Be Improved

January 31, 2022

A report by the Office of the District of Columbia Auditor

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Office of the District of Columbia Auditor

January 31, 2022

The Hon. Muriel Bowser
Mayor of the District of Columbia
The John A. Wilson Building
Washington, DC 20004

The Hon. Phil Mendelson
Chairman, Council of the District of Columbia
The John A. Wilson Building
Washington, DC 20004

Dear Mayor Bowser and Chairman Mendelson:

I am pleased to share the final report in a series of three reports on the 2020 elections in the District of Columbia. The new report, **Fair Elections Program Was Well-Run But Program Controls Can Be Improved**, is a Yellow Book audit of the Office of Campaign Finance (OCF) management of the Fair Elections Program (FEP) in its first year of operation as required in the program's authorizing legislation. The Office of the D.C. Auditor found that the public financing program was essentially well-managed, and we are pleased to report that where we have recommended additional procedures and controls, the OCF leadership has concurred and pledged to implement the improvements.

The financial audit of the FEP completes a series that included two reports by the Fors Marsh Group (FMG). The first, Fair Elections Program Amplifies "Voices of Everyday Voters, assessed the impact of the program including the goal to "strengthen the District's democracy" and curb the "outsized influence of wealthy and corporate contributors in District elections" through public campaign financing. The second in the series, District of Columbia 2020 Elections Administration, evaluated the overall administration of elections in 2020, looking at the use of mail ballots, early voting, and production of final results during the pandemic year.

We greatly appreciate the cooperation of the OCF in responding to our queries and commenting on this draft report. We're grateful to OCF and to the D.C. Board of Elections, as well as the assistance of candidates, campaign staff members, and other community stakeholders for sharing their views on the FEP and election administration. And we hope the findings and recommendations in each of the three reports will help D.C. policymakers continue to improve access to elections for candidates and the overall experience of voters.

Sincerely yours,

Kathy Patterson

Kathleen Patterson
District of Columbia Auditor

cc: D.C. Councilmembers

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Executive Summary

Office of the District of Columbia Auditor

What ODCA Found

- The law in effect during the 2020 election cycle did not clearly define the maximum matching amount. Candidates and members of the public could not recalculate the maximum matching amounts and did not discover that the Office of Campaign Finance (OCF) had used budget estimates.
- The Fair Elections Program (FEP) Division did not track the enforcement of all matters it referred.
- Some payments for special election campaign committees were paid to the primary committees instead.
- OCF posted sensitive information on its website.
- OCF requested the Office of the Chief Financial Officer (OCFO) pay one campaign committee the full base payment before the candidate was eligible.
- Only a small number of approved contributions did not meet FEP requirements.
- The law and the standard operating procedures for the FEP do not require campaign committees to provide OCF the information needed to determine if a small-dollar contribution was eligible for matching.
- OCF did not review an audit log, a tool to detect unauthorized changes in the FEP e-filing system.
- Although no funds were lost, at times one OCF staff member tracked and transmitted checks worth thousands of dollars payable to the D.C. Treasury while D.C. government was operating remotely.

Why ODCA Did This Audit

D.C. Code § 1-1163.32j(b) requires ODCA to prepare and submit to the Mayor and Council a report on the Fair Elections Program's operations that includes "(1) An evaluation of the extent to which the Fair Elections Program and participating candidates met the requirements of the Fair Elections Amendment Act of 2018...(2) A financial audit of the Fair Elections Program; and (3) Recommendations for improving the Fair Elections Program."

What ODCA Recommends

Regarding information systems, OCF should:

- Develop a written security plan for sensitive information in the FEP e-filing system.
- Ensure its information technology staff are equipped to proactively manage security and privacy.
- Regularly review the audit log.
- Periodically test e-filing system automated controls.

Regarding its review process, OCF should:

- Calculate final maximum matching amounts for the FEP in accordance with the law and review those calculations.
- Review the official ballot access orders for challenged petitions.
- Require a residential address within D.C. for contribution matching.
- Retain documentation to support approving matching for a contribution that it previously rejected.
- Review and reconcile the payment report from the OCFO and its own payment records with campaign committee bank statements.

OCF should develop standard operating procedures to:

- Track the enforcement process for non-compliant committees.
- Determine if a second contribution from the same contributor is excess or eligible for matching.
- Address all relevant risks whenever external changes significantly increase risk.

Background

The Fair Elections Program is an optional public campaign finance program that provides public funding to candidates who choose to participate and meet the program's qualifications. The Fair Elections Amendment Act of 2018 (Fair Elections Act) established the Fair Elections Program, which was in effect for the first time during the 2020 election cycle.[1] The Office of Campaign Finance administers the Fair Elections Program. Candidates for Mayor, Attorney General, Council Chair, and at-large and ward candidates for members of the Council and the State Board of Education may participate in the Fair Elections Program if they choose.

How the Fair Elections Program Works for Candidates

Candidates who choose to participate in the Fair Elections Program must agree to additional reporting, lower limits on contribution amounts, restrictions on the source of contributions and on expenditure purposes for their campaign committees, and various other requirements, including participating in a debate for all candidates for an office elected at large. Candidates do not receive funding from the Fair Elections Program until they receive a certain number of contributions from D.C. residents that aggregate to a specific amount, depending on the office for which the candidate is running, as outlined in Figure 1.

In addition to small-dollar contributions from D.C. residents, Fair Elections Program candidates may accept other contributions from individuals and Fair Elections Committees (defined by the Fair Elections Act). Aggregate contributions from one contributor, regardless of whether they live in D.C., are limited to a certain size that depends on the office for which the candidate is running (see Figure 1).[2]

Figure 1: Threshold for Fair Elections Program Candidates to Receive Funds

Office	Minimum number of District-resident small-dollar contributors	Minimum aggregate contributions to qualify	Small-dollar contributor limit
Mayor	1,000	$40,000	$200
Attorney General	500	$20,000	$200
Chairman of the Council	300	$15,000	$200
Council - At-Large	250	$12,000	$100
Council - Ward	150	$5,000	$50
Board of Education – At-Large	150	$5,000	$50
Board of Education - Ward	50	$1,000	$20

Source: DC Code § 1-1163.32c (a)

Note: Those shaded were offices on the ballot in the 2020 election cycle, which fell within the audit scope.

1 Codified at D.C. Code Title I, Chapter 11A, Subchapter III, Part C, § 1-1163.32a et seq.

2 Contributions from the candidate's personal funds and the candidate's immediate family are excepted from this limit, up to a specific amount depending on the office for which the candidate is running. These excepted contributions are not eligible for matching funds. Fair Elections Committee contributions may not exceed $1,500 per campaign and are not eligible for matching either. D.C. Code § 1-1163.32f (a)(6).

The Fair Elections Act states when candidates may receive Fair Elections Program funds, and how much (see Figure 2). When a candidate meets the threshold for their office and OCF verifies that they have provided the required information and agreed to comply with the Fair Elections Program's requirements, the candidate receives matching amounts equal to five times the small-dollar contributions from D.C. residents.

Figure 2: How Campaign Committees Receive Fair Elections Program Funds

Step	Campaign Committee	OCF
1	Collects a certain number of small-dollar contributions from D.C. residents that meet the threshold	Pays first half of base amount* Matches small-dollar contributions already received from D.C. residents at 5:1
2	Continues collecting small-dollar contributions from D.C. residents	Continues matching 5:1 until maximum matching amount reached
3	Qualifies for the ballot	Pays second half of base amount*

***Contested races only**

Source: D.C. Code Title I, Chapter 11A, Subchapter III, Part C, § 1-1163.32a et seq.

If the candidate is competing in a contested race, the candidate also receives the lump sum base amount (Figure 3). If the candidate has not yet qualified to be listed on the ballot, they receive only the first half of the base amount and receive the second half when they achieve ballot access. Candidates continue to receive matching funds for small-dollar contributions D.C. residents contribute before the election, up to the maximum matching amount, which differs by office as shown in Figure 3. The statute directs OCF to calculate the maximum matching amounts from the expenditures made by the campaign committees for previous successful candidates for the same office.

Figure 3: Limits on Fair Elections Program Payments and Contributions

Office	Base amount	Maximum matching amount for 2020 election cycle
Mayor	$160,000	-
Attorney General	$40,000	-
Chairman of the Council	$40,000	-
Council - At-Large	$40,000	$308,639
Council - Ward	$40,000	$241,055
Board of Education - At-Large	$10,000	$21,877
Board of Education - Ward	$10,000	$14,006

Source: DC Code § 1-1163.32b (a) and DC Code § 1-1163.32d (a) and OCF's Fair Elections Program website at https://fairelections.ocf.dc.gov/public/CandidatePayment

Figure note: Those shaded were offices on the ballot in the 2020 election cycle, which fell within the audit scope.

How OCF Oversees the Fair Elections Program

OCF assigns an auditor to each campaign committee and the auditor conducts a desk review of the Reports of Receipts and Expenditures the campaign committee submits. The campaign committees submit their Reports of Receipts and Expenditures and the auditors conduct the desk review relying on information in the new Fair Elections Program e-filing system, which is critical for the operations of the Fair Elections Program.

Immediately after submission, the auditor reviews small-dollar contributions from D.C. residents which are eligible for matching if approved. The law requires that OCF approve qualified small-dollar contributions from D.C. residents for matching within five days of the report submission. OCF sends a request to make the matching payment to the Office of the Chief Financial Officer (OCFO) which has an additional five days from receipt of the request to make the payment. Therefore, the District has a total of 10 days to make an approved matching payment.

The base amount payments are authorized by OCF and paid by the OCFO using the same process. After the auditor has approved all qualified small-dollar contributions, they review all other transactions.

When a candidate whose campaign committee has received Fair Elections Program funds is unsuccessful or when the election cycle ends, the campaign committee must remit any remaining funds to the Fair Elections Fund and OCF audits the campaign committee to ensure it complied with all requirements throughout the campaign.

Cost of the Fair Elections Program

Of the offices on the ballot for 2020, at-large and ward candidates for members of the Council and the State Board of Education were eligible for the Fair Elections Program. The Fiscal Impact Statement adopted by the Council when passing the Fair Elections Act projected that an election cycle such as the 2020 election cycle that does not include the offices of Mayor, Council chair, or Attorney General, will cost approximately $3.2 million in financing for the primary and general election.

In addition to the primary and general elections in the 2020 election cycle, there also was a special election for Ward 2 Councilmember to fill former Councilmember Jack Evans' seat after his resignation. Candidates in the special election also were eligible to participate in the Fair Elections Program. Funding to campaign committees for the Fair Elections Program during the 2020 election cycle, including for the regularly scheduled primary and general elections and the special election, was $4,018,879 (Figure 4 and Appendix A).

Figure 4: Total 2020 Election Cycle Fair Elections Program Payments by Office

Office	Total Fair Elections Program Payments
Council - At-Large	$1,804,350
Council - Ward	$1,683,409
Council Ward 2 Special Election	$345,302
State Board of Education - At-Large	$31,877
State Board of Education - Ward	$153,941
Total	**$4,018,879**

Source: District's System of Accounting and Reporting (SOAR). Numbers do not sum exactly due to rounding.

The 2022 election cycle is a mayoral election cycle. In addition to contests for ward and at-large members of the Council and ward members of the State Board of Education, candidates for Mayor, Attorney General, and Chairman of the Council will be on the ballot and eligible for participation in the Fair Elections Program. The fiscal impact statement estimates that mayoral election cycles will cost $18.8 million, significantly more than a non-mayoral year election. The per-contributor limit for candidates for Mayor, Attorney General, and Chairman of the Council is higher, $200, and the base amounts are also higher. For example, the base amount for the office of the Mayor is $160,000, four times the highest base amount for a contest in the 2020 election cycle.

Sources for Fair Elections Program Funds

Payments to campaign committees participating in the Fair Elections Program for the primary and general elections come from the Fair Elections Fund, which is a non-lapsing fund with three sources of revenue:

- Annual appropriations for the Fair Elections Program from local funds;
- The remaining balance of public funds at the end of a Fair Elections Program candidate's campaign; and
- Payment of fines imposed for violations of the Fair Elections Act.

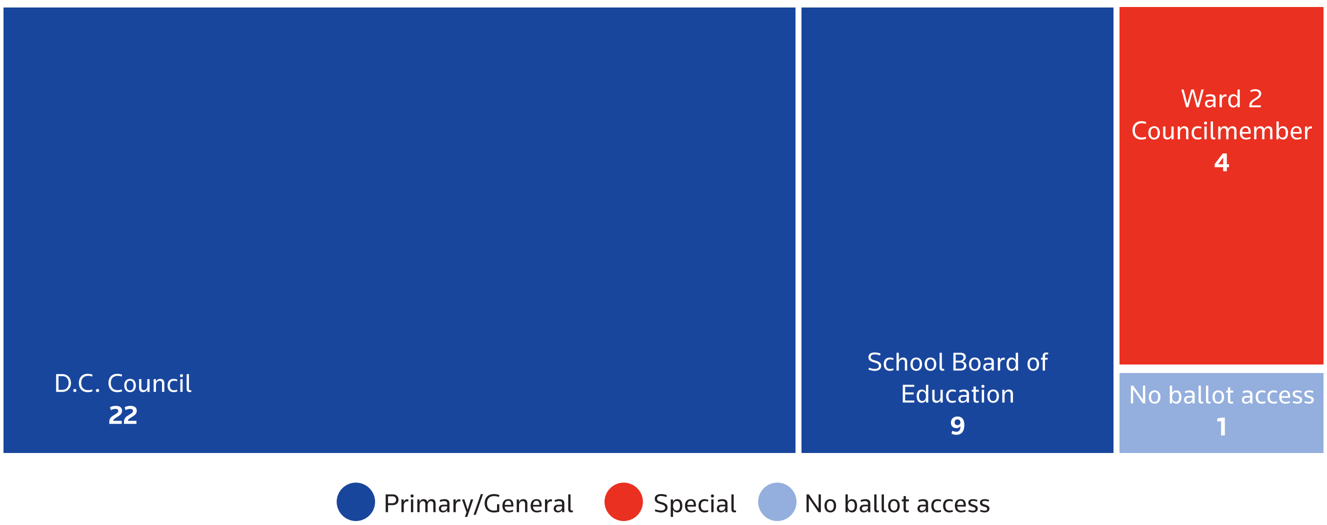
The Fair Elections Fund is primarily funded with annual appropriations. OCF reports that 2020 Fair Elections Program campaign committees have remitted approximately $144,000 in unspent funds as of October 13, 2021.

Funds for the special election for the Ward 2 Councilmember came from a contingency reserve fund.

2020 Election Cycle Fair Elections Program Participation

In the 2020 election cycle, OCF reported that 55 campaign committees registered for the Fair Elections Program, and a total of 36 achieved certification and their campaign committees received Fair Elections Program funds (see Figure 5). Twenty six of the 36 campaign committees were for candidates on the ballot for Council seats, nine were on the ballot for State Board of Education seats, and one did not achieve ballot access. Four of the campaign committees that were certified and received funds for Council races were special election campaign committees.[3] More candidates are expected to participate in the Fair Elections Program in the 2022 election cycle than did in the 2020 cycle.

Figure 5: 2020 Election Cycle Campaign Committees that Received Fair Elections Program Funds, by Election and Office



Source: ODCA analysis of data from the District's System of Accounting and Reporting (SOAR) and official election results.

Candidates for elected office in D.C. must collect signatures on nominating petitions and submit them to be listed on the ballot. In response to concerns that collecting signatures on nominating petitions would transmit the virus that causes COVID-19, the D.C. Council made several temporary changes to the requirements for the process in 2020, including a reduction in the number of signatures required for the general election (Figure 6).[4] Fair Elections Program requirements were not changed directly, but Fair Elections Program candidates were required to qualify for ballot access to continue in the program and to receive the full base amount. Therefore, the reduction in the number of required signatures indirectly changed program requirements for the campaign committees of candidates who participated in the general election but not the primary.

3 Six campaign committees registered for the special election, but only four achieved certification. For the names of all 2020 election cycle Fair Elections Program candidates and the office for which each ran, see appendix A.

4 D.C. Code § 1-1001.08

Figure 6: Changes to Ballot Access Signature Requirements in 2020

Office	Usual number of signatures needed for general election ballot access	Number of signatures needed for general election ballot access in 2020
Council - At-Large	3,000	250
Council - Ward	500	150
State Board of Education - At-Large	1,000	150
State Board of Education - Ward	200	50

Source: DC Code § 1-1001.08. Temporary amendments pursuant to the "Coronavirus Support Emergency Amendment Act of 2020", Act A23-326, effective May 27, 2020, expired June 9, 2020; the "Coronavirus Support Temporary Amendment Act of 2020", Law L23-334, effective October 9, 2020, expired May 21, 2021; the "Coronavirus Support Congressional Review Emergency Amendment Act of 2020", Act A23-0328, effective June 8, 2020, expired Sep 06, 2020.

Since the end of the 2020 election cycle and outside the scope of this audit, the Council passed the Fair Elections Clarification Emergency Amendment Act of 2021, which makes several changes to the law, including a clarification of the maximum matching amount. Under the law as amended, OCF must calculate the maximum matching amount for at-large and ward candidates for members of the Council and State Board of Education from the expenditures of the winners of the last two general elections.[5] See Appendix B for a comparison of the original and amended statutes.

5 *See* "Fiscal Year 2022 Budget Support Act of 2021", signed by the Mayor and enacted with Act Number A24-176. Title I, Subtitle C. "Fair Elections Clarification Amendment Act of 2021." Due to a delay in the Congressional review period, this provision was not effective as permanent legislation until November 13, 2021. *See* Law L24-0045. However, prior to that date, the provision was effective on August 23, 2021 via the "Fiscal Year 2022 Budget Support Emergency Act of 2021".

Objective, Scope, and Methodology

Objective

To determine whether the Office of Campaign Finance (OCF) properly administered the Fair Elections Program by distributing public monies to candidates who met statutory and regulatory requirements for participating in the Fair Elections Program regarding receipt of matchable contributions, and return of unspent funds.

Scope

November 7, 2018, to January 4, 2021.

Methodology

To conduct this review, we developed an understanding of the procedures OCF used for high-risk tasks, such as matching approved contributions from D.C. residents and transmitting the unspent funds from a campaign committee's account for deposit to the D.C. Treasury, including their internal controls. We also reviewed the internal controls for the Fair Elections Program e-filing information system.

We obtained records from the Fair Elections Program e-filing system database for all small-dollar contributions made by D.C. residents to campaign committees that received Fair Elections Program funds that were approved for matching. There were 13,394 such contributions. We identified 14 contributions where the campaign committee reported a ZIP code that is not in D.C. and reviewed supporting documentation to determine if it contained a D.C. address. We identified 16 contributions which either included a non-residential address, like a post office (P.O.) box, or did not include an address at all and reviewed supporting documentation to determine if OCF had the information it would have needed to determine whether the contributor was a D.C. resident. In addition, we reviewed the approval history and supporting documentation for six approved small-dollar contributions from D.C. residents that had comments saying they were approved by the Fair Elections Program Manager.

We identified 12,573 unique contributors to all the campaign committees that received Fair Elections Program funds, based on exact matching of contributor name and address and the campaign committee to which contributions were made. Of these, 21 contributors exceeded the individual contribution limit when all of their contributions to the same campaign committee were aggregated. We reviewed supporting documentation for these contributions to determine if they were contributed by separate individuals. There may have been additional excess contributions by the same contributor where the name or address were entered with slight differences.

Campaign committees that received Fair Elections Program funds accepted 581 small-dollar cash contributions from D.C. residents that were approved for matching. We reviewed the affirmation statements for all approved cash contributions to each campaign, or 75 cash contributions if a campaign received more than 75. In total, we reviewed 443 items to determine if the contributor provided a legally binding signature (including a verifiable digital signature) affirming their identity and address.

We also calculated the maximum matching amount that would have applied to each office in the 2020 election if the recently clarified law had been in effect at the time and compared how much each candidate would have received under the clarified law to how much they actually received from the Fair Elections Program.

We reviewed Fair Elections Program fund payments to the campaign committees of candidates that had Fair Elections Program campaign committees in both the primary election and the special election for Ward 2 member of the Council to determine if payments went to the correct campaign committee.

We reviewed base amount payments to determine if candidates received payments to which they were not entitled.

We reviewed the amounts of unspent funds that campaign committees that terminated within our scope reported remitting and verified that the same amount was deposited into the D.C. Treasury. We did not review expenditures made by campaign committees for compliance with Fair Elections Program requirements.

Finally, we reviewed public monthly OCF statistics reports, a list that the Fair Elections Program Manager compiled for this audit, and official enforcement orders from the Office of the General Counsel to identify Fair Elections Program campaign committees that the Fair Elections Program Division had referred to the OCF Office of the General Counsel for enforcement. We determined whether they returned to compliance and identified any enforcement activity OCF undertook if not, such as imposing a fine.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

The challenge of implementing the Fair Elections Act for its inaugural election cycle was complicated by the beginning of the COVID-19 pandemic. We were able to obtain and review all contributions approved for matching and found very few errors. OCF had program procedures in place, and management was aware that it was critically important that the Fair Elections Program be credible. To that end, OCF had focused significant effort on the process that determines if a contribution can be matched. That said, there are other processes that impact the amount of funding each campaign committee receives—some even more than an individual contribution—that need to be strengthened before the next election.

OCF's Office of the General Counsel imposed some fines but the Fair Elections Program Division did not track the enforcement of all instances of non-compliance.

According to the Standards for Internal Control in the Federal Government, to provide reasonable assurance of achieving its objectives, the management of an entity "develops and maintains documentation of its internal control system," including "who, what, when, where, and why of internal control execution."[6]

There were nine instances of noncompliance referred to the OCF Office of General Counsel for enforcement for which we could not find any documentary evidence that either the campaign committee had come back into compliance or enforcement had occurred. [7] From interviews and document reviews, we learned that campaign committees that did not comply with the District's campaign finance law were referred to Office of the General Counsel, which scheduled a hearing and notified the campaign committee. The campaign committee then had two opportunities to return to compliance or to explain why it should not be fined. If the committee did not return to compliance or provide a good explanation of why it should not be penalized, OCF fined the candidate, treasurer, and/or committee.[8]

The Fair Elections Act provides that OCF may revoke a campaign committee's certification for non-compliance with the Fair Elections Program's requirements.[9] OCF revoked one campaign committee's certification to receive funds when the candidate ended her candidacy.

The Fair Elections Program Division did not have standard operating procedures (SOPs) for tracking non-compliant campaigns from referral to enforcement. Its SOPs only state that auditors have responsibility for referring noncompliant campaigns to the Office of the General Counsel.

There is a risk that OCF failed to enforce the requirements of the Fair Elections Program, which would fail to deter candidates and campaign committees from taking advantage of the Fair Elections Program to access public funds.

6 Standards for Internal Control in the Federal Government. Paragraphs 3.09 and 3.10, page 29. September 2014 revision. https://www.gao.gov/assets/gao-14-704g.pdf
7 This does not include 3 instances of non-compliance by Renee Bowser's campaign committee which were referred but not resolved, and which the General Counsel told us were held in abeyance until the completion of the audit.
8 3 DCMR § 3711
9 D.C. Code § 1-1163.32c (c). The campaign committee has the opportunity to appeal OCF's revocation and while doing so, is not eligible to receive Fair Elections Program funds.

As of this writing, the candidates and treasurers for three Fair Elections Program campaign committees were fined for four instances of non-compliance with campaign finance law that occurred during our scope (see Figure 7). The candidate and treasurer for Markus Batchelor's campaign committee were fined $2,850 for failure to provide adequate supporting documentation for $82,578.15 in expenditures, and $750 for failure to respond to OCF's request for documentation to complete a full audit. The candidate and treasurer of the James Allen Harnett campaign committee and the Kishan Putta primary campaign committee were also fined for failure to respond to OCF's request for documentation to complete a full audit, $4,000 and $1,500, respectively.

Figure 7: Fair Elections Program Campaign Committees Fined for Non-Compliance as of 11/23/2021[10]

Campaign committee	Non-compliance	Fine amount
James Allen Harnett's campaign committee	Failure to respond to audit request	$4,000
Markus Batchelor's campaign committee	Failure to provide adequate supporting documentation for $82,578.15 in expenditures	$2,850
	Failure to respond to audit request	$750
Kishan Putta's primary campaign committee	Failure to respond to audit request	$1,500

Source: ODCA analysis of referral dates provided by OCF, OCF statistics monthly reports, and official OCF orders imposing fines.

Recommendation

1. OCF should develop standard operating procedures for the Fair Elections Program Division to track campaign committees referred for non-compliance and to document all steps in the process.

10 Throughout the report, we refer to campaign committees by the name of the candidate. When there were two Fair Elections Program campaign committees with the same candidate, we distinguish them by election, for example, Patrick Kennedy's special and primary election campaign committees. For official campaign committee names by candidate name, please see Appendix A, which also states the amount of Fair Elections Program funds paid to each campaign committee.

The law for the maximum matching amount a campaign committee could receive was ambiguous. Plausible interpretations of the law in effect during the audit scope yield a wide range of maximum matching amounts for each office.

The Fair Elections Program statute[11] in effect during the audit scope described the maximum matching amount in a way that plausibly could be interpreted to mean 110% of the average expenditures of the winning candidates from either:

1. The two most recent general elections;
2. The last two general elections with the same seats as the current election cycle; or
3. All general elections that have occurred since the second-most recent general election and that had the same seats as the current election cycle.

For the 2020 election cycle, these different interpretations meant the base years were either (1) 2016 and 2018, (2) 2012 and 2016 or (3) 2012, 2014, 2016, and 2018. The range in maximum matching amounts from one interpretation to another was as much as $90,852.37, for candidates for at-large member of the Council (see Figure 8).

Figure 8: Range of Maximum Matching Amounts

	Base years			
Office	**(1) 2016 & 2018**	**(2) 2012 & 2016**	**(3) 2012-2018**	**Difference between greatest and least**
Council - At-Large	$ 312,173	$ 349,369	$ 258,517	$ 90,852
Council - Ward	$217,184	$268,798	$236,087	$51,615
Board of Education - At-Large	$28,717	$21,796	$21,796	$6,922
Board of Education - Ward	$20,875	$7,172	$16,667	$13,703

Source: ODCA analysis of OCF's database of traditional campaign finance program contributions and expenditures.

For the Fair Elections Program to be fair, the law describing the maximum matching amount must be unambiguous and clear steps needed to calculate it must be provided.

The ambiguity of the law prevented members of the public and candidates from checking OCF's calculations. OCF developed a budget for the 2020 election cycle by estimating the maximum matching amounts. OCF used the expenditures of the winning candidates in 2014 and 2016 for the Council ward and at-large offices and the State Board of Education ward office, and the expenditures made by the

11 D.C. Code § 1-1163.32e(d), during the audit scope: "The maximum amount participating candidate may receive under [5:1 matching] shall be:[...]For candidates for member of the Council elected at-large or by ward, and for candidates for member of the State Board of Education elected at-large or by ward, 110% of the average expenditures of all winning candidates for that covered office, respectively, in the prior 2 election cycles (not including special elections)."

winning candidates in 2012 and 2016 for the State Board of Education at-large office, because these were the most recent complete data available. OCF obtained these expenditures from its traditional campaign e-filing system database. The database contains all expenditures but the statutory definition limits the expenditures for calculating the maximum matching amount to certain categories. [12]

When it came time to establish and publish maximum matching amounts to apply to the campaign committees participating in the Fair Elections Program, OCF used the amounts calculated during the budget process instead of calculating them with more recent information and according to the statute. OCF applied these maximum matching amounts consistently to all candidates, except for one small error which led to the overpayment of the Dontrell Smith campaign by $644. If members of the public or campaign committees had been able to recalculate the maximum matching amounts, they could have discovered that OCF had not calculated the maximum matching amount according to the statute.

Some campaign committees received a different amount of total funding from the Fair Elections Program than they would have if the law had been clear and the correct, clarified maximum matching amount had been applied to them (Figure 9). One committee, Janeese Lewis George's campaign committee, received $23,871 more than it would have if the clarified law had been in effect. Four other campaign committees received less than they would have if the clarified law had been in effect, a total of $17,543 collectively.

Figure 9: Total Payments to Affected Campaign Committees as They Would Have Been Under the Clarified Law, and Actual Payments

Campaign committee	Office	Under clarified law	Actual Payments	Difference
Janeese Lewis George's campaign committee*	Council Ward	$257,184	$ 281,055	$23,871
Ed Lazere's campaign committee	Council At-Large	$352,173	$348,639	$(3,534)
Mysiki Valentine's campaign committee	SBOE At-Large	$38,717	$31,877	$(6,840)
Dontrell Smith's campaign committee	SBOE Ward	$24,950	$24,650	$(300)
Eboni Thompson's campaign committee*	SBOE Ward	$30,875	$24,006	$(6,869)

Source: ODCA analysis of OCF's database of traditional campaign finance program contributions and expenditures and the District's System of Accounting and Reporting (SOAR).

*** Campaign committees of candidates who won their contests.**

12 Expenditures for principal campaign committees are defined by statute as "a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly: the election of a candidate;…a transfer of funds between…candidates." D.C. Code § 1-1161.01 (21)(A)

Since the end of the audit scope, the law was amended so that it is clear that the maximum matching amount is to be based on the expenditures of the candidates that won the last two general elections.[13]

Recommendation

2. OCF should calculate the maximum matching amount using a separate process from the estimation used for the budget. OCF should use expenditures as defined by statute to calculate the maximum matching amount and assign another staff person to review the calculation to ensure accuracy.

The Office of the Chief Financial Officer confused the primary and special election campaign committees of candidates that were running in both, resulting in $124,885 that should have been for special election campaign committees going to the same candidates' primary election campaign committees.

There were four candidates with two Fair Elections Program campaign committees because they qualified for the Fair Elections Program as candidates for Ward 2 member of the Council in both the special election and the primary election:

- John Fanning
- Jordan Grossman
- Patrick Kennedy
- Kishan Putta

According to 3 DCMR § 4209.6, "Fair Elections Program funds may not be used for: (a) An expenditure for any purpose other than the furtherance of the participating candidate's nomination or election." On several occasions, the Office of the Chief Financial Officer (OCFO) correctly debited the subsidies for the Patrick Kennedy, Kishan Putta, and Jordan Grossman special election campaign committees against the contingency reserve fund but incorrectly paid them to the primary campaign committees of the respective candidates. The OCFO misdirected these payments despite OCF providing the correct campaign committee name on all but one request to issue payment. Payments intended for the John Fanning special election campaign were not misdirected to his primary campaign committee; ODCA traced all but $50 to his special election campaign committee account. ODCA identified a total of $268,781 that the OCFO paid to primary campaign committees that should have been paid to special election campaign committees.

The Patrick Kennedy and Jordan Grossman primary campaign committees corrected some, but not all, of these payments by making transfers to the special election campaign committees. The Kishan Putta primary campaign committee did not make transfers to the special election campaign committee to

13 *See* "Fiscal Year 2022 Budget Support Act of 2021", signed by the Mayor and enacted with Act Number A24-176. Title I, Subtitle C. "Fair Elections Clarification Amendment Act of 2021." Due to a delay in the Congressional review period, this provision was not effective as permanent legislation until November 13, 2021. *See* Law L24-0045. However, prior to that date, the provision was effective on August 23, 2021 via the "Fiscal Year 2022 Budget Support Emergency Act of 2021". See appendix B for a comparison of the original and amended statutes.

correct the errors, and OCF did not discover the error until the audit at the end of the election cycle. The result was $124,885 intended for special election campaign committees that was paid to primary election campaign committees and not corrected (see Figure 10).[14]

Figure 10: Payments Made to the Primary Campaign Committee Intended for the Same Candidate's Special Campaign Committee

Candidate	Base and matching owed to the special committee	Paid to primary committee acct	Primary committee corrected by transfer to special committee acct	Uncorrected amount remaining in primary campaign acct
Kishan Putta	$94,985	$93,085		$ 93,085
Patrick Kennedy	$85,093	$83,280	($54,430)	$28,850
Jordan Grossman	$92,541	$92,416	($89,466)	$2,950
John Fanning	$74,621	$ -	Not applicable	$ -
TOTAL	**$347,239**	**$268,781**	**$143,896**	**$124,885**

Source: ODCA analysis of small-dollar contributions from D.C. residents, payments to campaign committees recorded in the District's System of Accounting and Reporting (SOAR), and campaign committee bank account records submitted to OCF. Values may not total exactly due to rounding.

Additionally, this suggests that there is a risk that payments will go to the wrong campaign committee and possibly even the wrong candidate in future election cycles.

OCF had a reconciliation process to review payments but it was not adequate to ensure payments went to the correct campaign committee. The Fair Elections Program Manager told us that OCF reconciled a report from the Office of Finance and Resource Management at the OCFO with OCF's records of how much a campaign committee should have been paid. To determine if a payment was made to the correct payee, OCF needed to have reconciled its own records of what campaign committees should have been paid with reports from the District's System of Accounting and Reporting (SOAR) showing the amount paid out and with campaign committee bank records. Furthermore, in ODCA's review of SOAR, we saw that the same payee and payee identification number (vendor number) was listed for payments that should have been to the Patrick Kennedy, Jordan Grossman, and Kishan Putta special and general election campaigns. A closer review on OCF's part would have identified that the payees were the same.

Recommendation

3. OCF should reconcile reports of actual payments from OFRM with its payment records and campaign committee bank account records frequently enough to detect payments to the wrong campaign committee during the election cycle.

14 An additional $3,888 owed to special election campaign committees could not be traced to the bank accounts of either the special or primary election campaign committees and may not have been paid at all.

OCF posted account and routing numbers for Fair Elections Program campaign committee bank accounts to its public website.

Bank account information for 34 of the 36 Fair Elections Program campaign committees that received funds was posted on a public website. We informed OCF of the presence of the information on September 13, 2021, and we determined that OCF had removed it from the website as of November 22, 2021.

According to the National Institute of Standards and Technology Risk Management Framework for Information Systems and Organizations, to manage its security and privacy risks, an organization conducts a risk assessment, which may include assessing security and privacy risks. Risk assessments and privacy assessments involve determining the likelihood that threats will exploit the vulnerabilities of information assets and that the operations of the information system that use personally identifiable information could affect individuals adversely, respectively, and the potential impact if these were to occur. An organization uses the result of a risk assessment to define its security and privacy requirements.[15]

The Fair Elections Program carries its own unique risks compared to the traditional program, such as paying out government funds, and the Fair Elections Program relies extensively on the e-filing system to operate. OCF has not conducted a risk assessment for the Fair Elections Program. OCF does not have a security plan for the Fair Elections Program e-filing system, nor has it identified which of the information in the Fair Elections Program e-filing system is sensitive.

The public had access to the bank account information for Fair Elections Program campaign committees, and malicious actors could have used it to initiate transactions inappropriately, including committing theft of money from the campaign committees. As of our review in October 2021, 19 of the affected bank accounts were still vulnerable because the committees did not appear to have closed them yet. Because the bank account information for several campaign committees was available, malicious actors could have stolen large amounts of public funds even through very small transactions if the campaign committees did not review them frequently or carefully enough. OCF did not review bank statements in detail until the audit of campaign committees, which occurred after the candidate was unsuccessful or after the end of the election cycle.

15 NIST SP 800-37, Revision 2. Pages 41-42. https://doi.org/10.6028/NIST.SP.800-37r2

Additionally, because OCF has not identified which information is sensitive and taken steps to protect it from unauthorized access, other sensitive information could be made available indirectly through a security breach.

Recommendation

4. OCF should conduct a risk assessment for the Fair Elections Program e-filing system, determine which information is sensitive, and develop a written security plan to keep it safe.

OCF requested that the full base payment be made to one campaign committee before the candidate qualified for access to the ballot.

OCF issued a request for the OCFO to pay the base amount to the Ryan Washington campaign committee on August 26, 2020, before Mr. Washington had qualified for the second half of it ($5,000) by achieving access to the ballot. The District made the payment to his campaign committee on August 31, 2020, and the Board of Elections met on September 2 and issued an order granting him ballot access on September 4, 2020. There is a risk that a candidate who never achieves ballot access could receive the second half of the base amount.

The second half of the base amount is to be paid to Fair Elections Program candidates once they have qualified for ballot access. Candidates qualify for ballot access by submitting a nominating petition with a certain number of signatures of District voters who support their ballot access to the Board of Elections, which posts all petitions publicly for 10 days. During the time the petitions are posted, any registered voter can challenge the validity of a petition. The Board of Elections must hear evidence about the nominating petition and decide whether the candidate whose nominating petition was challenged should receive ballot access. Candidates whose nominating petitions are not challenged qualify for ballot access by default at the close of the 10-day posting period.[16]

Ryan Washington was the only Fair Elections Program candidate whose nominating petition was challenged. The Board of Elections found that the petition met the requirements for ballot access on September 2, 2020, and issued an order granting him ballot access on September 4, 2020. OCF communicated by email with the Registrar of the Board of Elections to determine which candidates had qualified for ballot access rather than referring to the official ballot access order issued by the Board of Elections.

Recommendation

5. When the nominating petition of a Fair Elections Program candidate is challenged, OCF should obtain and review the official Board of Elections order granting ballot access before authorizing the final base amount payment to the candidate's campaign committee.

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16 D.C. Code § 1-1001.08 (o)

Very few contributions approved for matching failed to meet Fair Elections Program requirements.

Most contributions that OCF approved for matching met all Fair Elections Program requirements. Some contributors made multiple contributions to the same campaign committees. ODCA identified 12,573 D.C. resident contributors whose contributions OCF approved; 20 of these contributors exceeded the per-contributor limit. Of 13,394 contributions OCF approved as D.C. resident contributions to campaign committees that received Fair Elections Program funds, six contributions had previously been declined but were subsequently approved without the necessary documentation, and six were from individuals who were not D.C. residents.

Contributors who exceeded the maximum

The matchable contributions to Fair Elections Program campaign committees that received Fair Elections Program funds were made by 12,573 contributors with unique names and addresses. We confirmed that 20 of these contributors exceeded the contributor limit because they made multiple contributions that OCF approved. Twenty contributors is only 0.16% of all of the contributors whose contributions were matched.

Candidates may not accept a small-dollar contribution that would exceed certain limits when aggregated with other contributions from the same individual, per election cycle, which are listed in Figure 11.

Figure 11: Per Contributor Limit by Office, for the Offices in the 2020 Election Cycle[17]

Office	Contributor limit
Council - At-Large	$100
Council - Ward or Board of Education - At-Large	$50
Board of Education - Ward	$20

Source: DC Code § 1-1163.32b (a)

There are three reasons that excess contributions we reviewed were approved for matching. For half of the contributors, the campaign committee refunded the excess contribution or contributions, and OCF approved the remaining contributions for matching. However, those refunded contributions already had been approved for matching and we did not find that the campaign returned the matching funds to OCF. Therefore, the campaign committee collected Fair Elections Program funds without a corresponding contribution.

The excess contribution from three contributors were not flagged by the e-filing system as excess. The e-filing system automatically calculated the cumulative contributions for each contributor and flagged most contributions which caused the cumulative contributions to exceed the per-contributor limit. The

17 D.C. Code § 1-1163.32b (a) This applies to small-dollar contributions from D.C. residents or non-District residents.

system's failure to flag excess contributions was not limited to a specific time, campaign committee, office, or per-contributor limit.

The seven remaining contributors made contributions that were appropriately flagged as excess, and none of which had been refunded. One was approved by the Fair Elections Program Division IT specialist. The Fair Elections Program Manager assigned the IT specialist, who is not an auditor, to complete desk reviews for the Franklin Garcia campaign committee to better understand how auditors used the Fair Elections Program e-filing system. The IT specialist's error was not corrected in a review of his work.

Experienced auditors approved the contributions made by the other six contributors who exceeded the limit. We asked one of the auditors who approved them about the approval of two contributions of $100 to a campaign committee with a per-contributor limit of $100. She told us they had been approved in error.

Contributions without necessary documentation

We identified six contributions OCF approved for matching that lacked the necessary documentation: three for which the campaign committee did not supply the information they were required to collect from the contributor, and three made by credit card for which the campaign committee did not supply the transaction receipts. All of these initially had been declined by the auditor conducting the desk review. The manager of the Fair Elections Program Division marked them approved 10 months or more after their initial denial, but no additional supporting documentation had been added to the system. When we asked the Fair Elections Program manager about them, he said that the campaign committee may have provided additional information by email, but he was not able to locate it.

The six contributions were for $255 total. Because these contributions were approved, they were eligible for matching with $1,275 in Fair Elections Program funds.

D.C. Code requires that candidates collect and retain specific information from each small-dollar contributor, including from D.C. residents whose contributions are matchable in the Fair Elections Program.[18] The information includes such things as name, address, place of business, and an affirmation that the contributor is making the contribution from their own funds and has not received anything of value in exchange for it.

OCF's SOPs for the Fair Elections Program require the auditor performing the desk review to review the receipt of a credit card contribution transaction.

When we asked the Fair Elections Program Manager why the contributions we identified had been approved without contributor information or transaction receipts, he said that he did not know, and that the auditor responsible for one of the campaign committees was on extended leave and unable to assist him in finding the documentation.

The Fair Elections Program e-filing system did not require the Fair Elections Program manager to attach additional information to support his determination that contributions auditors had marked as declined were approved for matching.

18 D.C. Code § 1-1163.32b (b)

Non-District resident individuals

According to the D.C. Code, "Contributions from non-District resident individuals shall not be matched."[19] ODCA identified six contributions from non-District residents that had been approved for matching out of 13,394 contributions to campaign committees that received Fair Elections Program funds (0.04%). We identified them by reviewing supporting documentation for contributions where the campaign committee had reported a ZIP code outside DC. Some of the contributors had addresses nearby in Maryland; others had addresses in New York state.

The campaign committees submitted these contributions in Schedule A, which is for recording contributions from D.C. residents, and also recorded the city and state as Washington, D.C. However, the ZIP codes for the contributions were not D.C. ZIP codes, and using an internet-based mapping program, we were not able to identify a location within D.C. with the street address supplied. The e-filing system offered users auto-complete options for the address, and starting in July or August 2020, it also validated the ZIP codes. The addresses may have been entered before the ZIP code validation was added or it may have malfunctioned. Both the e-filing system and the reviewing auditor failed to identify the addresses as outside of D.C.

The total value of approved contributions from non-District residents was $205 and the 5:1 matching OCF approved for them would have led to payment of $1,025 in Fair Elections Program funds. Contributions from non-District residents were approved for matching very infrequently in the 2020 election cycle, but campaign committees could submit more non-District resident contributions in the schedule for D.C. resident contributions and list the city and state of residence as Washington, D.C. in future election cycles. We recommend changes to prevent OCF from matching more contributions from outside of D.C. in future election cycles.

Recommendations

6. OCF should develop standard operating procedures for auditors to determine if a second contribution from the same contributor to the same campaign committee exceeds the per-contributor limits or if it can be approved for matching because the campaign committee refunded previous contributions and remitted any matching payments for them.

7. OCF should add to the e-filing system any additional documentation it receives from the campaign committee that justifies changing the status of a contribution from declined to approved.

8. OCF should test the Fair Elections Program e-filing system periodically to make sure automated controls like flagging ZIP codes outside DC and flagging excess contributions are working as intended.

19 D.C. Code § 1-1163.32e (c)

Campaign committees are not required to collect an individual D.C. resident contributor's residential address.

We identified 11 contributions OCF approved as small-dollar contributions from D.C. residents for which the campaign committee did not submit a residential address for the contributor. The address for the contributor was either a P.O. Box or was missing entirely. ODCA identified these 11 contributions by reviewing supporting documentation for the contributions without residential addresses entered in the report, to determine if a residential address was available. Eleven contributions are only 0.08% of all the D.C. resident contributions OCF approved for matching.

According to the Standards for Internal Control in the Federal Government, to achieve its objectives, an entity should obtain relevant data. Relevant data have a logical connection with the information needed to address risks, such as residential addresses to determine if a contributor is a D.C. resident.[20]

There is no requirement that contributors provide, or that candidates collect the residential address for D.C. resident contributors.[21] The law requires the candidate to collect the contributor's address, but it does not specify that it must be the residential address rather than the mailing address.

Contributions without a residential address were a very small number of the approved contributions to campaigns that received Fair Elections Program funds in the 2020 election cycle. However, in future election cycles, campaign committees could take advantage of matching for contributions without residential addresses and solicit contributions from non-District residents with post office boxes in D.C. To avoid this, OCF can change its requirements.

Recommendation

9. OCF should adjust requirements, working with the Council if necessary, so that matching is available only when residential addresses within D.C. are supplied (i.e. street address, not P.O. Box).

The e-filing system is critical for the operation of the Fair Elections Program, and OCF did not review an audit log to detect inappropriate changes to data in it.

The Fair Elections Program e-filing system is critical to the operation of the Fair Elections Program. OCF tracked and approved contributions to Fair Elections Program campaign committees through the Fair Elections Program e-filing system, which it used to determine candidate certification for Fair Elections Program participation, matching payment amounts, and qualification for base payments.

To prevent, detect, and minimize the impact of security incidents, OCTO's Information System Audit and Monitoring Control Policy[22] required that each D.C. agency regularly review an audit log for each server

20 Standards for Internal Control in the Federal Government. Paragraphs 13.02 and 13.04, page 59. September 2014 revision. https://www.gao.gov/assets/gao-14-704g.pdf

21 D.C. Code § 1-1163.32b (b)

22 OCTO Information System Audit and Monitoring Control Policy, policy number OCTO-4002.2, effective 4/22/2016. OCTO's updated Audit & Accountability Policy is available at https://octo.dc.gov/page/it-policies.

and critical system that included "all actions taken by system users that are assigned system and security administration privileges" and what data are affected.[23]

Throughout the Fair Elections Program, OCF's IT staff had not reviewed either the audit record automatically generated in the server or the table within the Fair Elections Program e-filing database of changes to the information in the Fair Elections Program e-filing system.

OCF expected the vendor and OCTO to provide oversight of the system. OCF's IT personnel who support the Fair Elections Program e-filing system had a reactive, rather than proactive, approach to ensuring the system is functioning, accurate, and secure.

As a result, the vendor that developed and maintains the Fair Elections Program e-filing system or an unauthorized user could make changes that affect payments to campaign committees without OCF's knowledge. ODCA did not review the audit logs or identify unauthorized access or changes to the e-filing system.

Recommendations

10. OCF should review audit records of the Fair Elections Program e-filing system for indications of inappropriate or unusual activity, at a defined frequency, and report findings to designated OCF personnel.
11. OCF should ensure that the Fair Elections Program e-filing system is supported by OCF IT personnel who are equipped with experience, training, and supervision to complete or delegate the tasks that are necessary to manage its security and privacy proactively.

While OCF and Office of the Chief Financial Officer staff were working remotely because of the COVID-19 pandemic, OCF could not follow its strong policies for handling remission of unspent funds, but still did not misplace any funds.

Some checks that campaign committees remitted with their account balances after the election cycle were handled by individual OCF staff members without sufficient safeguards to provide assurance that they were transmitted to the OCFO for deposit to the D.C. Treasury. ODCA determined that all funds campaign committees reported remitting as of August 6, 2021, had been depositied in the D.C. Treasury.

OCF's SOPs for receiving mail and handling revenue designate a position to receive all checks, which they log and time stamp, and turn over to the appropriate and separate agency staff member to transmit to the OCFO for deposit. According to the Standards for Internal Control in the Federal Government, an entity's management addresses the risks of management override and fraud through segregation of duties, which may include separating "control activities related to authority, custody, and accounting of operations."[24]

23 OCTO-4002.2, Page 1. https://octo.dc.gov/sites/default/files/dc/sites/octo/publication/attachments/Policy%20Number%20-%20OCTO-4002%202.pdf

24 Standards for Internal Control in the Federal Government. Paragraph 10.13, page 51. September 2014 revision. https://www.gao.gov/assets/gao-14-704g.pdf

While D.C. government, including OCF, was working remotely due to the COVID-19 pandemic, OCF did not follow the established process for receiving, logging, and transmitting checks, and did not develop an alternative procedure that addressed the risk of loss or theft. Instead, the manager that was in the office when a check was received would take responsibility for all steps of the process. According to the Standards for Internal Control in the Federal Government, "existing controls may not be effective for meeting objectives or addressing risks under changed conditions. Management analyzes the effect of identified changes on the internal control system and responds by revising the internal control system…to maintain its effectiveness."[25]

Without control activities, like logging and transmission assigned to separate OCF staff members, there was a risk that remission checks worth thousands of dollars could have been lost or stolen before being transmitted to the OCFO for deposit into the Fair Elections Fund.

In addition to annual appropriations, the Fair Elections Fund is funded with revenue from the remission of the balance of each Fair Elections Program campaign committee's bank account at the end of the election cycle and fines levied for violations of the Fair Elections Act.[26] Failures to transmit and deposit remission checks properly could result in a loss of revenue to the Fair Elections Fund. Lost revenue for the Fund would have to be made up with increased appropriations.

Recommendation

12. When external changes increase the risk associated with following standard operating procedures, OCF should develop temporary procedures that are practical under the circumstances and adequately mitigate all relevant risks, including loss or theft of funds, and ensure they are followed.

25 Standards for Internal Control in the Federal Government. Paragraph 9.04, page 43. September 2014 revision. https://www.gao.gov/assets/gao-14-704g.pdf
26 D.C. Code §1-1163.32i (b)

Conclusion

The Office of Campaign Finance is to be congratulated on implementing the Fair Elections Act. OCF has created processes that address many of the risks the Fair Elections Program faces and put personnel in place who have the skills needed to execute many aspects of the Fair Elections Program. There are some areas, however, that would benefit from additional attention. OCF should make these improvements before the minor errors ODCA identified have the potential to cause larger impacts in the mayoral election cycle.

The e-filing system is critical for the operations of the Fair Elections Program, and we urge the OCF to implement fully our recommendations related to information technology. The Fair Elections Program e-filing system was built by the same vendor that maintains the traditional e-filing system and shares many characteristics with it. The Fair Elections Program e-filing system, however, faces more risks and more serious risks than the traditional e-filing system because D.C. government funds are disbursed. A proactive approach, including a risk assessment, ensuring OCF IT personnel possess the necessary knowledge and skills, regular audit log review, and periodic testing is critical to ensure that the Fair Elections Program e-filing system continues to provide OCF with the correct information to administer the Fair Elections Program.

In our interviews with OCF management, most were aware of the risk to the Fair Elections Program's credibility if payments were made to candidates in the wrong amount. OCF has created policies and procedures for processing the information it obtains from campaign committees, which resulted in very few errors. However, there are other information sources that can impact payment amounts to committees, and OCF seems to have given less attention to these risks – such as the risk from using budgeting estimates as the final maximum matching amounts, or the risk that a candidate who has not qualified for the ballot receives the second or full base amount. OCF also should obtain and use reliable external information to ensure it disburses the correct amounts to the correct campaign committees. This will include adjusting current requirements for D.C. resident contributor addresses so that they must be residential addresses.

OCF is aware of the need in general for some of the measures we are recommending. For example, the Fair Elections Program Division already had Standard Operating Procedures, and we have identified certain processes that also would benefit from written procedures, such as tracking of enforcement for non-compliant campaign committees and determining if repeat contributions are eligible for matching based on refunds to the contributor and remission of the matching funds. OCF has several processes for supervision and review of various high-risk tasks, and we identified two more. OCF should reconcile requests for payments with records from SOAR and campaign committee bank statement thoroughly and early, and it should review the calculation of the maximum matching amount. In addition, OCF should obtain and retain documentation needed for reviews.

In addition to our recommendations, we believe the Council may wish to consider revising the nominating petition challenge process. Candidates whose nominating petitions are challenged achieve ballot access later than those whose nominating petitions are not challenged. If OCF withholds base payments from these candidates until they have achieved ballot access, as is consistent with current law[27], candidates may challenge nominating petitions for their competitors in the Fair Elections Program to delay their funding and hamper their campaign operations. The Council may wish to make legislative changes to prevent this outcome.

27 D.C. Code § 1-1163.32d (a)(1)(B)

Summary of Report Recommendations

Most of the recommendations in this report can be implemented without any additional costs to the agency and help to advance the goals of the Office of Campaign Finance, as seen below.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
1. OCF should develop standard operating procedures for the Fair Elections Program Division to track campaign committees referred for non-compliance and to document all steps in the process.	No	Yes	"Provide a fair, effective, and efficient public financing program for candidates who qualify to participate in the program and agree to abide by its requirements." – OCF's strategic objective #5, Fiscal Year 2021 Approved Budget and Financial Plan.[28]
2. OCF should calculate the maximum matching amount using a separate process from the estimation used for the budget. OCF should use expenditures as defined by statute to calculate the maximum matching amount and assign another staff person to review the calculation to ensure accuracy.	No	Unclear. Accurate maximum matching amounts could be higher or lower than inaccurate ones.	
3. OCF should reconcile reports of actual payments from OFRM with its payment records and campaign committee bank account records frequently enough to detect payments to the wrong campaign committee during the election cycle.	No	No	
4. OCF should conduct a risk assessment for the Fair Elections Program e-filing system, determine which information is sensitive, and develop a written security plan to keep it safe.	No	Yes	

28 Fiscal Year 2021 Approved Budget and Financial Plan, Volume 2: Agency Budget Chapters – Part 1, page 161. Available at https://cfo.dc.gov/page/annual-operating-budget-and-capital-plan.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
5. When the nominating petition for a Fair Elections Program candidate is challenged, OCF should obtain and review the official Board of Elections order granting ballot access before authorizing the final base amount payment to the candidate's campaign committee.	No	Yes	
6. OCF should develop standard operating procedures for auditors to determine if a second contribution from the same contributor to the same campaign committee exceeds the per-contributor limits or if it can be approved for matching because the campaign committee refunded previous contributions and remitted any matching payments for them.	No	Yes	
7. OCF should add to the e-filing system any additional documentation it receives from the campaign committee that justifies changing the status of a contribution from declined to approved.	No	No	
8. OCF should test the Fair Elections Program e-filing system periodically to make sure automated controls like flagging ZIP codes outside D.C. and flagging excess contributions are working as intended.	No	Yes	
9. OCF should adjust requirements, working with the Council if necessary, so that matching is available only when residential addresses within D.C. are supplied (i.e. street address, not P.O. Box).	No	Yes	

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
10. OCF should review audit records of the Fair Elections Program e-filing system for indications of inappropriate or unusual activity, at a defined frequency, and report findings to designated OCF personnel.	No	Could reduce or increase expenditures, depending on the nature of inappropriate activity found.	
11. OCF should ensure that the Fair Elections Program e-filing system is supported by OCF IT personnel who are equipped with experience, training, and supervision to complete or delegate the tasks that are necessary to manage its security and privacy proactively.	Yes, training or hiring.	No	
12. When external changes increase the risk associated with following standard operating procedures, OCF should develop temporary procedures that are practical under the circumstances and adequately mitigate all relevant risks, including loss or theft of funds, and ensure they are followed.	No	Yes	

Agency Comments

On December 17, 2021, we sent a draft copy of this report to the Office of Campaign Finance (OCF) for review and written comment. OCF responded with comments on January 21, 2022. Agency comments are included here in their entirety.

JANUARY 21, 2022 RESPONSES OF THE OFFICE OF CAMPAIGN FINANCE TO THE D.C. AUDITOR RECOMMENDATIONS

1. **OCF should develop standard operating procedures for the Fair Elections Program Division to track campaign committees referred for non-compliance and to document all steps in the process.**

Response:

The current FEP SOP's state that auditors have the responsibility for referring noncompliant campaigns to the Office of the General Counsel (OGC). In addition to this current practice, FEP will revise the FEP SOPs include a provision which will require the FEP Auditors following the referral to the OGC to work with the candidate/committee to obtain the requested documents required to complete the audit and or secure requested supporting documents, and to review the enforcement practices to seek more stringent and appropriate remedies, based on the circumstances of the matter, such as revocation of certification and possibly criminal prosecution. The Draft Audit Report incorrectly states that no Fair Elections Program campaign committee has had its certification revoked when in fact the certification of the Candidate Renee' Bowser, Renee' Bowser for Ward 4 Principal Campaign Committee, was revoked on to June 30, 2020 for Failing to continue to run as a participating candidate in the 2020 Election Cycle.

The Bowser for Ward 4 Principal Campaign Committee also received a Non-Compliance Audit Report in January 2022. However, it should be noted that the Fair Elections Act does not impose the severe penalty of revocation or termination on Fair Election Committees for the failure to timely file Reports of Receipts and Expenditures or to timely respond to Requests for Additional Information. Similar to the enforcement in the Traditional Campaign Finance Program for these types of reporting delinquencies, ministerial fines are imposed for such violations in the Fair Elections Program. Therefore, the basis for revocation of certification in the Fair Elections Program requires violations of greater magnitude than delinquent reporting infractions.

In addition, the Office of Campaign Finance is in the process of developing an Administrative Module for the OCF E-Filing and Disclosure System which will include a Referral Tracker that will enable both the Fair Elections Division, Reports Analysis and Audit Division, and the Public Information and Records Management Division to monitor all enforcement activity related to matters the Divisions refer to the Office of the General Counsel.

2. **OCF should calculate the maximum matching amount using a separate process from the estimation used for the budget. OCF should use expenditures as defined by statute to calculate the maximum matching amount and assign another staff person to review the calculation to ensure accuracy.**

Response:

Each year, the Office of Campaign Finance must submit in time for inclusion in the Mayor's budget and financial plan, an estimate of the amount of public funds that will be necessary to provide for the administration of the Program and for the elections in the next year in which elections are scheduled. *See D.C. Official Code § 1-1163.32i.* The Fair Elections Act (the Act) prescribes the amount of Base Amount Payments, dependent upon the Office sought, and the process for the calculation of Matching Payments. The 2020 Election Cycle was the first election cycle during which public funds were made available to local campaigns.

As stated in the Draft Audit Report, the law did not clearly define the formula for determining the maximum in matching amounts a candidate may receive during the 2020 Election Cycle. Former calculations were based on the previous Election Cycle(s) in which that specific office was on the ballot (i.e., Member of Council from Ward 4; Member of the State Board of Education from Ward 2; etc.) as is defined in Title 3, Chapter 99 of the District of Columbia Municipal Regulations. The Office of Campaign Finance based its calculations on four-year election cycles in accordance with D.C.

Official Code Section 1-1161.01(16A) and was confident that the calculations that were provided to and approved by the Council of the District of Columbia were accurate.

By virtue of Title I, Subtitle C, “The Fair Elections Clarification Emergency Amendment Act of 2021”, of D.C. Act 24-0159, the “Fiscal Year 2022 Budget Support Emergency Act of 2021”, expires November 21, 2021 (extended to March 13, 2022 by D.C. Act 24-0235, the “Fiscal Year 2022 Budget Support Congressional Review Emergency Act of 2021”), the provisions of the Fair Elections Act pertaining to the calculation of the cap for the matching fund payments were amended to further clarify the process.

Specifically, D.C. Official Code § 1-1163.32e (d), as amended, now requires for the covered office of Mayor, to reflect on and calculate 110% of the average expenditures per election cycle of all candidates who were elected Mayor in the prior 4 general elections for Mayor; for the covered office of Chairman of the Council, to reflect on and calculate 110% of the average expenditures per election cycle of all candidates who were elected Chairman of the Council in the prior 4 general elections for Chairman of the Council; for the covered office of Attorney General, to reflect on and calculate 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 general elections for Attorney General have been held; for the covered office of Member of the Council elected at-large, to reflect on and calculate 110% of the average expenditures per election cycle of all candidates who were elected Member of the Council at-large in the prior 2 general elections for Member of the Council elected at-large; for the covered office of Member of the Council elected by ward, to reflect on and calculate 110% of the average expenditures per election cycle of all candidates who were elected Member of the Council by ward in the prior 2 general elections for Member of the Council elected by ward; for the covered office of Member of the State Board of Education elected at-large, to reflect on and calculate 110% of the average expenditures per election cycle of all candidates who were elected Member of the State Board of Education at large in the prior 2 general election cycles for member of the State Board of Education elected at large; and for the covered office of Member of the

State Board of Education elected by ward, to reflect on and calculate 110% of the average expenditures per election cycle of all candidates who were elected Member of the State Board of Education by ward in the prior 2 general election cycles for Member of the State Board of Education elected by ward.

The covered offices scheduled for election during the 2022 Election Cycle are the Offices of the Mayor, the Attorney General, the Chairman of the Council, At-Large (2 Seats) and Ward Members of the Council (Wards 1, 3, 5, and 6), and Ward Members of the State Board of Education (Wards 1, 3, 5, and 6). Based on the above referenced recent amendments of the Fair Elections Act, the Agency revisited the prior calculations which projected that at a minimum the total sum of $21,567,225.40 would be required to support the Elections Fund for the 2022 Election Cycle (including $20,157,225.40 for matching payments, and $1,410,000.00 for base amount payments). The former projections for the matching fund caps for the At-Large and Ward Members of the Council (1, 3, 5, and 6), and the Ward Members of the State Board of Education (1, 3, 5, and 6) were based on Election Cycles 2014 and 2018, the most recent completed cycles during which these specific offices were elected, and the number of candidates who achieved ballot access in the 2018 Election Cycle. The projections were included in the Office of Campaign Finance (CJO) Fiscal Year 2021 Budget Submission on October 25, 2019, which requested the sum of $3,666,428.32 (17%) for anticipated activity during Fiscal Year 2021(approved in the OCF FY 21 Budget); and in the Fiscal Year 2022 Budget Submission on November 5, 2020, which requested the sum of $15,744,074.52 (73%) for activity anticipated in Fiscal Year 2022.

Consistent with the clarification of D.C. Official Code § 1-1163.32e, the cost projections for the 2022 Election Cycle were revised based on the expenditures of the winning candidates for the Office of Member of the Council and State Board of Education, irrespective of the Ward designation, in the 2018 and the 2020 Election Cycles, and on the number of candidates in the 2020 Election Cycle who achieved Ballot Access. The cost projections for the Covered Offices for the Offices of the Mayor, the Attorney General, and the Chairman of the Council for the 2022 Election Cycle remain unchanged because these Offices were not on the ballot during the 2020 Election Cycle.

It should be noted that the internal approval process by the Agency of the projected calculations of the Elections Fund for the maximum cap required for Matching Payments does involve the review by the Public Affairs Manager, the Fair Elections Division Manager, the General Counsel, and the Director

3. **OCF should reconcile reports of actual payments from OFRM with its payment records and campaign committee bank accounts records frequently enough to detect payments to the wrong campaign committee during the election cycle.**

   Response:
   The OCF currently receives a weekly FEP Payment Tracking Summary by Fiscal Year from the OFRM. The FEP Division will assign a FEP Staff Member with the responsibility to monitor and compare the actual payments issued from OFRM with the payment amounts authorized for disbursement by order of the OCF to ensure the accuracy of the payment amounts and the issuance of the payments to the correct principal campaign committee.

4. **OCF should conduct a risk assessment for the FEP e-filing system, determine which information is sensitive, and develop a written security plan to keep it safe.**

   Response:
   The OCF will develop Standard Operating Procedures (SOP's) to address risk assessments for the FEP e-filing system. The Fair Elections Information Technology Specialist is currently developing a Risk Assessment Plan.

5. **When the nominating petition of a FEP candidate is challenged, OCF should obtain and review the official Board of Elections order granting ballot access before authorizing the final base amount payment to the candidate's campaign committee.**

Response:

The OCF submits that a second base payment was authorized prematurely by the FEP on August 31, 2020, (when if fact ballot access for the candidate was not achieved until September 2 and the Board of Elections (BOE) order was issued on September 4, 2020), pursuant to an email between FEP/OCF and the Registrar of the BOE. The FEP shall institute a policy which includes a provision in the SOP's to prohibit the authorization for base amount payments where the nominating petitions of FEP Candidates have been challenged prior to the receipt and review of an order by the BOE granting ballot access to the candidate's campaign committee.

6. **OCF should develop standard operating procedures for auditors to determine if a second contribution from the same contributor to the same campaign committee exceeds the per contributor limits or if it can be approved for matching because the campaign committee refunded previous contributions and remitted any matching payments.**

Response:

The OCF/FEP E-filing System currently flags all possible excessive contributions per the contribution limits per office sought. The auditors also filter all contributions through an excel spreadsheet for checks and balances. The FEP will develop SOP's to reinforce the existing business process of the Division.

7. **OCF should add to the e-filing system any additional documentation it receives from the campaign committee that justifies changing the status of a contribution from declined to approved.**

Response:

The OCF has already upgraded the FEP E-Filing System to implement this Feature. All FEP Candidates and Committees can currently upload additional documentation as necessary to the OCF/FEP E-Filing System. All responses to Audits and RFAI's may be uploaded by campaign committees to the FEP E-Filing System and reviewed by the FEP staff through the e-filing system which will enable the status of a contribution to a committee to be changed from declined to approved expeditiously.

8. **OCF should test the FEP e-filing system periodically to make sure automated controls like flagging ZIP codes outside DC and flagging excess contributions are working as intended.**

Response:

The FEP Information Technology Specialist has been assigned and is responsible for the twice weekly testing of the system to ensure that the automated features of the System, including flagging of zip codes outside of the DC and excessive contributions, are working properly

9. **OCF should adjust requirements, working with the Council if necessary, so that matching is available only when residential addresses within D.C. are supplied (i.e., street address, not P.O. Box)**

Response:

For your information, addresses with P.O. Boxes are not acceptable for matching funds. The FEP E-Filing System currently flags addresses with P.O. Boxes for denial.

10. **OCF should review audit records of the FEP e-filing system for indications of inappropriate or unusual activity, at a defined frequency, and report findings to designated OCF personnel.**

    Response:

    The audit records of the FEP E-Filing System are routinely reviewed by the OCF FEP Information Technology Specialist and any irregularities are immediately reported to the FEP Manager and Office of the General Counsel.

11. **OCF should ensure that the FEP e-filing system is supported by OCF IT personnel who are equipped with experience, training, and supervision to complete or delegate the tasks that are necessary to manage its security and privacy proactively.**

    Response:

    The FEP, Information Technology Specialist is responsible for ensuring that the FEP e-filing system is monitored and protected daily. The responsibilities of the Information Technology Specialist have been revised in the Standard Operating Procedures (SOP's) to include the specific duty to manage and monitor the security and privacy of the FEP e-filing.

12. **When external changes increase the risk associated with following standard operating procedures, OCF should develop temporary procedures that are practical under the circumstances and adequately mitigate all relevant risks, including loss of theft of funds, and ensure they are followed.**

    Response:

    The Public Information and Records Management (PIRM) Division is responsible for the receipt of all U.S. Mail and deliveries to the OCF. All mail is timestamped and delivered to the appropriate OCF Division or delivered to the PIRM Manager for further review.

Checks, cashier checks, or money orders that are received are delivered to the PIRM Manger to be properly receipted and recorded. Checks may be received for the payment of fines, copies of reports, or the Remission of Fair Elections Funds. The PIRM Manger makes photocopies of all checks received and prepares a receipt transmittal to be provided with the check to the Director via the Administrative Officer for delivery to the Office of the Chief Financial Officer.

If the check is for the payment of a fine, an additional copy of the check and receipt transmittal is provided to the General Counsel for the reconciliation of the records of enforcement matters where fines are imposed.

If the check is for the Remission of Fair Elections Funds, an additional copy of the check and receipt transmittal is provided to the FEP Manager for accounting purposes.

The PIRM Manger maintains photocopies of checks and receipt transmittal for the PIRM Division records which are kept in a secured cabinet in the Manager's Office, and for inclusion in the monthly reporting of the OCF Activity Report to the Board of Elections.

ODCA Response to Agency Comments

We appreciate OCF's attention to our report and response to our recommendations. We are pleased that OCF agrees with all of the recommendations.

While it is encouraging that OCF has assigned responsibility to a staff member to perform reconciliations, it will be important to include campaign committee bank statements in the reconciliation, as stated in our recommendation, in order to ensure that funds go to the correct account. We hope OCF will consider reconciling reports of actual payments from the D.C. Office of Finance and Resource Management with both its payment records and campaign committee bank account records.

We are pleased OCF plans to conduct a risk assessment of the Fair Elections Program e-filing system to identify sensitive information and write a plan to protect such information.

We welcome OCF's agreement that contributions from individuals for which a campaign committee provides a non-residential address, such as a P.O. Box, should not be approved for matching. We are hopeful that the automatic flagging OCF mentioned implementing since our audit scope in its comments on the draft report will be sufficient to prevent these types of contributions from being matched in the future.

It is reassuring that OCF has been able to return to its policies for check handling that include segregation of duties. If a need to deviate from the procedures arises, however, OCF should develop temporary procedures that are practical under the circumstances and adequately mitigate all relevant risks, including loss or theft of funds, and ensure they are followed.

We appreciate the additional information that OCF provided about the Renee Bowser campaign committee. We have edited the text of the final report to reflect that OCF revoked that campaign committee's Fair Elections Program certification.

Appendices

Appendix A

Appendix A: Payments from D.C. Treasury to candidates

Candidates by office	Base amount	Matching alone	Payment total
Council - At-large Maximum total $348,639			
Ed Lazere	$40,000	$308,639	$348,639
Christina Henderson	$40,000	$265,665	$305,665
Vincent Orange	$40,000	$162,436	$202,436
Chander Jayaraman	$40,000	$147,740	$187,740
Will Merrifield	$40,000	$131,675	$171,675
Markus Batchelor	$40,000	$130,045	$170,045
Monica Palacio	$40,000	$129,835	$169,835
Jeanne Lewis	$40,000	$96,355	$136,355
Franklin Garcia	$40,000	$71,960	$111,960
Council – Ward Maximum total $281,055			
Janeese Lewis George	$40,000	$241,055	$281,055
Jordan Grossman	$40,000	$172,692	$212,692
Kishan Putta	$40,000	$116,690	$156,690
Patrick Kennedy	$40,000	$115,545	$155,545
Randy Downs	$40,000	$106,875	$146,875
Trayon White	$40,000	$58,396	$98,396
Jack Evans	$40,000	$52,825	$92,825
John Fanning	$40,000	$51,325	$91,325
Mike Austin	$40,000	$43,425	$83,425
Martin Miguel Fernandez	$40,000	$43,172	$83,172
Anthony Green	$40,000	$40,200	$80,200
Kelvin Brown	$40,000	$32,245	$72,245
Yilin Zhang	$40,000	$30,515	$70,515
Renee Bowser	$20,000	$38,450	$58,450
Council - Ward 2 Special Maximum total $281,055			
Kishan Putta*	$40,000	$54,985	$94,985
Jordan Grossman*	$40,000	$52,416	$92,416
Patrick Kennedy*	$40,000	$43,280	$83,280
John Fanning	$40,000	$34,621	$74,621

Board of Education - At-large Maximum total $31,877

Mysiki Valentine	$10,000	$21,877	$31,877

Board of Education - Ward Maximum total $24,006

Dontrell Smith	$10,000	$14,650	$24,650
Eboni Thompson	$10,000	$14,006	$24,006
Allister Chang	$10,000	$11,550	$21,550
Carlene Reid	$10,000	$11,250	$21,250
Karen Williams	$10,000	$8,100	$18,100
James Harnett	$10,000	$7,285	$17,285
Ryan Washington	$10,000	$5,850	$15,850
Frazier O'Leary	$ -	$11,250	$11,250
TOTAL			**$ 4,018,879**

***The amounts listed are those that should have been paid to the special election committees for Kishan Putta, Jordan Grossman, and Patrick Kennedy. Payments intended for the special election for Ward 2 member of the Council were taken from the contingency fund. ODCA found that not all payments from the contingency fund were paid to the special election campaign committee; some were paid to the same candidate's primary election campaign committee. A more complete discussion of this problem begins on page 16.**

Source: **The District's System of Accounting and Reporting (SOAR)**

Appendix B

Appendix B: Recent amendment to the directions for calculating the maximum matching amount in the Fair Elections Act in D.C. Code § 1-1163.32e (d)

Original statute

"The maximum amount participating candidates may receive under this section shall be: [...]

For candidates for member of the Council elected at-large or by ward, and for candidates for member of the State Board of Education elected at-large or by ward, 110% of the average expenditures of all winning candidates for that covered office, respectively, in the prior 2 election cycles (not including special elections)."

Amended statute[29]

"The maximum amount participating candidates may receive under this section shall be: [...]

For candidates for member of the Council elected at large, 110% of the average expenditures per election cycle of all candidates who were elected member of the Council at large in the prior 2 general elections for member of the Council elected at large;

For candidates for member of the Council elected by ward, 110% of the average expenditures per election cycle of all candidates who were elected member of the Council by ward in the prior 2 general elections for member of the Council elected by ward;

For candidates for member of the State Board of Education elected at large, 110% of the average expenditures per election cycle of all candidates who were elected member of the State Board of Education at large in the prior 2 general elections for member of the State Board of Education elected at large; and

For candidates for member of the State Board of Education elected by ward, 110% of the average expenditures per election cycle of all candidates who were elected member of the State Board of Education by ward in the prior 2 general elections for member of the State Board of Education elected by ward."

29 *See* "Fiscal Year 2022 Budget Support Act of 2021", signed by the Mayor and enacted with Act Number A24-176. Title I, Subtitle C. "Fair Elections Clarification Amendment Act of 2021." Due to a delay in the Congressional review period, this provision was not effective as permanent legislation until November 13, 2021. See Law L24-0045. However, prior to that date, the provision was effective on August 23, 2021 via the "Fiscal Year 2022 Budget Support Emergency Act of 2021".

About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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