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**Montgomery County Government**

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# **Frequently Asked Questions**

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**Public Election Fund**

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*The following questions and answers are provided for general information only. They do not purport to be legal advice. Questions involving application of the Public Election Fund law to your particular circumstances should be addressed to a lawyer.*

## **What is the Public Election Fund and for what purpose was it established?**

The Public Election Fund (“Fund”) provides matching County funds based on eligible contributions to eligible candidates. The Fund was created to provide public campaign financing to a candidate for a County elective office in an effort to reduce the role of large private contributions during the election process and encourage small private donations.

## **Who is eligible to participate in this Program?**

To be eligible to participate in the Public Campaign Financing program, a candidate must be a County resident who is running for a covered office (i.e., the Office of the County Executive or County Councilmember) and become a candidate certified by the State Board of Elections in either a primary or general election.

## **Can you clarify what is considered to be a contested election? Does the election have to be contested in both the general and primary for it to be considered contested for both (i.e. there are 2 Democrats running for a council seat in the primary, but there is no Republican candidate for the general, is this still considered contested in the primary election)?**

A “contested election” is defined as an election in which there are more candidates for an office than the number who can be elected to that office. Contested election includes a special election held to fill a vacancy in a covered office under Section 16-17.

An election does not have to be contested in both the primary and the general election in order to be a “contested election.” The primary and general elections are separate elections under the public campaign finance law and the determination of whether an election is contested is made independently for each election. An election is contested if there are more candidates for the office than the number who can be elected to that office. For example, if there are two Democrats and one Republican running for a single County Council seat in the primary, the Democratic primary election is contested, but the Republican primary is not contested.

## **Can a candidate participate in the PEF Program during the primary election, and if they win, choose to opt out of participating in the Program during the general election (i.e. if a candidate becomes a certified candidate, unless they choose to withdrawal and pay back all public funds distributed to their campaign, they must participate in the Program until the end of the election cycle)?**

A candidate need only qualify once (i.e., receive a certain number of qualifying contributions that total a certain amount) to become a certified candidate during an election cycle, which is defined as the primary and the general election for the same term of a covered office. A certified candidate who accepts a matching public contribution during a primary or general election becomes a participating candidate for that primary or general election. In other words, participation in the primary election is separate from participation in the general election. But a certified candidate who accepted a public contribution during the primary election (and won) must participate in the general election unless that candidate files a statement of withdrawal with the State Board of Elections and repays the Fund the full amount of the public contributions received, with interest.

**What is the maximum amount of matching funds that each candidate can receive during an election? Can they receive the maximum amounts (i.e. \$750k) in the primary and the general elections or can they only receive the maximum amount over the entire election cycle?**

The statutory maximum public contribution a certified candidate can receive is calculated separately for the primary election and for the general election. For example, a certified candidate for County Executive can receive \$750,000 in public contributions for the primary election, and another \$750,000 in public contributions for the general election.

**Who is allowed to contribute to a candidate's publicly funded campaign account?**

Qualifying contributions must be made by County residents with an aggregate donation in a 4-year election cycle of a minimum of \$5 but not greater than \$150 within the election cycle, but no later than 15 days prior to the respective election.

**How does an individual become a certified candidate for the Office of the County Executive?**

- File a notice of "intent to qualify" for the Program with the Maryland State Board of Elections via their electronic filing system on or before April 15<sup>th</sup> in the year of election.
- Establish a publicly funded campaign account for the purpose of receiving eligible contributions, deposit into the account all qualifying eligible contributions (Note: proof of receipt of each qualifying contribution must be submitted to the Maryland State Board of Elections), and spend funds in accordance with Program regulations.
- Each candidate must collect from County residents at a minimum:
  - o 500 qualifying contributions (minimum \$5 but not to exceed \$150); and
  - o An aggregate total of at least \$40,000.

**How does an individual become a certified candidate for the Office of an At-Large Councilmember?**

- File a notice of "intent to qualify" for the Program with the Maryland State Board of Elections via their electronic filing system on or before April 15<sup>th</sup> in the year of election.
- Establish a publicly funded campaign account for the purpose of receiving eligible contributions, deposit into the account all qualifying eligible contributions (Note: proof of receipt of each qualifying contribution must be submitted to the Maryland State Board of Elections), and spend funds in accordance with Program regulations.
- Each candidate must collect from County residents at a minimum:
  - o 250 qualifying contributions (minimum \$5 but not to exceed \$150); and
  - o An aggregate total of at least \$20,000.

### **How does an individual become a certified candidate for the Office of a District Councilmember?**

- File a notice of “intent to qualify” for the Program with the Maryland State Board of Elections via their electronic filing system on or before April 15<sup>th</sup> in the year of election.
- Establish a publicly funded campaign account for the purpose of receiving eligible contributions, deposit into the account all qualifying eligible contributions (Note: proof of receipt of each qualifying contribution must be submitted to the Maryland State Board of Elections), and spend funds in accordance with Program regulations.
- Each candidate must collect from County residents at a minimum:
  - o 125 qualifying contributions (minimum \$5 but not to exceed \$150); and
  - o An aggregate total of at least \$10,000.

### **How would a candidate file a notice of intent to qualify for the Program and register a Public Finance Committee?**

All candidates who wish to participate in the Program would file their intent to qualify and establish a Public Finance Committee with the State Board of Elections via their electronic filing system. The following is a link to the State Board of Elections filing website.

<https://campaignfinance.maryland.gov/Public/PublicFinanceCommitteesHelp>

### **How much money would an individual have to raise in qualified contributions to become a certified candidate?**

- Each County Executive candidate must collect from County residents at a minimum:
  - o 500 qualifying contributions (minimum \$5 but not to exceed \$150); and
  - o An aggregate total of at least \$40,000.
- Each At-Large Councilmember candidate must collect from County residents at a minimum:
  - o 250 qualifying contributions (minimum \$5 but not to exceed \$150); and
  - o An aggregate total of at least \$20,000.
- Each District Councilmember candidate must collect from County residents at a minimum:
  - o 125 qualifying contributions (minimum \$5 but not to exceed \$150); and
  - o An aggregate total of at least \$10,000.

### **How are public funds distributed to a candidate once they become certified and request a matching distribution?**

Upon receiving the minimum number of qualifying contributions, a candidate would submit their qualifying contributions to the State Board of Elections to be certified. The State Board of Elections will then certify the contributions within 10 business days of receiving them. If the State Board of Elections certifies the contributions, they will then submit authorization to the County’s Director of Finance to distribute a public contribution to the certified candidate’s publicly funded campaign account. The Director of Finance must deposit the authorized public contributions in the candidates publicly funded campaign account within 3 business days after the Board authorizes the public contribution.

**What are the matching distribution amounts that a candidate can received once they become certified?**

Upon certification, the matching amounts of public funds from the PEF are listed in the table below:

<b>COVERED OFFICE</b>	<b>Qualifying Contribution</b>	<b>Matching Public Dollars</b>	<b>Qualified Contribution Threshold</b>	<b>Maximum Public Contribution</b>
<b>County Executive</b>	\$1	\$6	First \$50	\$750,000 Per Election Cycle
	\$1	\$4	Dollars \$51 - \$100	
	\$1	\$2	Dollars \$101 - \$150	
<b>At-Large Councilmember</b>	\$1	\$4	First \$50	\$250,000 Per Election Cycle
	\$1	\$3	Dollars \$51 - \$100	
	\$1	\$2	Dollars \$101 - \$150	
<b>District Councilmember</b>	\$1	\$4	First \$50	\$125,000 Per Election Cycle
	\$1	\$3	Dollars \$51 - \$100	
	\$1	\$2	Dollars \$101 - \$150	

**Where does the Public Election Fund receive its funding?**

All funds that are in the Public Election Fund are:

- Funds appropriated by the Montgomery County Council.
- Any unspent money in a certified candidate’s publicly funded campaign account that is returned after the candidate is no longer a candidate for a covered office.
- Any County matching funds received by a participating candidate who voluntarily withdraws from program participation that is returned to the Fund.
- All interest earned on money in the Fund, including interest on funds returned to the Fund by a participating candidate who withdraws from program participation.
- Voluntary donations made directly to the Fund.

**What happens to surplus funds remaining in a certified candidate’s publicly funded campaign account at the end of a primary election? General election?**

All unspent funds remaining in the certified candidate’s publicly funded campaign must be returned to the Public Election Fund at the end of the candidate’s contested campaign. For candidates who win a contested primary election and continue on to a contested general election, they may retain the unspent funds and continue to receive eligible contributions up to 15 days prior to the general election for the covered office for which they are campaigning.

**If, as a certified candidate, I receive a distribution(s) from the Public Election Fund for my campaign but later decide to withdraw from the Program, do I have to pay back the public contributions received?**

Yes, if a candidate receives any distributions from the Public Election Fund and later withdraws from the Program, for whatever reason, the candidate must return all Public Election Fund contribution amounts, including interest on the returned amount that was received during the election cycle. Interest is to be computed using the prime lending rate (published by the Federal Reserve Board) as of January 1 in the year in which the distribution is repaid to the Public Election Fund.

**What happens if the Public Election Fund runs out of funding during an election cycle?**

All requests for matching funds received from a certified candidate will be recorded in the order of receipt and once the Public Election Fund has additional funds, the funds will be distributed in the same order in which the requests were received until all request have been satisfied or funds have been exhausted.

**Can a candidate use contributions and funds that were raised by them prior to qualifying for the Program and becoming a Certified Candidate?**

To qualify to participate in the Public Election Fund Program, a candidate must become certified by meeting the required contribution thresholds (contribution number and dollar amounts) as well as not accepting contributions outside of the Qualified Contribution guidelines (e.g. \$5 - \$150, made by County resident, etc.). All Eligible Contributions will be deposited into the Candidate's established publicly funded campaign account for the exclusive purpose of receiving eligible contributions and spending funds in accordance with the Program. Any funds raised by a candidate prior to filing a notice of intent with the State Board of Elections cannot be used by the candidate at any point during their certified candidacy.

**When can I receive distributions of public funds to my publicly funded campaign account?**

The Distribution Period begins 365 days before the Primary Election and ends 15 days after the General Election that the candidate is participating in. For the 2018 election, the Distribution Period will run from June 26, 2017 through November 21, 2018.

**Who determines a candidate's eligibility, eligible contributions and expenditures, amount of matching funds that will be distributed, and the candidate's compliance with Program regulations?**

All determinations of candidate eligibility and compliance reside with the State Board of Elections (the Board). The decision by the Board whether to certify a candidate is final. Upon certification, the Board determines the amount of public contribution matching funds to distribute to each candidate based on their eligible contributions. All questions and disputes pertaining to permissible campaign expenditures are determined by and should be directed to the Board.

**During the period that I am obtaining qualified contributions, but prior to becoming a certified candidate, am I subject to the Program's regulations over campaign expenditures?**

Yes, to become a certified candidate for a County Elected Office with the State Board of Elections, each applicant candidate must provide the following:

- 1) A declaration from the candidate agreeing to follow the regulations governing the use of a public contribution;
- 2) A campaign finance report which includes:
  - a. A list of each qualifying contribution received
  - b. A list of each expenditure made by the candidate during the qualifying period
  - c. The receipt associated with each contribution and expenditure
- 3) A certificate of candidacy for a covered office.

Any expenditure items not in compliance with these regulations will disqualify the potential candidate from becoming certified and participating in the Public Election Fund Program.

**What are considered to be either allowable or prohibited uses of funds within the Program?**

The allowable uses of money in a publicly funded campaign account are limited to expenses directly related to election campaign related activities and incurred during the specific time period for either the primary or general election.

Prohibited expenses of public campaign funds include, but are not limited to, personal use or expenses related to holding office; paying for a personal endorsement; and paying late filing fees.

Prohibited expenses include contributing to current or future candidates for any elective office, and contributions to any entity or organization, such as a political party.

**When can I begin raising qualified contributions towards the certification requirements?**

The Qualifying Period for becoming a certified candidate begins on January 1 following the prior General Election and ends 45 days prior to the Primary Election that the candidate is participating in. For the 2018 election, the Qualifying Period will run from January 1, 2015 through May 12, 2018.

**Can I use money raised outside of the Program to pay in advance for goods and services which will be received after I join the Program?**

No. All goods and services that are received once a candidate has filed their intent to participate in the Program must be paid for out of the candidate's publicly funded campaign account. However, assets that the candidate has paid for and received prior to filing their intent to participate in the Program can be used within the candidate's campaign after they become a participating candidate:

- **Example 1:** On March 1, 2017, Candidate A contracts with a bus manufacturer to build a custom campaign bus and pays \$100,000 in full for the bus to be built and delivered on July 1, 2017. On April 1, 2017, Candidate A files their notice of intent to participate in the Public Election Fund with the State Board of Elections. On July 1, 2017, upon receipt of the pre-paid campaign bus, Candidate A would be in violation of the Public Election Fund regulations which prohibit the advanced purchase of goods and services with ineligible contributions received outside of the Program.
- **Example 2:** On March 1, 2017, Candidate B contracts with a web developer to create a campaign website for the cost of \$10,000 and pays in full at the time. On March 21, 2017, the website is completed and published to the world wide web with an ongoing monthly fee of \$99, which began on March 21, 2017. On April 21, 2017, Candidate B files their notice of intent to participate in the Public Election Fund with the State Board of Elections. Upon filing this notice of intent, Candidate B now pays the monthly website fee of \$99 from the candidate's publicly funded campaign account. This is considered to be an allowable expense within the Program since the asset was purchased, received, and in operation prior to the candidate filing the notice of intent and all associated fees moving forward for current charges are being paid out of the approved publicly funded campaign account.

**Can a County resident contribute to multiple candidates who participate in the Public Election Finance Program?**

Yes. As long as each candidate receives no more than \$150 from an individual during a 4-year election cycle, the individual can contribute to as many qualified candidates as they so choose.

**Are there any sample contribution forms or templates available for campaigns to use?**

Yes, see the below links for contribution sample templates:

Contribution Card Sample:

[http://www.elections.state.md.us/campaign\\_finance/documents/Contribution\\_Card.pdf](http://www.elections.state.md.us/campaign_finance/documents/Contribution_Card.pdf)

In-Kind Contribution Sample:

[http://www.elections.state.md.us/campaign\\_finance/documents/In-Kind%20contributions.pdf](http://www.elections.state.md.us/campaign_finance/documents/In-Kind%20contributions.pdf)



**Where can I see how many candidates have filed an intent to qualify for the Program or how many certified candidates there are participating in the Program?**

To view all campaign committees that have been certified or have filed an intent to become certified to participate in the Program, click on the below link, in the drop down box for “Committee Type”, select the last option “Public Financing Committee”, then click search.

<https://campaignfinance.maryland.gov/Public/ViewCommittees>

**When a candidate files a notice of intent to qualify for the Program, what must happen to all monies in other prior campaign accounts affiliated with this candidate?**

Upon filing a notice of intent to qualify for the Program, a candidate may only use eligible and qualified contributions (including matching public funds) that have been deposited into their public campaign finance account. Any other accounts that affiliated with a candidate must be frozen and may not be used while a candidate is participating in the Program.

**If it appears that a candidate has violated the Program rules and regulations that they declared with the State Board of Elections to agree to follow, who should be notified of the perceived violation?**

A complaint alleging an impermissible receipt or use of funds by a participating candidate must be filed with the State Board of Elections. A participating candidate must provide the State Board of Elections with reasonable access to the financial records of the candidate’s publicly funded campaign account, upon request.

**If a candidate chooses not to participate in the PEF Program during the primary, can they participate in the PEF Program during the General Election?**

The law (County Bill 16-14) doesn’t specifically prohibit anyone from participating in the PEF Program in the general election even if they chose not to do so during the primary election. However, the qualifying period for a candidate to be able to participate in the Program ends on 5/12/18, prior to the primary election that will be held on 6/26/18. Therefore, unless a candidate has qualified to participate in the Program prior to the primary election taking place, they would be precluded from participating as a PEF candidate in the general election.

**Can a candidate accept in-kind contributions?**

The Program allows for in-kind contributions using the same restrictions that are in place for other contributions (i.e. limited to \$150 per contributor, can only be given from an individual, etc.). However, unlike other contributions, in-kind contributions are not matched with public funds.

**Can a candidate accept cash contributions?**

Yes, cash contributions are allowable and can be matched as long as the contribution meets the Program's requirements for matching (i.e. between \$5 - \$150, made by a County resident, etc.) and all required contributor information is collected at the point of contribution, similar to that of a contribution made by check or electronic payment. Cash contributions are limited to \$100 in the aggregate for the election cycle to your campaign committee by a contributor per State law.

**Can a County resident who is making a qualified contribution use a P.O. Box as their listed address on their contribution card?**

No, even if an individual certifies or confirms that they are a County resident, they still need to include their County resident address on the Contribution Card that they fill out along with their campaign contribution. If a non-resident or P.O. Box address is provided on a contribution card, it will not be considered a qualifying contribution and therefore will not be eligible for a distribution from the Public Election Fund.

**If a County resident makes a qualified contribution to a qualifying candidate during their campaign, but moves residences from the individual's County address to one outside of the County prior to the election, is the contribution still a qualifying contribution and eligible to be matched by public funds?**

Yes, if at the time of the campaign contribution, the individual is a resident of the County, then the contribution is considered a qualified contribution and is eligible to receive a distribution from the Public Election Fund.

**If an individual resident makes 10 separate contributions of \$15, does that count as 10 contributions or only 1 individual contribution?**

The \$150 in aggregate that were made in 10 separate contributions would qualify as 1 individual contribution. Contributions are recognized by individual resident rather than by a single contribution amount. It should also be noted that each resident may only contribute up to \$150 in any given election cycle, regardless of how many single contributions they make.

**If an individual made a contribution to a candidate's campaign prior to the candidate filing an intent to participate in the PEF Program, can the same individual make an additional contribution of \$150 to the same candidate after the candidate has filed their intent to participate in the Program?**

No, a candidate may only receive the maximum of \$150 from any individual during an election cycle, which includes amounts received prior to electing to participate in the Public Election Program. However, if an individual only contributed \$50 to a campaign prior to the candidate electing to participate in the PEF Program, the individual could still contribute up to \$100 in qualified contributions to the candidate's public campaign account during that election cycle.

**(ADDED 11/30/17) If a candidate is not married, can they contribute or lend up to \$12,000 in contributions to their campaign similar to a candidate who is married, or are they limited to \$6,000 since they do not have a spouse?**

The County law states that an applicant candidate and the candidate's spouse together must not contribute or lend a combined total of more than \$12,000 to the candidate's publicly funded campaign account. Therefore, irrespective of whether an applicant candidate has a spouse or not, an applicant candidate may contribute, individually or in combination with their spouse, up to \$12,000 to their campaign in any given election cycle.

**(ADDED 11/30/17) Is an applicant candidate required to obtain a contribution receipt for eligible contributions or is this requirement only for qualifying contributions?**

A contribution receipt is required for all contributions received, eligible and qualifying, during a candidate's public financing campaign. Failure to submit a receipt for an eligible contribution from a non-resident would not result in the loss of matching contributions otherwise earned, however, it could result in a fine to the campaign for violating the law after an audit is performed if the candidate cannot prove who made the eligible contribution and for how much.

**(ADDED 1/31/18) If an applicant candidate files for certification with the State Board of Elections and it is determined that they don't meet the minimum requirements to qualify for public financing due to error or otherwise, is the candidate automatically disqualified from participating in the Program or can they correct any errors and resubmit to become qualified?**

A candidate may submit only one application for certification for any election. A candidate may correct any mistakes in the application for certification within the earlier of 10 business days after receiving notice that the Board denied the application, or, by the end of the qualifying period. Under no circumstances may an applicant candidate solicit new qualifying contributions after the application has been filed. The following examples illustrate these points.

Example 1: On June 1, 2017, Candidate A files an application for certification with the appropriate number, and total dollar amount, of qualifying contributions for the covered office. During its review, the Board determines that some of Candidate A's qualifying contributions were made by non-County residents and therefore do not meet the minimum requirements. Candidate A will then be allowed to correct this mistake by resubmitting the application with proof of additional qualifying contributions that were made by County residents, and deposited in Candidate A's campaign account, prior to June 1, 2017.

Example 2: On June 1, 2017, Candidate B files an application for certification without the appropriate number, and total dollar amount, of qualifying contributions for the covered office. The Board denies the application, but Candidate B did not have any other contributions in addition to those that had been included in the application on June 1, 2017. Candidate B will not be allowed to resubmit the application and will be disqualified from participating in the Program for not meeting the minimum qualifications to become a certified candidate.

**For additional information related to the Program, please contact:**

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