

New York City Campaign Finance Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? We are proposing amendments to the Campaign Finance Board’s (“Board”) rules regarding public funds payments and repayments, proof of compliance with the Conflicts of Interest Board (“COIB”), deadlines for submitting certain documents and completing a compliance training, disclosure statements, contribution limits, transfers of funds, qualified expenditures, independent expenditures, expenditures in special elections, disclosure in runoff elections, and the Voter Guide. These amendments are being made to conform to, and facilitate implementation of and compliance with, amendments made to the Administrative Code of the City of New York (the “Code”) and the New York City Charter (the “City Charter”) by Local Laws No. 1 and 128 for the year 2019; amendments made to the City Charter by the 2018 and 2019 Charter Revision Commissions; and amendments made to the New York State Election Law by section 14 of chapter 5 of the laws of 2019 and section 8 of chapter 6 of the laws of 2019.

When and where is the Hearing? The Board will hold a public hearing on the proposed rules. The public hearing will take place at 1:00 p.m. on March 26, 2020. The hearing will be in the Board’s board room at 100 Church Street, 12th Floor, New York, NY 10007.

This location has the following accessibility option(s) available:

- Wheelchair Accessible
- Sign Language Interpretation

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- Website.** You can submit comments to the Board through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- Email.** You can email written comments to Rules@nyccfb.info.
- Mail.** You can mail written comments to Hillary Weisman, General Counsel for Legal Affairs, Campaign Finance Board, 100 Church Street, 12th Floor, New York, NY 10007.
- Fax.** You can fax written comments to the Board at (212) 409-1705.
- Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling Hillary Weisman, General Counsel for Legal Affairs, at (212) 409-1858. You can also sign up in the hearing room before the hearing begins. You may speak for up to three minutes.

Is there a deadline to submit written comments? Yes, written comments must be submitted by March 25, 2020.

Do you need assistance to participate in the Hearing? You must tell Hillary Weisman if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 409-1800. You must tell us by March 23, 2020.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rules will be available to the public on the Board's website at www.nyccfb.info.

What authorizes the Board to make these rules? Sections 1043, 1052(a)(8), and 1052(a)(15)(e) of the City Charter and sections 3-701 *et seq.* of the Code authorize the Board to make these proposed rules. These rules were included in the Board's regulatory agenda for the 2020 fiscal year.

Where can I find the Board's rules? The Board's rules are in title 52 of the Rules of the City of New York and on the Board's website at <http://www.nyccfb.info/law/rules>.

What rules govern the rulemaking process? The Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rules

The Campaign Finance Board (the “CFB” or “Board”) is a nonpartisan, independent City agency that empowers New Yorkers to make a greater impact in elections. The CFB administers the City’s campaign finance system, overseeing and enforcing the regulations related to campaign finance and holding candidates accountable for using public funds responsibly. The CFB publishes detailed public information about money raised and spent in City elections by candidates and independent spenders, and engages and educates voters through community outreach, the Voter Guide, and the Debate Program.

The CFB is proposing amendments to several of its rules regarding public funds payments and repayments, registration and certification, proof of compliance with the Conflicts of Interest Board (“COIB”), deadlines for submitting certain documents and completing a compliance training, disclosure statements, contribution limits, transfers of funds, qualified expenditures, independent expenditures, expenditures in special elections, and the Voter Guide.

The CFB is proposing these amendments to improve the administration of the Campaign Finance Program and to conform to, and facilitate implementation of and compliance with, amendments made to the City Charter by the 2018 and 2019 Charter Revision Commissions; Local Laws No. 1 and 128 for the year 2019, codified in sections 3-702, 3-703, 3-704, 3-705, 3-706, 3-708, 3-709, 3-709.5, 3-710, 3-713, 3-720, 3-801, and 12-110 of the Administrative Code of the City of New York (the “Code”) and sections 1052 and 1152 of the City Charter; section 14 of chapter 5 of the laws of 2019, codified in section 8-100(1) of the New York State Election Law; and section 8 of chapter 6 of the laws of 2019, codified in § 8-600 of the New York State Election Law.

The following is a summary of the substantive changes.

Summary of Proposed Rules

Chapter 1

Section 1-02 is amended to update the definition of “optional early public funds repayment” to reflect the fact that there are now multiple public funds payments made before the ballot is set. Additionally, the definitions of “election” and “transfer” are amended to account for the removal of runoff elections (*see also* Chapter 16).

Section 1-04(a)(iii) is amended to clarify that if a scheduled payment date falls on a Saturday, Sunday, or legal holiday, the payment will be made on the next business day.

Chapter 2

Section 2-01 is amended to require that candidates declare an office sought when they submit a Filer Registration. Candidates may change their office sought until the certification deadline or until they receive public funds, whichever comes first. Pursuant to section 2-02(e), a declaration of office sought must also be provided with a Certification. This information is crucial to effective and efficient administration of the Campaign Finance Program, as it is required in order to

determine each candidate's contribution limit, expenditure limit, threshold calculation, and total public funds payable.

Section 2-02 is amended to update the certification and rescission deadlines, in order to conform to §§ 3-703(1)(c) and 3-705(4) of the Code, as amended by Local Law No. 128 of 2019 ("Local Law 128").

Section 2-06 is amended to clarify the deadlines by which candidates must complete the CFB's pre-election compliance training. Candidates not seeking an early payment must complete the training by the final day of the disclosure period reported in the 32-day pre-primary disclosure statement, while candidates seeking an early payment must complete the training at least 15 business days before the payment is made.

Chapter 3

Section 3-01(b) is amended to reflect the fact that there are now multiple public funds payments made before the ballot is set.

Section 3-01(d) is amended to provide that a candidate may be ineligible to receive public funds during the pre-election period if the candidate maintains a significant reporting variance for either receipts or expenditures, fails to report employment information or provide complete and accurate backup documentation for a significant percentage of matching claims, or fails to attend a compliance training. Reporting variances, missing employment information, and documentation error rates above a certain percentage are common indicia of inadequate internal controls and thus provide a basis for the denial of public funds. The Board has previously denied public funds based on documentation error rates and missing employment information pursuant to its internal audit standards; this amendment represents a codification of that practice. The addition of reporting variance as a factor follows a 2015 rule change requiring that candidates submit all bank statements and deposit slips concurrently with each disclosure statement. Prior to this rule change, a significant reporting variance during the pre-election period could be a result of the campaign not yet having provided up-to-date bank records. Now, an underreporting variance likely indicates significant amounts of unreported activity, while an overreporting variance likely indicates a failure to comply with the requirement to provide bank records with each disclosure statement; either scenario represents a lack of adequate internal controls and a failure to disclose key information to the Board and/or the public. The threshold amounts for determining what constitutes a "significant" reporting variance, percentage of missing employment information, and documentation error rate will be calculated for each election cycle and will be publicized on or before July 11 in the year prior to the year of the election.

Section 3-02 is amended to remove the statement that a candidate who has been disqualified from the ballot, or who is no longer opposed by a candidate who appears on the ballot, is not eligible to receive public funds, as this statement appears in section 7-01(e) as amended herein.

Section 3-05 is amended to conform to §§ 3-703(1)(m) and 12-110(b)(2)(a) of the Code, as amended by Local Law 128, concerning filing with the Conflicts of Interest Board.

Chapter 4

Section 4-05(b) is amended to modify the disclosure schedule during the year of the election, in order to account for the rescheduling of the primary election from September to June per recent amendments to the State Election Law. The May 15 disclosure statement is removed, as the 32-day pre-primary disclosure statement will be due in mid-May, and a new disclosure statement is added in late August, due to the gap between the primary and general elections.

Section 4-05(c)(ii) is amended to accommodate the updates to contribution refund requirements in sections 5-07(b) and (c).

Section 4-05(c)(iv) is amended to change the threshold dollar amount above which contributions to political committees from a candidate's personal funds are considered contributions to, and expenditures by, that candidate's campaign.

Section 4-05(c)(vi) is amended to delete the requirement that transfers of funds consist entirely of contributions previously raised by the transferor committee.

Chapter 5

Section 5-01(b) is amended to update the year of the most recent contribution limit adjustment from 2018 to 2022.

A new section 5-01(c) is created to clarify that the new contribution limits, as created by the 2018 Charter revision and codified in § 3-703(1)(f) of the Code, apply to all contributions accepted by Option A candidates in the 2021 elections, regardless of when the contributions were received. Failure to refund the over-the-limit portion of contributions received at any time during the election cycle is a violation that may result in a penalty. *See also* CFB Advisory Opinion No. 2019-1.

Sections 5-07(b) and (c) are amended to provide that contribution refunds must be documented and are considered to be made on the date on which the funds cleared the committee account. The documentation provided must demonstrate that the refund cleared the committee account and was issued to the reported contributor (for example, for a refund made by check, the campaign must provide a copy of the front and back of the endorsed check as well as the corresponding committee bank statement). The sections are further amended to remove the requirement that contribution refunds be made by bank or certified check. Contribution refunds may be made electronically by ACH transfer, or using a committee check; however, the campaign assumes the risk that the contributor may not cash or deposit a committee check in a timely manner, which would delay the refund date and potentially affect the campaign's public funds eligibility and result in violations and penalties.

Section 5-08(c) is amended to provide that transfers between CFB committees are not subject to the requirement to demonstrate that transferred funds are not derived from excess or prohibited contributions. This change is to conform to § 3-703(14) of the Code, as amended by Local Law 189 of 2016.

Chapter 6

Section 6-02(a) is amended to provide that expenditures to defend the validity of petitions may be qualified expenditures. This change is to conform to § 3-704(2)(h) of the Code, as amended by Local Law 128.

Chapter 7

Section 7-01(e) is amended to clarify that a candidate who does not appear on the ballot, or who is not opposed on the ballot, may be required to return any public funds received. This clarification is necessary because Local Law 128 provided for public funds payments beginning in December in the year prior to the election year, thus increasing the likelihood that a candidate who previously received public funds, or that candidate's sole opponent, could subsequently be disqualified from the ballot. Candidates who are not opposed on the ballot are not eligible to receive public funds for that election. *See* Admin. Code § 3-703(5).

Section 7-02(a)(iii) is relocated to new section 7-01(g) and is amended to reflect the fact that there are now multiple public funds payments made before the ballot is set. The section is also amended to remove the reference to unopposed candidates, who are covered in section 7-01(e).

Section 7-02(a) is amended to conform to the payment schedule established by § 3-705(4) of the Code, as amended by Local Law 128. Additionally, the section provides that a certified statement of need, which must be submitted in order to receive an early public funds payment, must be received at least 15 business days before the scheduled date of the payment. This is to allow CFB staff sufficient time to review statements of need and determine eligibility before issuing payments.

Section 7-02(c) is amended to clarify what may constitute "new information" for purposes of § 3-703(12) of the Code, which provides that the Board may not invalidate a matching claim that was submitted in a previously reviewed disclosure statement unless the Board learns of new information that is relevant to the eligibility for matching of the claim and that was not available to the Board at the time of the initial review. New information may include, but is not limited to, information relevant to the candidate's eligibility to receive public funds generally, including the submission of a Certification not previously submitted, and information relevant to determining which contribution limit is applicable to the candidate, such as a declaration or change of the office sought.

Section 7-02(d) is amended to modify the characterization of public funds payments as being for the primary or general election. This change is to accommodate both the increased amount of time between the primary and general elections, due to the primary being rescheduled from September to June, and the additional early public funds payment dates created by § 3-705(4) of the Code, as amended by Local Law 128. Public funds payments will not be characterized as for the primary or general election, but no candidate may receive more than the maximum public funds payable amount for a single election prior to the day after the day of the primary election. For example, a City Council candidate who anticipates running in both the primary and general elections may submit sufficient valid matching claims to be eligible for public funds totaling \$168,888 for the

primary and \$168,888 for the general, totaling \$337,776. However, that candidate would only receive \$168,888 prior to the primary election. On the first payment date after the primary election, the candidate could receive an additional \$168,888 (less the 5% withholding assessed pursuant to Board Rule 7-06 and § 3-705(4) of the Code).

Section 7-04 is amended to conform to § 3-705(7) of the Code, as amended by Local Law 128, which requires that, in order for a candidate to receive either an early public funds payment or public funds payments totaling more than 25% of the maximum payable amount, either 1) the candidate must submit a certified statement of need attesting that one or more enumerated conditions applies, 2) the candidate must be opposed in an election for an office for which no incumbent is seeking re-election, or 3) the candidate must be opposed by a candidate who has received public funds for the election in question.

Section 7-06 is amended to provide that the Board may withhold an amount equal to the amount of any contributions made, solicited, or otherwise received in violation of the law, including contributions from a prohibited source and over-the-limit contributions (for which only the excess portion would be withheld), pending refund of the contribution (or excess portion, as applicable) to the contributor or disgorgement to the Public Fund. Previously, the Board's policy was to deem a candidate ineligible to receive a pre-election public funds payment if the candidate had received and failed to refund any prohibited or over-the-limit contributions. By providing a less severe consequence for failing to refund such contributions in a timely manner, this change will reduce the burden on campaigns that do not have additional compliance issues.

Chapter 9

Section 9-02(f) is amended to clarify that a candidate who is no longer opposed by a candidate who appears on the ballot may not spend public funds for any purpose other than the payment of liabilities previously incurred for qualified expenditures. Candidates who are not opposed on the ballot are not eligible to receive public funds for that election. *See* Admin. Code § 3-703(5). Additionally, section 9-02(h) is amended and section 9-02(i) is added to clarify that a candidate may be required to repay public funds due to either failing to satisfy the requirements to actively campaign for office, or ceasing to actively campaign for office. Section 9-02(j) (previously section 9-02(h)) is added to clarify that a candidate may be required to repay public funds if the candidate fails to appear on the ballot or be opposed on the ballot. If a candidate who received public funds fails to actively campaign, that candidate may be required to repay all public funds received. If a candidate who received public funds ceases to actively campaign, that candidate may not incur additional expenditures and may be required to repay all public funds previously received, less the amount of any qualified expenditures made before the candidate ceased campaigning. *See* Admin. Code § 3-710(3). These amendments are necessary because Local Law 128 provided for public funds payments beginning in December in the year prior to the election year, thus increasing the likelihood that a candidate could receive public funds and subsequently drop out of the race or be disqualified from the ballot.

Chapter 13

Section 13-02(a)(viii) is amended to accommodate the updates to contribution refund requirements in sections 5-07(b) and (c).

Chapter 14

Section 14-01 is amended to expand the definition of “electioneering communication” to include communications disseminated within 60 (previously 30) days of a primary election. This change is to account for recent changes to the election calendar, in particular the establishment of early voting, codified in § 8-600 of the Election Law.

Section 14-03(a) is amended to align the independent expenditure disclosure schedule with the campaign disclosure schedule.

Chapter 15

Section 15-03(e) is amended to provide that expenditures incurred outside of the calendar year in which a special election is held are presumed not to be qualified, unless the proclamation and the special election occur in different calendar years.

Section 15-04(e) is amended to reflect the threshold dollar amounts and payment dates for special elections stated in §§ 3-703(2), 3-705(4), 3-709(5) of the Code, as amended by Local Law 128.

Chapter 16

Chapter 16 is repealed. New section 1057-g of the City Charter, implementing ranked choice voting in citywide elections beginning on January 1, 2021, renders runoff elections unnecessary. References to runoff elections are deleted throughout the rules.

Chapter 17

Sections 16-02(b)(i) and (iii) (previously sections 17-02(b)(i) and (iii)) are amended to allow for Voter Guide submissions between the primary and general elections. Previously, final general election Voter Guide statements were required to be submitted prior to the primary election, and no modifications could be made thereafter. As the primary election will now be held in June rather than September, the additional time between the primary and general elections allows for more flexibility in the submission schedule.

Additionally, the entirety of Chapter 17 is renumbered to become the new Chapter 16.

Chapter 18

The entirety of Chapter 18 is renumbered to become the new Chapter 17.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of the Board, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The definitions of the terms “election”, “optional early public funds payment”, and “transfer” in section 1-02 of chapter 1 of title 52 of the rules of the city of New York are amended to read as follows:

“**Election**” means any primary, [runoff primary,] special, [runoff special,] or general election for nomination or election.

“**Optional early public funds payment**” means [the] a disbursement of optional public financing occurring prior to two weeks after the last day to file designating petitions for a primary election.

“**Transfer**” means any exchange of funds or any other thing of value between political committees, other than multicandidate committees, authorized by the same candidate pursuant to § 14-112 of the New York State Election Law. [In section 16-06 the term “transfer” means funds exchanged between different bank or other depository accounts.]

§ 2. Paragraph (iii) of subdivision (a) of section 1-04 of chapter 1 of title 52 of the rules of the city of New York is amended to read as follows:

(iii) Weekends and holidays. If the scheduled date of a public funds payment, or the deadline for submitting a Certification or for filing a disclosure statement, other than a daily pre-election disclosure statement, falls on a Saturday, Sunday, or legal holiday, the next business day becomes the deadline or scheduled payment date.

§ 3. Subdivision (e) of section 2-01 of chapter 2 of title 52 of the rules of the city of New York is amended to read as follows:

(e) Contents. The Filer Registration must include:

- (i) the candidate’s name, residential address information and telephone numbers, email address, and employment information;
- (ii) the name and mailing address, and treasurer name, treasurer residential address information and telephone numbers, treasurer email address, and treasurer employment information, of every political committee authorized by the candidate that has not been terminated, and, in the case of a participant or limited participant, an indication of which such committee is the principal committee;
- (iii) the name, mailing address, email address, and telephone number of any person designated by the candidate to act as liaison with the Board for each committee filing disclosure statements;
- (iv) identification of all bank accounts and other depository accounts, including merchant and payment processor accounts, into which receipts have been, or will be, deposited, and all bank accounts used for the purpose of repaying debt from a previous election; [and]

- (v) the specific office to which the candidate is seeking nomination or election; and
- (vi) other information as required by the Board.

§ 4. Section 2-02 of chapter 2 of title 52 of the rules of the city of New York is amended to read as follows:

§2-02 Certification. To join the Program, a candidate must submit a Certification by the [election year's] deadline [date] as provided in §§ 3-703(1)(c) and 3-705(4) of the Code. A candidate may submit a Certification, [in lieu] instead of the Filer Registration, [prior to] before filing disclosure statements.

(a) Applicability. The Certification applies to all covered elections that are held in the same calendar year or to a special election to fill a vacancy in an office covered by the Act. A candidate [need] only needs to file one Certification for the primary and general [election, and any related runoff election] elections. Special elections and all other elections require [a] separate [Certification] Certifications.

(b) Deadlines[.

The] (i) For primary and general elections, the deadline for filing a Certification [shall be: (i) in the case of a primary or general election,] is the later of the [tenth of June in the year of the covered] ninth Monday preceding the primary election or the thirtieth day after a special election is held to fill a vacancy for the office sought by the candidate[; or]. To be eligible to receive an optional early public funds payment, candidates must file a Certification no less than fifteen business days before the date on which the payment is scheduled to be made.

(ii) [in the case of the declaration of] If the Board declares an extraordinary circumstance, the deadline for filing a Certification will be [on or before] the seventh day following the declaration [by the Board of the extraordinary circumstance].

(c) [Rescission;] Failure to timely certify. A candidate [may rescind such candidate's Certification by submitting a Certification rescission form on or before the ninth Monday preceding the primary election or prior to the receipt of public funds, whichever occurs first. A candidate who rescinds a Certification in a timely manner or] who does not file a timely Certification [shall be deemed to be] is a non-participant.

(d) Rescission. A candidate who files a Certification prior to the deadline may rescind the Certification by submitting a Certification rescission form on or before the deadline or prior to receiving public funds, whichever happens first. A candidate who timely rescinds a Certification is a non-participant and may not submit an additional Certification for the same election cycle.

(e) Form. The Certification must contain any signatures and notarizations [as may be] required by the Board. A candidate who has already submitted a Filer Registration may submit a Certification [in electronic format] electronically, except that if a new principal committee treasurer has been appointed since the Filer Registration was submitted, the Certification [must be submitted in non-electronic format] cannot be submitted electronically. [A Certification] Certifications submitted

[in a non-electronic format] non-electronically must contain [an] original notarized [signature] signatures from both the candidate and the principal committee treasurer.

(e) (f) Contents. The Certification must include all filer registration information required by section 2-01 and such other information as required by the Board, including all information necessary to receive payment by electronic funds transfer. In the Certification, the candidate shall designate a principal committee.

(f) (g) Legal effect. The candidate must comply fully with Program requirements in all elections for which the Certification is submitted, regardless of the office sought and regardless of whether the candidate: (1) meets all the requirements of law to have such candidate's name on the ballot in the election; (2) meets the Act's threshold for eligibility for public funds; (3) accepts public funds; or (4) is otherwise [not] eligible to receive public funds in the election.

§ 5. Section 2-06 of chapter 2 of title 52 of the rules of the city of New York is amended to read as follows:

§2-06 Training. A candidate or [such] the candidate's representative must attend a training provided by the Board concerning compliance with the requirements of the Program and use of the disclosure software. [Such] The training must be completed on or before the [financial disclosure cut-off date] final day of the 32-day [pre-election primary] pre-primary election disclosure [statement] period; provided, however, that for the candidate to be eligible to receive an optional early public funds payment, such training must be completed at least 15 business days before such payment is made. The individual attending the training may be the candidate, the candidate's campaign manager or treasurer, or another individual with significant managerial control over [a] the campaign [(not including campaign consultants)]. For this section, campaign consultants are not individuals with significant managerial control over the campaign. The training attendee must be listed on the candidate's Filer Registration or Certification.

§ 6. Subdivision (b) of section 3-01 of chapter 3 of title 52 of the rules of the city of New York is amended to read as follows:

(b) Ballot status. In order to be eligible to receive public funds, a candidate in a covered election must meet all of the requirements to appear on the ballot as provided in Article 6 of the New York State Election Law, and be opposed by at least one other candidate on the ballot, or, for [the] an optional early public funds payment, certify that [such] the candidate intends to meet all the requirements of law to have such candidate's name on the ballot for the primary or general election.

§ 7. Paragraph (i) of subdivision (d) of section 3-01 of chapter 3 of title 52 of the rules of the city of New York is amended to read as follows:

(i) Pre-election. The Board may determine that a pre-election public funds payment [shall] will not be paid to a candidate if:

- (A) the candidate fails to submit a disclosure statement required by these rules;
- (B) the candidate fails to provide to the Board, upon its request, documents or records required by Chapter 4 of these rules, or other information that verifies campaign activity; [or]
- (C) the difference between the candidate's reported receipts and documented receipts, or between the candidate's reported expenditures and documented expenditures, exceeds a maximum threshold percentage. The threshold percentage for each election cycle will be determined and publicized by the Board on or before July 11 in the year before the year of the election;
- (D) the amount of matching claims for which a candidate has failed to provide complete and accurate documentation exceeds a maximum threshold percentage of such candidate's total matching claims. The threshold percentage for each election cycle will be determined and publicized by the Board on or before July 11 in the year before the year of the election;
- (E) the amount of matching claims for which a candidate has failed to report employer information as required by section 4-05(c)(ii)(A) exceeds a maximum threshold percentage of such candidate's total matching claims. The threshold percentage for each election cycle will be determined and publicized by the Board on or before July 11 in the year before the year of the election;
- (F) the candidate or such candidate's representative fails to attend a compliance training by the deadline provided in section 2-06; or
- (G) there is reason to believe that the candidate has committed a violation of the Act or these rules not otherwise enumerated in [subparagraph] paragraph (ii) of this [paragraph] subdivision, and which is not a basis for withholding pursuant to section 7-06.

§ 8. Subparagraph (C) of paragraph (ii) of subdivision (d) of section 3-01 of chapter 3 of title 52 of the rules of the city of New York is amended to read as follows:

(C) previous public [fund] funds payments to the candidate for the election equal the maximum permitted by the Act;

§ 9. Section 3-02 of chapter 3 of title 52 of the rules of the city of New York is amended to read as follows:

§3-02 Disqualification from ballot]. A candidate who has been disqualified from the ballot, or who is no longer opposed by a candidate who appears on the ballot, is not eligible to receive public funds.]

(a) Notice of appeal. The candidate must notify the Board immediately, in writing, if the disqualified candidate is seeking to appeal or otherwise remedy a disqualification. This notice must [indicate] say whether a judicial appeal is being taken as of right or by permission and the specific nature of any [other] judicial remedy sought.

(b) Disqualification reversed. The candidate must immediately inform the Board, in writing, if the disqualification of the candidate or the opponent is reversed by a court [of competent jurisdiction].

§ 10. Section 3-05 of chapter 3 of title 52 of the rules of the city of New York is amended to read as follows:

§3-05 Proof of filing with the Conflicts of Interest Board [(COIB)]; payment of penalties

(a) Requirements. In order to be eligible to receive public funds, a candidate must comply with the requirements in § 12-110 of the Code, including payment of any penalties assessed by the conflicts of interest board. The Board may [obtain confirmation of] confirm the candidate's compliance [from] with the conflicts of interest board. The failure of a candidate to demonstrate [such] compliance by the deadline established [by the conflicts of interest board or by the reporting deadline immediately preceding the date on which the candidate seeks to receive a public funds payment, whichever is earlier,] pursuant to §§ 3-703(1)(m) and 12-110 of the Code may result in a delay of any payment by the Board [of public funds the candidate may otherwise be eligible to receive until a future scheduled payment date].

(b) Due dates. A candidate may submit proof of compliance with the Board [and such proof shall be considered]. Proof is timely [submitted] if it is submitted to the Board on or [prior to] before the [last business day of July in the year of] deadline to file a Certification for the covered election, except as provided by paragraph (a).

§ 11. Paragraph (ii) of subdivision (b) of section 4-05 of chapter 4 of title 52 of the rules of the city of New York is amended to read as follows:

(ii) Filing dates. The Board [shall] will publish a schedule of disclosure statement filing dates on its website on or before March 1 in the first year of each election cycle, or as soon as is practicable after the State Board of Elections has published its schedule.

(A) Semi-annual disclosure statements are due on January 15 and July 15 in each year of the election cycle and on January 15 in the year after the election.

(B) Pre-election disclosure statements are due:

(i) 32 and 11 days before the election; and[,]

(ii) at the Board's discretion, on March 15 and [May 15] the fourth Friday in August in the year of the election.

(C) Post-election disclosure statements are due 10 days after a primary election and 27 days after a general [or special] election.

(D) Weekends and holidays. The Board's published schedule of disclosure statement filing dates [shall] will reflect that if a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, submission must be made on the next business day.

§ 12. Subparagraph (A) of paragraph (ii) of subdivision (c) of section 4-05 of chapter 4 of title 52 of the rules of the city of New York is amended to read as follows:

(A) Reporting requirements. To fully report a contribution accepted during the reporting period, the candidate must report, for each contribution:

- (1) the contributor's and intermediary's (if any) full name, residential address, occupation, employer, and business address;
- (2) the date the contribution was received by the candidate;
- (3) the amount of the contribution;
- (4) the form of the contribution (cash, check, cashier's check, money order, credit card, text, or other);
- (5) the number of the check, cashier's check, or money order, if applicable;
- (6) the date and amount of each contribution returned to a contributor, the account from which the funds used to make the return originated, and, if applicable, the number of the [bank or certified] check used to issue the return of funds;
- (7) each previously reported contribution for which the check was returned unpaid;
- (8) whether the contribution was accepted for a [runoff or] rerun election in accordance with [Chapter 16 and] section 5-12;
- (9) whether the contribution was accepted to be deposited into a segregated bank account in accordance with section 7-07(b); and
- (10) such other information as the Board may require.

§ 13. Subparagraph (F) of paragraph (iv) of subdivision (c) of section 4-05 of chapter 4 of title 52 of the rules of the city of New York is amended to read as follows:

(F) Contributions to political committees. [Political contributions] Contributions to political committees that support or oppose candidates in New York City (except political committees of other candidates), including state party committees, that are made by a candidate with [such] the candidate's personal funds and that, in the aggregate for any single political committee, exceed [the contribution limit applicable to the office of mayor for contributors having business dealings with the city pursuant to section 3-703(1-a) of the Code] \$1,000, are presumed to be expenditures in furtherance of the [campaign's candidate] candidate's campaign and contributions from the candidate to the candidate's campaign[,] and[, as such,] must be reported to the Board. The candidate may rebut this presumption by providing evidence [indicating] that the contributions were not in furtherance of the [campaign's candidate] candidate's campaign. [Such] These contributions are subject to all applicable expenditure and contribution limits, except that contributions made to committees registered with the State Board of Elections or the Federal Election Commission as independent

expenditure committees are not subject to such limits. Candidates must create and maintain records of such contributions. Contributions made with a candidate's personal funds as provided in this subparagraph [shall] are not [be the] a basis for a deduction from [such] the candidate's public funds payment pursuant to section 7-07(a).

§ 14. Paragraph (vi) of subdivision (c) of section 4-05 of chapter 4 of title 52 of the rules of the city of New York is amended to read as follows:

(vi) Transfers

(A) [Transfers of funds shall consist entirely of contributions previously raised by the transferor committee and shall not include any public funds.

(B)] Candidates must report contemporaneously: (1) the aggregate amount of each transfer to an authorized committee from a committee not otherwise involved in the covered election, and, unless the transferring committee is another authorized committee of the same candidate that has filed contemporaneous disclosure statements with the Board in a timely manner, (2) each contribution the transfer consists of (using a last-in/first out attribution), including the name and residential address of the contributor and the amount and date of the contribution.

[(C)] (B) In the case of a transfer to an authorized committee from a committee not otherwise involved in the covered election, unless the transferring committee is another authorized committee of the same candidate that has filed contemporaneous disclosure statements with the Board in a timely manner, participants must (1) report to the Board, in the same disclosure statement in which the transfer is reported, any expenditures incurred by the transferor committee in connection with raising or administering the transferred contributions, regardless of when the expenditures were incurred, and (2) upon request by the Board, disclose all expenditures made by the transferor committee during the covered election cycle for purposes other than raising or administering the transferred contributions. [Further, candidates] Candidates must also contemporaneously submit [contemporaneously] the records required to be maintained pursuant to section 4-01(b)(ii)(D).

§ 15. Subdivision (b) of section 5-01 of chapter 5 of title 52 of the rules of the city of New York is amended to read as follows:

(b) Adjustment. Pursuant to § 3-703(7) of the Code, not later than the first day of March in the year [2018] 2022, and every fourth year thereafter, the Board [shall] will adjust the contribution limits. [Such] The adjustment [shall be made in accordance with] will follow changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States Bureau of Labor Statistics. The adjustment [shall be based on] is the difference between the average consumer price index over the 12 months preceding the calendar year of such adjustment, and either (a) the calendar year preceding the year of the last such adjustment or (b) such other calendar year as may be appropriate pursuant to any amendment to the Act.

§ 16. A new subdivision (c) of section 5-01 of chapter 5 of title 52 of the rules of the city of New York is added to read as follows:

(c) Contributions received prior to January 12, 2019. For candidates in covered elections held before the year 2022 who choose Option A, as defined in § 3-720(e)(1) of the Code, the contribution limits as stated in § 3-703(1)(f) of the Code will apply to all contributions received during the 2021 election cycle, regardless of when they are received. Such candidates shall refund the portion of any contribution that exceeds the limits, as provided in section 5-07 of this chapter, even if the contribution was received before January 12, 2019. Failure to timely issue required refunds will be considered a violation of the Act and these rules.

§ 17. Subdivisions (z), (aa), (bb), and (cc) of section 5-05 of chapter 5 of title 52 of the rules of the city of New York are amended to read as follows:

(z) [Contributions for a runoff election. Contributions solicited for, or required to be deposited into an account established for, a runoff election, as provided in section 16-06.

(aa) [Withdrawn matching claims. Contributions for which a matching claim was previously withdrawn by the candidate.

[(bb)] (aa) Non-matchable contributions. Contributions that are otherwise not matchable contributions within the meaning of the Act.

[(cc)] (bb) Additional factors. In addition, the Board [shall] will consider the following factors in determining whether matchable contribution claims are invalid and in projecting a rate of invalid matchable contribution claims:

- (i) any information that suggests that a contribution has not been processed or reported in accordance with Program requirements;
- (ii) any other information that suggests that matchable contribution claims may be invalid; and
- (iii) [arithmetical] calculation errors in totals reported.

§ 18. Subdivisions (a), (b), (c), and (d) of section 5-07 of chapter 5 of title 52 of the rules of the city of New York are amended to read as follows:

§ 5-07 Refunding prohibited and over-the-limit contributions

(a) Generally. When a candidate knows or has reason to know that [such] the candidate has accepted a contribution or aggregate contributions from a single source in excess of the applicable contribution limit, including a contribution or contributions from a contributor having business dealings with the city, or from a source prohibited by the Act or the Charter or by state or federal law, the candidate must promptly refund the excess portion or prohibited contribution [by bank or certified check made out] to the contributor or to the Fund[; provided, however, that when]. When a candidate knows or has reason to know that [such] the candidate has accepted a nominee or anonymous contribution, the candidate must promptly disgorge the [amount of such] contribution

[by bank or certified check made out] to the comptroller of the state of New York for deposit in the general treasury of the state.

(b) Contribution refunds must be timely.

(i) When a candidate knows or has reason to know that [such] the candidate has accepted a prohibited or over-the-limit contribution, the candidate must return or refund the contribution, or the over-the-limit portion [thereof], on or before the next disclosure statement filing deadline or the deadline set by the Board.

(ii) When a candidate is notified by the Board that [such] the candidate has accepted a prohibited or over-the-limit contribution, the candidate must return the contribution or the over-the-limit portion by the date specified in the notice sent by the Board.

(iii) A contribution refund is made on the date on which the funds cleared the committee account.

(c) Contribution refunds must be documented and reported. If a candidate issues a refund for a contribution after it has been deposited in the committee's account, the contribution and corresponding refund must be documented and reported to the Board. The documentation must demonstrate that the refund cleared the committee account and was cashed or deposited by the reported contributor.

(d) Restrictions on return. [After] Unless directed to do so by the Board, a candidate may not return a contribution after receiving public funds for an election[, a candidate may not return a contribution, unless directed by the Board to do so,] until any required repayments to the Fund have been made[, except if the]. A contribution may be returned if it: (i) exceeds the contribution limit, including the limit applicable to contributors having business dealings with the city, (ii) is otherwise illegal, or (iii) is returned because of the candidate's reputational interest in light of the particular source or intermediary involved[, or (iv) was deposited in a separate account pursuant to section 16-06 for a runoff election that is not held].

§ 19. Paragraph (i) of subdivision (c) of section 5-08 of chapter 5 of title 52 of the rules of the city of New York is amended to read as follows:

(i) Candidates have the burden of demonstrating that surplus funds and transfers of funds from [committees] a committee not otherwise involved in the covered election, other than another authorized committee of the same candidate that has filed contemporaneous disclosure statements with the Board in a timely manner, do not derive from:

(A) contributions in excess of the Act's contribution limits, including contributions that would exceed the Act's contribution limits when aggregated with other contributions accepted from the same source; or

(B) contributions from sources prohibited by the Act, the Charter, or state or federal law.

§ 20. Subdivision (b) of section 5-11 of chapter 5 of title 52 of the rules of the city of New York is amended to read as follows:

(b) Receipts may be used only to further a candidate's nomination or election. A candidate may use receipts only for the covered election for which that account was established [or an associated runoff election].

§ 21. Subparagraph (L) of paragraph (ii) of subdivision (a) of section 6-02 of chapter 6 of title 52 of the rules of the city of New York is amended to read as follows:

(L) expenditures to challenge [or defend] the validity of petitions of designation, or nomination, or certificates of nomination, acceptance, authorization, declination, or substitution, and expenses related to the canvassing of election results;

§ 22. Subdivision (e) of section 7-01 of chapter 7 of title 52 of the rules of the city of New York is amended to read as follows:

(e) Ballot disqualification; unopposed candidates. Pursuant to §§ 3-703(1)(a) and (5) of the Code, the Board will not [make payment to] pay any candidate disqualified from the ballot by the Board of Elections or by a court, or [to] any candidate for an election in which all other candidates have been disqualified from the ballot by the Board of Elections or by a court, until such candidate or other candidate is restored to the ballot by a court [of competent jurisdiction]. A candidate who does not appear on the ballot in an election, or who appears as the only candidate on the ballot in an election, [shall] is not [be] eligible to receive public funds, notwithstanding any write-in candidates in that election, except as otherwise provided in subparagraph (ii) below, and may be required to return any public funds received.

§ 23. A new subdivision (g) of section 7-01 of chapter 7 of title 52 of the rules of the city of New York is added to read as follows:

(g) Pursuant to §§ 3-703(1)(a) and (5) of the Code, public funds are not payable to a participant who has not met the legal requirements to have the participant's name on the ballot, or, for an optional early public funds payment, who has not certified that the participant intends to meet all the requirements of law to have the participant's name on the ballot and stated the specific office to which the participant is seeking nomination or election.

§ 24. Subdivision (a) of section 7-02 of chapter 7 of title 52 of the rules of the city of New York is amended to read as follows:

(a) [Three payment dates in the 30 days prior to an election. The Board shall schedule at least three payment dates in the 30 days prior to a covered primary, general, or special election.]

Payment dates

(i) The Board will schedule at least three payment dates in the 45 days before a covered primary election and at least four payment dates in the 90 days prior to a covered general election.

(ii) No public funds [shall] will be paid to candidates in a primary or general election any earlier than [four business days after the final day to file a written Certification for such] two weeks after the last day to file designating petitions for the primary election [pursuant to

paragraph (c) of subdivision 1 of section 3-703 of the Code], except that optional early public funds payments may be made no earlier than December 15 in the year before the year of the election. For a candidate to receive an optional early public funds payment, the Board must determine that one of the conditions set forth in § 3-705(7)(a)(2) or (3) of the Code is satisfied, or the candidate must submit a certified signed statement attesting to the need for such public funds and demonstrating that at least one of the conditions set forth in § 3-705(7)(a)(1) of the Code is satisfied. The statement must be accompanied by supporting documentation and must be submitted to the Board at least 15 business days before the optional early public funds payment is scheduled to be made.

[(ii) Pursuant to §§ 3-703(1)(a) and (5) of the Code, public funds are not payable to a participant who has not met the legal requirements to have such participant's name on the ballot, who is unopposed, or, for the optional early public funds payment, who has not certified that such participant intends to meet all the requirements of law to have such participant's name on the ballot and stated the specific office to which such participant is seeking nomination or election.]

§ 25. Subdivision (c) of section 7-02 of chapter 7 of title 52 of the rules of the city of New York is amended to read as follows:

(c) Preliminary review of matching claims[.]

[Prior to] (i) Before making a pre-election payment determination, the Board may issue a report to the candidate indicating any matching claims determined to be invalid based on preliminary review of each disclosure statement and of the matchable contribution claims reported [therein]. The candidate may respond to [such] the report by providing information or documentation demonstrating that any [such] of the matching claims should be considered valid. Failure by the candidate to respond to such report by the deadline set by the Board may [result in a] delay [in] payment of public matching funds.

(ii) Pursuant to 3-703(12)(b) of the Code, the Board will not invalidate a matching claim in a review of any disclosure statement filed after the statement in which such claim was submitted, unless the Board learns of new information relevant to the eligibility of the claim that was not available to the Board at the time of the initial review. Such new information may include: (1) information related to the candidate's eligibility to receive public funds generally, including the submission of a Certification as provided in Rule 2-02, where the submission had not been made at the time of the initial review, and (2) information related to the contribution limit applicable to the candidate, including a declaration or change of the office sought by the candidate.

§ 26. Subdivision (d) of section 7-02 of chapter 7 of title 52 of the rules of the city of New York is amended to read as follows:

(d) [Characterization of payments as for the primary or general election.]

(i) If a participant is on the ballot and has an opponent on the ballot in both a primary and the general elections, payments made after the primary election will be characterized initially as follows:

(A) As a primary election payment, if the payment is made on the basis of contribution and expenditure information reported in or before the disclosure statement due 10 days after the primary election, except as otherwise provided in subparagraph (B).

(B) As a general election payment, to the extent that any further primary election payments would exceed a maximum applicable in the primary election pursuant to the Act.

(C) As a general election payment, if the payment is made on the basis of contribution and expenditure information reported in disclosure statements due later than 10 days after the primary election.

(ii) If the Board determines that payments characterized initially as either primary or general election payments were, in fact, used for qualified campaign expenditures incurred in the other election, the payments will be recharacterized accordingly, and additional payments may be made or repayments required, if appropriate.]

No candidate shall receive more than the maximum public funds payable amount for a single election, pursuant to § 3-705(2)(b) of the Code, any earlier than the day after the day of the primary election.

§ 27. Subdivision (a) of section 7-04 of chapter 7 of title 52 of the rules of the city of New York is amended to read as follows:

(a) [Pursuant to § 3-705(7)(b) of the Code, a] A candidate shall not be eligible to receive more than one quarter of the applicable maximum pursuant to § 3-705(2)(b) of the Code unless the Board determines that one of the conditions set forth in § 3-705(7)(a)(2) or (3) of the Code is satisfied, or the candidate submits a certified signed statement attesting to[, and stating the reason for, such candidate's] the need for additional public funds and demonstrating that at least one of the conditions set forth in § 3-705(7)(a)(1) of the Code is satisfied. The statement [of need] must be filed with the Board no later than the due date for the applicable disclosure statements as follows, except that, if the basis for filing the statement [of need] arises after [such] the due date, and no [such] basis existed prior to such due date, then the statement [of need] shall be due by the deadline for the disclosure statement immediately preceding the next date on which a public funds payment is scheduled to be made:

- (i) Candidates in the primary election must file the statement of need no later than the due date for the 32-day pre-primary election disclosure statement.
- (ii) Candidates in the general election must file the statement of need no later than the due date for the 32-day pre-general election disclosure statement.

§ 28. Section 7-06 of chapter 7 of title 52 of the rules of the city of New York is amended to read as follows:

§ 7-06 Withholdings. The Board may withhold up to 5% of the amount of public funds payable to a candidate until the final pre-election payment for any election in which the candidate is eligible to receive public funds. In addition, the Board may withhold from pre-election public funds payments: (a) a percentage equal to the projected rate of invalid matching claims; (b) an amount equal to any contributions made, received, solicited, or otherwise obtained in violation of any law, pending disgorgement of such contributions to the Fund or refund to the contributor; and [(b)] (c) up to an additional 5% if the Board determines that there is reason to believe that the candidate has failed to comply with the Act, including by failing to adequately respond to a Board request for information or documentation. [Such withholdings] Withholdings shall be subject to post-election audit.

§ 28. Subdivisions (f), (g), and (h) of section 9-02 of chapter 9 of title 52 of the rules of the city of New York are amended, and new subdivisions (i) and (j) are added, to read as follows:

(f) Ballot disqualification. Pursuant to §3-709(7) of the Code, a candidate who has been finally disqualified or whose designating or nominating petitions have been finally declared invalid by the Board of Elections or a court [of competent jurisdiction], or whose only remaining opponent has been finally disqualified or whose designating or nominating petitions have been finally declared invalid by the Board of Elections or a court, may not [thereafter] spend public funds for any purpose other than the payment of previous liabilities incurred in qualified campaign expenditures. All public funds in excess of [such] those liabilities previously incurred shall be promptly repaid to the Board[; the]. The amount to be repaid [shall] will be determined in accordance with §3-710(2)(b) of the Code and subdivision (b) of this section. A repayment made pursuant to §3-709(7) [shall] does not [preclude a determination] prevent the Board from determining that an additional repayment is required [pursuant to that or any other provision of the Act].

(g) Ballot fraud. Pursuant to § 3-710(3)(a) of the Code, a candidate who has been disqualified by a court [of competent jurisdiction] on the grounds that [such] the candidate committed fraudulent acts in order to obtain a place on the ballot[, if such decision is not reversed,] must pay to the Board an amount equal to the total public funds paid to the candidate. Repayments pursuant to this subdivision must be made promptly upon the court's determination of disqualification. No repayment is required if the decision is reversed.

(h) Failure to actively campaign. Pursuant to § 3-710(3)(b) of the Code, a candidate who fails to actively campaign for a covered office may be required to repay an amount equal to the total public funds received.

(i) Ceasing to campaign. Pursuant to § 3-710(3)(c) of the Code, a candidate who ceases to actively campaign for a covered office may be required to repay an amount equivalent to the amount of public funds paid to the candidate that were not spent on qualified expenditures. Only expenditures incurred prior to the date on which the candidate ceased actively campaigning may be considered qualified expenditures.

(j) Other reasons for repayment. The Board may require a candidate to repay public funds because:

- (i) the candidate failed to maintain copies of checks or contribution cards that document matchable contributions;
- (ii) the public funds paid were based on contributions that were returned or contribution checks that have not been paid;
- (iii) the candidate has failed to demonstrate eligibility for the public funds paid [and/or] or compliance with Program requirements, including the requirements to appear on the ballot and to be opposed by at least one other candidate on the ballot; or
- (iv) a determination pursuant to §§ 3-705(6) or (7) of the Code is reversed following reconsideration pursuant to Rule 7-10(b)(vii).

§ 30. Paragraph (viii) of subdivision (a) of section 13-02 of chapter 13 of title 52 of the rules of the city of New York is amended to read as follows:

- (viii) the date and amount of each donation returned to a donor, the account from which the funds used to make the return originated, and, if applicable, the number of the [bank or certified] check used to issue the return of funds;

§ 31. The definition of the term “electioneering communication” in section 14-01 of chapter 14 of title 52 of the rules of the city of New York is amended to read as follows:

“**Electioneering communication**” means a communication that: (1) is disseminated by radio, television, cable, or satellite broadcast, is a paid advertisement [such as in a periodical or on a billboard], or is a mass mailing; (2) is disseminated within [30] 60 days of a covered primary, general, or special election[, or within 60 days of a covered general election]; and (3) refers to one or more clearly identified ballot proposals or candidates for a covered election. Electioneering communication [shall] does not include a [campaign-related] candidate-related communication made by an organization operating and remaining in good standing under § 501(c)(3) of the Internal Revenue Code of 1986.

§ 32. Paragraph (i) of subdivision (a) of section 14-03 of chapter 14 of title 52 of the rules of the city of New York is amended to read as follows:

- (i) Disclosure statements are due on January 15, March 15, [May 15, and] July 15, and the fourth Friday in August of the election year.

§ 33. Paragraph (iii) of subdivision (a) of section 14-03 of chapter 14 of title 52 of the rules of the city of New York is amended to read as follows:

- (iii) During the 14 days before a primary or general election, [or a related runoff election,] an independent spender must submit a disclosure statement to the Board within 24 hours of distributing any reportable communication, making any reportable expenditure, or receiving any reportable contribution.

§ 34. Section 14-09 of chapter 14 of title 52 of the rules of the city of New York is amended to read as follows:

§ 14-09 Other provisions concerning independent expenditures. *See* sections 15-06 (Special elections); [16-07 (Runoff elections);] 10-03 (Enforcement); Chapter 12 (Complaints).

§ 35. Clause (1) of subparagraph (B) of paragraph (iii) of subdivision (d) of section 15-02 of chapter 15 of title 52 of the rules of the city of New York is amended to read as follows:

(1) for candidates in a special election who proceed to raise or spend funds for the following primary or general election, the 27 day post-election disclosure statement described in paragraph (iv) [shall be] is the last statement required for the special election[; provided, however, that if there is a runoff special election, the semi-annual disclosure statement described in paragraph (iv) shall be the last disclosure statement required for all candidates in the special election who continue to raise or spend funds for the following primary or general election, regardless of whether they were candidates in the runoff special election]; and

§ 36. Paragraph (v) of subdivision (d) of section 15-02 of chapter 15 of title 52 of the rules of the city of New York is amended to read as follows:

(v) [Post-runoff special election] Post-election disclosure statements. [For runoff special election candidates, post-election] Post-election disclosure statements must be filed 27 days after the special election and on the first January 15 or July 15 following the election. [Candidates in the special election must file both post-runoff special election disclosure statements, regardless of whether they were on the ballot for the runoff special election.]

§ 37. Paragraph (ii) of subdivision (e) of section 15-03 of chapter 15 of title 52 of the rules of the city of New York is amended, and a new paragraph (iii) is added, to read as follows:

(ii) Expenditures incurred outside of the calendar year in which the special election is held are presumed not to be qualified, unless the proclamation and the special election occur in different calendar years.

(iii) It is presumed that the following bills for goods and services are not qualified campaign expenditures:

(A) bills for a special election that are first reported in a disclosure statement submitted later than the first post-election disclosure statement applicable to that special election; and

(B) bills first reported in an amendment to a disclosure statement that is made after the special election.

§ 38. Subdivision (e) of section 15-04 of chapter 15 of title 52 of the rules of the city of New York is amended to read as follows:

(e) **Public funds.** To receive public matching funds, candidates in a special election must meet the same threshold and eligibility requirements as candidates in a primary or general election; provided, however, that the threshold dollar amount of summed matchable contributions shall be halved in a special election for mayor, public advocate, or comptroller. A candidate in a special election shall respond to an invalid matching claims report no later than the deadline set by the Board. The Board shall schedule at least three payment dates in the 30 days prior to a special election.

§ 39. Chapter 16 of title 52 of the rules of the city of New York is REPEALED.

§ 40. Chapter 17 of title 52 of the rules of the city of New York is amended to read as follows:

Chapter [17] 16: Voter Education and Engagement

§ [17-01] 16-01 Definitions

Except as otherwise provided, the definitions set forth in section 1-02 apply in this chapter. In addition[, the following terms mean]:

“**Ballot proposal**” means any proposition, referendum, or other question submitted to New York City voters pursuant to the Charter, the New York Municipal Home Rule Law, or any other law.

“**Candidate print statement**” means the document filed by a candidate containing biographical and other information requested by the Board, and a photograph of the candidate, for inclusion in the printed or online primary or general election Voter Guide.

“**Candidate video statement**” means a video-recorded statement by the candidate for inclusion in the video and online [edition(s)] edition of the primary or general election Voter Guide.

“**Election**” means any primary or general election for the office of mayor, public advocate, comptroller, borough president, or Council member, or a general election in which a ballot proposal is on the ballot, and does not include any special election held to fill a vacancy, [runoff primary election, runoff special election,] or election held pursuant to court order.

“**Registered candidate**” means an individual who has registered or filed a Certification with the Board pursuant to section 2-01 or 2-02 and § 3-703 of the Code.

§ [17-02] 16-02 Contents of the Voter Guide

(a) **Generally.** In addition to any information that the Board determines to be useful for promoting public awareness of the voting process, city government, and the candidates and ballot proposals in an election, the printed and online Voter Guides for an election [shall] will contain: (1) the date of the election; (2) the hours during which the polls will be open; (3) an

explanation of the voter registration process, including deadlines to register for both the primary and general elections; (4) an explanation of how to obtain and cast or mark an absentee ballot; (5) an explanation of how to cast a vote, including write-in votes; (6) information about the boundaries of City Council districts to aid voters in determining their appropriate district; and (7) tables of contents, graphics, and other materials which the Board determines will make the Voter Guide easier to understand or more useful for the average voter.

(b) Candidate statements

(i) Candidate print statements

(A) Candidate print statements contain the following biographical information:

- (1) the name of the candidate;
- (2) the political party, if any, in which the candidate is enrolled, and for which party lines the candidate's name will appear on the ballot;
- (3) the previous and current public offices held by the candidate;
- (4) the current occupation and employer of the candidate;
- (5) prior employment and positions held by the candidate;
- (6) the experience the candidate has had in public service;
- (7) the educational background of the candidate;
- (8) a list of the candidate's major organizational affiliations;
- (9) information about the candidate's principles, platform, or views, in a form prescribed by the Board; and
- (10) such other information as may be determined by the Board and requested of the candidate.

(B) The candidate print statement must be submitted in English.

(C) The photograph of the candidate submitted as part of a candidate print statement must:

- (1) be a recent photograph;
- (2) have a plain background;
- (3) show only the face or the head, neck, and shoulders of the candidate;

- (4) not include the hands or anything held in the hands of the candidate;
- (5) not show the candidate wearing any distinctive uniform, including [but not limited to] a judicial robe, or a military, police, or fraternal uniform; and
- (6) comply with the size and resolution requirements as determined by the Board.

(D) Candidate print statements may not:

- (1) refer to any opposing candidate by name;
- (2) contain profanity or statements that are patently offensive, obscene, libelous, or defamatory;
- (3) assert facts that the candidate knows or should know to be false; or
- (4) violate any city, state, or federal law, including regulations of the New York State Public Service Commission.

(E) A candidate print statement that violates any of the requirements outlined in this chapter, as determined by the Board at its sole discretion, [shall] will not be included in the Voter Guide.

(F) Timing of submission.

- (1) In the election year, all registered candidates considering filing designating petitions must submit their complete and final print statements in accordance with a deadline set by the Board.
- (2) A candidate not named in a filed designating petition who anticipates filing an independent nominating petition for the general election must submit a candidate print statement on or before the “independent candidates” submission deadline set by the Board.
- [(3) Complete and final print statements for the general election Voter Guide must be submitted prior to the publication of the primary election Voter Guide.]

(ii) Candidate video statements.

(A) Candidate video statements must contain information regarding the candidate’s platform and candidacy, and may contain such other information as the candidate may choose[; provided, however], except that the candidate may not:

- (1) refer to any opposing candidate by name;
- (2) use profanity, or statements, gestures, or materials that are patently offensive, obscene, or pornographic;

(3) make statements that are slanderous, or defamatory, or assert facts that the candidate knows or should know to be false;

(4) engage in any commercial programming or advertising;

(5) display any literature, graphs, or props; or

(6) violate any city, state, or federal law, including regulations of the New York State Public Service Commission and the Federal Communications Commission.

(B) Candidates recording video statements may dress as they choose and are responsible for their own clothing, make-up and hairdressing[; provided, however], except that when recording a video statement, candidates may not:

(1) [engage in] be [full] fully or [partial nudity] partially nude;

(2) wear any distinctive uniform, including [but not limited to] a judicial robe, or a military, police, or fraternal uniform; or

(3) violate any city, state or federal law, including regulations of the New York State Public Service Commission and the Federal Communications Commission.

(C) To ensure that candidate scripts meet the requirements of this section, candidate video statement scripts must be submitted for Board approval [in advance of] before the candidate's scheduled recording session, and on or before the script submission deadline set by the Board. Candidates must follow their approved video statement script during the recording. Recorded statements [shall] will not be edited by the Board or any entity participating in the production of the video edition of the Voter Guide, except that candidate identification and other election information may be displayed.

(D) Only the candidate may appear on camera, and only the candidate may record a candidate video statement.

(E) Candidates [shall be allowed to] may sit or stand while recording statements. Reasonable accommodations for candidates with special needs [shall] will be made.

(F) Video statements shall be recorded in English. Candidates may record a portion of their video statements in a language other than English[; provided, however, that] if the script submitted for Board approval contains both the English and non-English text[,] and an English translation of all non-English text. No additional time will be allotted for statements recorded in multiple languages.

(G) Candidate video statements that violate any of the requirements outlined in this chapter [shall] will not be included in the Voter Guide.

(H) Timing of candidate video statement recordings. In the election year, the recording schedule for candidates' video statements [shall] will be [provided] given to registered candidates in advance. Appointments for candidate video statement recordings [shall] will be [made at a time within] during the [prescribed] production schedule. A candidate who fails to appear at the scheduled time [shall be deemed to have waived] waives participation in the video edition of the Voter Guide.

(iii) Inclusion of candidate statements in Voter Guide editions.

(A) Primary election edition. [Candidate] Only registered candidates who have met the requirements of this chapter and who are on the ballot in a contested primary will have their candidate print and video statements [shall be] included in primary election editions of the Voter Guide[only for registered candidates who have met the requirements set forth in this chapter and are on the ballot in a contested primary. In the case of]. Candidates anticipated to appear on the ballot in a contested primary on the date that the primary election print edition goes to press, based on the Board's assessment of information available from the Board of Elections, will have their print statements included in printed editions of the Voter Guide[, print statements of candidates anticipated to appear on the ballot in a contested primary on the date that the primary election print edition goes to press shall be included, based on the Board's assessment of information available from the Board of Elections].

(B) General election edition. [Candidate] Only registered candidates who have met the requirements of this chapter and who are on the general election ballot will have their candidate print and video statements [shall be] included in general election editions of the Voter Guide [only for registered candidates who have met the requirements set forth in this chapter and are on the general election ballot]. Candidates who are seeking nomination or election exclusively as write-in candidates [shall] will not be included in the Voter Guide. Candidates anticipated to appear on the general election ballot on the date that the general election print edition goes to press, based on the Board's assessment of information available from the Board of Elections, will have their print statements included in [In the case of] printed editions of the Voter Guide[, print statements of candidates anticipated to appear on the general election ballot on the date that the general election print edition goes to press shall be included, based on the Board's assessment of information available from the Board of Elections]. Candidates running unopposed in the general election [shall] will be included in general election editions of the Voter Guide, except where the only election being covered is uncontested, in which case the Board [shall] will not produce or distribute print or video editions of the Voter Guide, but [shall] will produce an online Voter Guide.

(C) If a candidate in the general election was included in the primary election Voter Guide, then that candidate's primary election Voter Guide statement [shall] will be included in the general election Voter Guide, unless the candidate submits a general election Voter Guide statement on or before the deadline set by the Board. [No modifications or additions to the original statement shall be accepted.]

(D) Candidates' print statements [shall] will be included in the primary and general election online editions [in accordance with] following the requirements [set forth] in paragraphs (i), (ii), and (iii).

(E) The Board [shall] will not accept a candidate print or video statement unless it is submitted in [a manner provided] the form required by the Board, [includes] including any signatures or notarizations [as may be required by the Board], and unless the candidate has verified that the contents of the submission are true to the best of [such] the candidate's knowledge. The Board may[, at its discretion,] reject any portion of a [candidate] candidate's print or video statement[, or portions thereof,] that it decides [it deems to contain matter that] is obscene, libelous, slanderous, defamatory, or otherwise in violation of these rules.

(iv) Candidate statements must not exceed the length and space limitations provided by the Board. The Board may[, at its discretion,] require that candidate print statements follow a consistent format, and may edit statements to [achieve uniformity of] make them similar in presentation[, conformance with] and length [and space limitations,] and [consistency] consistent with existing law. Candidate video statements that exceed their allotted statement time, as determined by the Board, [shall] will be cut off at the time limit.

(v) A candidate print statement or video script is a written instrument which[, when filed,] becomes part of the Board's records when filed. A candidate may not include any false information in the [such candidate's] print statement or video script. The candidate must verify that [such candidate's] the print statement and video script are true, to the best of [such] the candidate's knowledge. [Knowingly filing a written instrument that contains a false statement or false information is a Class A misdemeanor under New York State Penal Law § 175.30.]

(vi) [With each candidate print statement, the] The Board [shall] will publish one of the following notices with each candidate print statement:

(A) In the case of a participant: "Participant in the Campaign Finance Program" or similar language [to like effect].

(B) In the case of a non-participant: "Not a participant in the Campaign Finance Program" or similar language [to like effect].

(c) Ballot proposals

(i) The print and online editions of the Voter Guide for a general election in which a city ballot proposal is anticipated to appear on the ballot [shall] will contain: (A) the form of each ballot proposal as it will appear on the ballot in the general election; (B) a plain-language abstract of each ballot proposal; and (C) to the extent feasible, [the] clearly-labeled major arguments for and against the passage of each ballot proposal[, clearly labeled as such]. If feasible, the Board [shall] will solicit [and accept from the] public

statements for and against passage of each ballot proposal for possible inclusion in the Voter Guide for the general election.

(ii) A public statement [shall] will not be accepted by the Board unless it: (A) is submitted in a form [and manner provided by the Board and includes] the Board requires, including any signatures [required by the Board]; (B) conforms to the length and space limitations [provided by the Board]; (C) identifies the organization, if any, on whose behalf the statement is made; and (D) clearly argues for or against passage of the proposal. No person may submit more than one statement per ballot proposal [pursuant to this paragraph].

(iii) Board determines whether to publish statements for and against ballot proposals. With respect to statements for or against passage of ballot proposals, the Board[, at its discretion,] may determine: (A) not to publish any such statements; (B) not to publish any statement submitted pursuant to paragraph (i) of subdivision (c); (C) to publish any portion of a statement submitted pursuant to paragraph (i) of subdivision (c); and (D) to compose and publish such statements as it deems appropriate.

(iv) State ballot proposals. The Board [shall] will include information about state ballot proposals in Voter Guides for a covered office or a city ballot proposal. [At its discretion, the] The Board may produce an online Voter Guide to provide information about state ballot proposals during an election for which no print Voter Guide is produced.

§ [17-03] 16-03 Voter Guide publication and distribution.

(a) The Board [shall] will publish printed Voter Guides in English and Spanish, and in [such] other languages [as may be] required by law. The Voter Guide [shall] will be distributed by mail to each city household in which there is at least one registered voter eligible to vote in the primary or general election, as applicable.

(b) The Board [shall] will produce an online Voter Guide in English and make the translated versions of the printed editions available online.

(c) The Board [shall] may [make all reasonable efforts to] produce a video edition of the Voter Guide for citywide elections[, and shall]. The Board will seek partners for the production, marketing, and broadcasting of video editions of the Voter Guide. The Board [shall] will post online the scripts provided pursuant to section [17-02(b)(ii)(C)] 16-02(b)(ii)(C), along with translations of those scripts into Spanish and [such] other languages [as may be] required by law.

(d) Any conflicts related to the submission or public release of candidate print or video statements [shall] will be decided by the Board.

(e) All decisions made by the Board with respect to any edition of the Voter Guide, including resolution of conflicts, are final.

(f) The Board [retains] has ownership of[,] and distribution rights to[,] all Voter Guide content, including candidate statements. Unedited candidate statements may be republished or broadcast with the Board's permission.

§ [17-04] 16-04 Elections not held as scheduled. Notwithstanding any other provision of this chapter, the Board [shall] will take such actions as are practicable to prepare, publish, and distribute a Voter Guide in a timely manner for an election that is not held as initially scheduled.

§ 41. Chapter 18 of title 52 of the rules of the city of New York is amended to read as follows:

Chapter [18] 17: Public Access to Information

§ [18-01] 17-01 Records available to the public. The New York State Freedom of Information Law (FOIL) (Public Officers Law, Article 6, § 84 et seq.) governs public access to the Board's records. The Board may deny access to records or portions of records that are exempted from disclosure by state or federal law.

§ [18-02] 17-02 Records access officer. The Board's records access officer is designated by the Executive Director and is responsible for ensuring appropriate agency response to public requests for access to records.

§ [18-03] 17-03 Requesting records

(a) A candidate may request access to records such candidate submitted to the Board by contacting the Candidate Guidance and Policy Unit, which may[, at its discretion,] provide access to such records without a FOIL request.

(b) To request access to Board records, a member of the public must:

- (i) make a written FOIL request in person, by mail, or by email, addressed to the Board's records access officer;
- (ii) reasonably describe the records sought;
- (iii) provide the requestor's name and mailing or email address; and
- (iv) specify preference for inspection of records or copies of records.

(c) Within five business days of receipt of a FOIL request made in accordance with subdivision (b) above, the Board will:

- (i) grant or deny the request, in whole or in part, in writing; or
- (ii) provide:

(A) a written acknowledgment of the request and state the approximate date on which the request will be granted or denied; or

(B) where circumstances prevent granting or denying the request within 20 business days of the written acknowledgment,

(1) a written statement of the reasons for the delay in making a determination; and

(2) a date, within a reasonable period depending on the circumstances, when the request will be granted or denied.

(d) Where the Board is unable to locate records responsive to the request, the Board, upon request, will certify that:

(i) the Board is not the custodian of such records; or

(ii) such records cannot be found after a diligent search.

(e) Where the request is granted, the Board will:

(i) make records available for inspection:

(A) between the hours of 10:00 a.m. and 4:00 p.m., on business days, Monday through Friday;

(B) at the offices of the Board or another location chosen by the Board;

(C) in quantities that may be limited to the amount available at the time; and

(D) contingent on the requester's promise that the records will not be removed, damaged, marked, or changed in any way during the inspection; or

(ii) make copies of records available in the medium requested, where practicable, upon payment of fees as described in this Chapter, and provide, on request, a certification that the copies are true copies;

(f) Where a request is denied, the Board will explain the reasons for the denial in writing and set forth the right to appeal.

§ [18-04] 17-04 Appealing a denial of access to records

(a) To appeal a denial of access to records, the requester must, within 30 days of the denial, submit a written appeal to the Board's General Counsel including:

(i) a copy of the original request;

(ii) a reasonable description of the records to which access was denied; and

(iii) the name and address of the requester.

(b) Upon receipt of an appeal, the Board's General Counsel shall, within 10 business days:

(i) decide the appeal and send a copy of the written decision to the requester; and

(ii) send a copy of the appeal and a copy of the written decision to the Committee on Open Government of the Department of State of the State of New York.

§ [18-05] 17-05 Fees. The Board may require payment for copies of records, as follows:

(a) 25 cents per page for photocopies not exceeding 8-1/2 inches by 14 inches; or

(b) the actual cost of reproducing any other record, in accordance with § 87 of the New York Public Officers Law.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendments Implementing New Requirements of Local and State Law

REFERENCE NUMBER: 2020 RG 008

RULEMAKING AGENCY: Campaign Finance Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: February 12, 2020

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendments Implementing New Requirements of Local and State Law

REFERENCE NUMBER: CFB-11

RULEMAKING AGENCY: Campaign Finance Board

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Aaron Friedman
Mayor's Office of Operations

February 12, 2020
Date