DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Banking and Financial Institutions, pursuant to the authority set forth in Mayor's Order 2002-45, dated February 22, 2002, and Section 14 of the Opportunity Accounts Act of 2000, effective April 3, 2001 (D.C. Law 13-266; D.C. Official Code §1-307.61 et. seq.) ("Act"), hereby gives notice of the adoption of an amendment to Title 26A, "Banking and Financial Institutions," of the District of Columbia Municipal Regulations ("DCMR") by adding a new chapter "Chapter 21 Opportunity Accounts." The purpose of the amendment is to implement the Act to establish opportunity accounts for residents of the District of Columbia. A notice of proposed rulemaking was published in the D.C. Register ("DCR") on April 12, 2002, at 49 DCR 3488. No comments were received in connection with the proposed rule and no changes have been made since publication of the proposed rule. Final action to adopt these rules was taken on May 23, 2002. The final rulemaking will become effective upon publication of this notice in the D.C. Register.

CHAPTER 21

OPPORTUNITY ACCOUNTS

2100 SCOPE

2100.1 These regulations shall govern the implementation of the Act including all opportunity accounts in the District of Columbia funded under the Act. They provide the rules for opportunity account participants, the non-profit organizations which seek and are chosen to administer an opportunity account program, and banks and other savings institutions that participate by holding opportunity accounts.

2101 FUNCTION OF OPPORTUNITY ACCOUNTS OFFICE, APPLICATION REQUIREMENTS AND PROCEDURES

2101.1 The Opportunity Accounts Office ("Office"), established pursuant to the Act, shall select, on a competitive basis, qualified non-profit organizations to administer the opportunity accounts programs. The non-profit organization shall administer the program, including selecting and enrolling qualified applicants, training in money management including budgeting and saving, training in the purchase and use of the participant's chosen asset, and assisting in the purchase of the chosen asset.

1.2 The Office shall solicit applications from non-profit organizations serving the District of Columbia to administer Opportunity Account programs pursuant to the Act. The Office shall solicit further applications as appropriate considering the money available and the need for broader coverage within the District of Columbia.

2101.3 Each applicant shall submit an application to the Office, including forms and attachments, as required by the Office and consistent with the purpose of the Act and these rules.

2101.4 The Office shall review each application for completeness and eligibility and then rank them on program strength under the criteria set forth in section 2101.5 below.

2101.5 Each application shall contain the following information:

(a) The name and address of the applicant;

(b) A description of the qualifications of the applicant to administer an opportunity accounts program, including its history, funding sources, a summary of other programs, including those that will assist the account holders, and the population and area of the District of Columbia that the applicant organization has served;

(c) An estimate of the costs projected for the administration of the program;

(d) A description of the ability and plans of the applicant to provide or raise sufficient matching and operating funds;

(e) A description of groups to be targeted for priority participation in the opportunity accounts program;

(f) A description of the process the applicant will use to include account holders in the decision-making process regarding the implementation and administration of the opportunity account program;

(g) A description of the process that the applicant will use to require account holders to contribute funds from earned income;

(h) A description of the terms of the opportunity accounts which the applicant proposes to offer including:

(1) The match ratio and source for each dollar of matching

funds;

(2) The overall maximum amount of participant's saving that will be matched, by asset type;

(3) A minimum monthly saving requirement; and

(4) A plan to encourage saving of Earned Income Tax Credit refunds.

(i) A description of the minimum or maximum savings period; and a time, other than the statutory time, for ending the opportunity account;

(j) A plan to provide opportunity accounts for youths under eighteen (18) years old and to ensure that the youths have an income for savings;

(k) A plan to publicize the availability of opportunity accounts and recruit participants;

(l) A plan to offer economic literacy training or arrangements for a partner to offer economic literacy training and to ensure that opportunity account holders complete the training satisfactorily;

(m) A description of the ability of the applicant to provide auxiliary services, such as counseling, to assist account holders with saving and resolving life problems that can prevent successful saving;

(n) A requirement that the account holder be provided adequate information on the requirements of the opportunity account program and this Act and the purposes for wliich an opportunity account may be used;

(o) A description of the process for offering or making available financial management courses or training on the use of funds for approved purposes, such as home ownership training for home ownership opportunity accounts; stay-in-school, tutoring, SAT prep and college counseling for education opportunity accounts; and business training for microenterprise opportunity accounts;

(p) A description of the process for regular evaluation and review of opportunity accounts to ensure compliance with the Act, District of Columbia regulations, and program rules by account holders;

(q) A description of the process for counseling account holders who are not in compliance with the Act or these rules;

(r) A description of the system for preventing withdrawal of matching funds for a purpose other than an approved purpose by maintaining the matching funds in a matching funds account separate from the opportunity account into which the account holder deposits his or her savings;

(s) If the applicant proposes to undertake any aspect of its proposal with the assistance of or in conjunction with a partner, the applicant shall include relevant information regarding any partner that the applicant proposes to utilize to implement and administer its proposal, including a signed agreement or letter specifying the role of the partner;

(t) A description of the applicant's key staff administering the opportunity account program by organizational chart and resume (or if not yet hired, job description);

(u) A description of the applicant's financial audits and, if available, program audits for the most recent fiscal year; and

(v) Such other information as the Office shall require.

2102 APPLICANT ORGANIZATION ELIGIBILITY AND ASSESSMENT

2102.1 In order to approve an application, the Office shall determine that the applicant is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)).

2102.2 In addition to section 2102.1 above, the Office shall consider the following factors in approving or disapproving applications filed pursuant to sections 2101.2 through 2101.5:

(a) The administrative and technical ability of the applicant to administer an opportunity account program;

(b) The fiscal accountability of the applicant including accounting procedures and audit reports;

(c) The ability of the applicant to provide or raise money for matching contributions;

(d) The ability of the applicant to establish and administer an opportunity account reserve fund to receive contributions from opportunity account program contributors;

(e) The amount and quality of proposed auxiliary services that the applicant will provide, including economic literacy training, asset training, counseling, and asset purchase assistance;

(f) The experience and training of the staff that the applicant will assign to the opportunity account program;

(g) The record of the applicant in administering an opportunity accounts program, or other asset-based programs such as homeownership, education community development, or social services;

(h) The likelihood that the applicant will be able to administer a successful opportunity account program; and

(i) Any other factors the Office considers relevant to ensure the creation and operation by the applicant of an efficient and effective opportunity account program.

2103 FINANCIAL INSTITUTIONS

2103.1 General approval is hereby granted to financial institutions that have a branch office located in the District of Columbia to establish opportunity accounts and opportunity account reserve funds accounts in compliance with the Act. These accounts shall be opened and managed under an agreement with an administering organization.

2103.2 Financial institutions establishing any opportunity account or opportunity account reserve fund account shall certify to the Office, on a form prescribed by the Office and accompanied by any documentation required by the Office, that the account has been established and that funds have been deposited into the account.

2103.3 A financial institution establishing an opportunity account shall:

(a) Maintain the account in the name of the account holder alone or in a sub-account of an escrow or custodial account in the name of the administering organization;

(b) Permit deposits to be made in the name of the account holder alone or in an administering organization on behalf of the account holder;

(c) Provide at least the rate of interest for similar accounts in the financial institution; and

(d) Permit the account holder, or, if in an escrow or custodial account, the administering organization to withdraw money from the account.

2104 OFFICE CONTRACT AGREEMENTS

2104.1 Following the selection of a non-profit organization to administer an opportunity account program, the Office shall enter into an agreement with the non-profit organization. In addition to the other requirements of the Office, the agreement shall provide that the administering organization will provide a report to the Office every six (6) months identifying the following:

(a) The number of opportunity account holders that the administering organization assists;

(b) The aggregate dollar amount in opportunity accounts contributed by account holders and in matching funds which are supervised by the administering organization;

(c) The sources of matching funds received and the amount received from each source;

(d) The amount available in the administering organization's opportunity account reserve account;

(e) The amounts withdrawn from opportunity accounts and the opportunity account reserve account and the use of those funds withdrawn;

(f) The activities undertaken by the administering organization to recruit opportunity account holders;

(g) The activities undertaken to raise the non-District of Columbia matching funds, either private or federal, (unless at the time of selection, the amount of non-District of Columbia matching funds, either private or federal, was in hand or committed to the administering organization);

(h) A list of financial institutions at which opportunity accounts or

opportunity accounts reserve accounts are held that are supervised by the administering organization, including number of accounts and aggregate dollars at each; and

(i) Such other information as the Office requires.

2104.2 Each administering organization must also agree as follows:

(a) That the administering organization will use no more than twenty percent (20%) of the entire grant for operating funds over the entire life of the grant. For example, if an administering organization receives one hundred thousand dollars ($100,000), it can use only twenty thousand dollars ($20,000) of that amount for operating for the opportunity accounts funded with that grant even though some opportunity accounts may be open and active for five (5) years from the grant;

(b) That the administering organization shall establish procedures to assure that:

(1) All match rates provided by District of Columbia funds shall be a maximum of two dollars ($2) of matching funds to one dollar ($1) of participant's savings;

(2) All match rates provided by non-District of Columbia funds shall, at a minimum, equal the District of Columbia matching funds;

(3) No more than three thousand dollars ($3,000) of District of Columbia funds are provided to any opportunity account;

(4) The administering organization notifies financial institutions holding accounts of any changes in the status of the account, including the death of the account holder; and

(5) The administering organization meets other program and financial requirements as the Office requires.

2104.3 If the Office determines that an administering organization has failed to comply fully with the requirements of the Act, these rules, or its agreements with the Office, the Office may take such action as it deems appropriate, including establishing a deadline for complete compliance; temporary termination from participation in the program; and permanent termination of participation in the program.

2105 APPROVED USE OF OPPORTUNITY ACCOUNTS

2105.1 After the required saving and financial management training are both completed, the account holder shall be eligible to purchase the approved asset using both his or her savings and the matching funds.

2105.2 An account holder may withdraw his or her opportunity account funds and receive match funds for any of the following purposes, if approved by the administering organization:

(a) To pay educational costs for the account holder or a spouse, domestic partner, father, mother, child, or dependent of the account holder at an accredited institution of higher education;

(b) To pay job training costs for the account holder or a spouse, domestic partner, father, mother, child or dependent of the account holder at an accredited or licensed training program;

(c) To purchase a primary residence;

(d) To pay for major repairs or improvements to a primary residence;

(e) To fund the start-up of a business for the account holder or a spouse, domestic partner, father, mother, child, or dependent of the account holder;

(f) To pay for costs associated with a medical emergency for the account holder or a spouse, domestic partner, father, mother, child, or dependent of the account holder, to the extent that those costs are not covered by insurance;

(g) To pay for costs and expenses incurred during retirement;

(h) To purchase a federally qualified individual retirement account if such purchase takes place not earlier than five (5) years after the establishment of the opportunity account.

2105.3 Any saving by the participant left after the purchase shall remain the property of the participant.

2105.4 Unused matching funds shall return to the pool of matching funds available for other account holders.

2106 WITHDRAWALS FROM OPPORTUNITY ACCOUNTS

2106.1 Withdrawals from opportunity accounts for purposes which are not permitted under the Act, these rules, or approved by the administering organization, shall, at a minimum, result in a reduction of the match made available to the participant in the match ratio. In addition, unless the withdrawal qualifies under section 2106.3:

(a) The account holder shall lose his or her matching funds and the matching funds shall be returned to the administering organization for use by other account holders or to the District of Columbia as the Office directs;

(b) The account holder shall be removed from the opportunity account program; and

(c) All funds deposited by the account holder into the opportunity account, plus interest earned on that amount, shall be returned to the account holder within thirty (30) days.

2106.2 An account holder may make an emergency withdrawal of his or her opportunity account funds without resulting in removal from the program in accordance with section 2106.3.

2106.3 An account holder may make an emergency withdrawal in the following circumstances:

(a) To pay the costs of medical care or the expenses necessary to obtain medical care for the account holder or a spouse, domestic partner, father, mother, child, or dependent of the account holder;

(b) To make a payment necessary to prevent the eviction of the account holder from the primary residence of the account holder or prevent foreclosure on a mortgage for the primary residence of the account holder; or

(c) To make payments necessary to enable the account holder to meet necessary living expenses following loss of employment.

2106.4 Except as provided in section 2106.5, an account holder making an emergency withdrawal shall only withdraw funds deposited by the account holder plus interest on those funds and shall not withdraw or have any right to withdraw matching funds.

2106.5 Account holders saving in medical emergency opportunity accounts may withdraw matching funds if the medical emergency is a permitted and approved use.

2106.6 An emergency withdrawal shall not be made unless authorized by an administering organization.

2106.7 An account holder shall deposit funds into the opportunity account in the same amount as the funds withdrawn from the account for the emergency withdrawal no later than twelve (12) months after the date of the withdrawal. If the account holder fails to redeposit the funds as required by this section, the account holder shall:

(a) Lose his or her matching funds and the matching funds shall be returned to the administering organization in the same amount as the matching funds were provided or solely to the administering organization for use by other account holders or to the District of Columbia as the Office directs;

(b) Be removed from the opportunity account program; and

(c) Receive all funds deposited by the account holder into the opportunity account, plus interest.

2106.8 Notwithstanding the provisions of this section, if the administering organization finds that extenuating circumstances of the account holder and the unapproved withdrawal justify retaining the account holder in the program, the administering organization may request, in writing, a waiver of the requirement that the account holder be removed from the program from the Office. The Office may grant such a waiver if it is consistent with the purpose of the Act to assist low-income families to purchase assets that will contribute to self-sufficiency. The Office may impose probationary terms and conditions to the waiver.

2107 TAXATION AND OTHER CONSEQUENCES

2107.1 Matching funds, spent by or for the benefit of the account holder for a use permitted by the Act and approved by the administering organization, are exempt from taxation under District of Columbia law, provided that any money withdrawn from a matching funds account by an account holder for an unapproved use shall be taxed as income to the account holder.

2107.2 Income earned on the deposits of the account holder in the opportunity account is earned income to the account holder and is subject to taxation by the District of Columbia.

2107.3 Funds in an Opportunity Account, including accrued interest, and matching funds available to the account holder shall not be considered in the determination of whether the account holder is eligible to receive public assistance or benefits, or the determination of the amount of public assistance or benefits available to the account holder.

2108 DISPOSITION OF OPPORTUNITY ACCOUNT UPON DEATH

2108.1 An account holder shall designate, in writing, a contingent beneficiary at the time the account is established on a form provided by the Office.

2108.2 In the event of the death of the account holder, ownership of the account shall be transferred to the contingent beneficiary. If the contingent beneficiary is deceased, or is not eligible to be an account holder, or otherwise cannot or will not accept ownership of the account, the matching funds shall be returned to the District of Columbia and the administering organization in the same amounts as the matching funds were provided. The funds in the opportunity account contributed by the account holder, plus interest, shall be disbursed in accordance with the District of Columbia law.

2108.3 The account holder may change his designation of the contingent beneficiary at any time, on a form provided by the Office.

2199 DEFINITIONS

2199.1 For the purpose of this chapter, the following terms have the meaning ascribed in this section:

"Account holder" means a person who is the owner of an opportunity account.

"Administering organization" means an organization that is approved by the Office to implement and administer an opportunity account program.

"Audit report" means a report prepared by an independent certified accounting firm within six (6) months after the close of the administering organization's fiscal year. The report shall include an unqualified opinion and a Statement of Financial Position which shall indicate a positive unrestricted net asset balance.

"District of Columbia median income" means the most recent median income statistic for the District of Columbia published by the United States Department of Housing and Urban Development.

"Financial institution" means any bank, trust company, savings bank, credit union, or savings and loan association with an office in the District of Columbia.

"Fiscal accountability" means an unqualified audit conducted by an independent certified public accountant of an administering organization within the last fifteen (15) months which must include verification that (a) at least one (1) year's operating funds are banked or committed and capable of underwriting opportunity account program services or (b) the administering organization has been in operation for three years or more and demonstrated the ability to successfully sustain its operations.

"Medical emergency" means a debilitating or life-threatening illness.

"Opportunity account" means a financial instrument established pursuant to the Act and, where applicable, the associated matching funds account.

"Opportunity account reserve fund" means the fund created by an administering organization for the purposes of funding the costs incurred in the administration of an opportunity account program and for providing matching funds for opportunity accounts.

"Retirement" means the period after which a person becomes eligible for Social Security benefits.