

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:

- candidate and committee registration and certification,
- committee termination and closure,
- post-election and post-termination disclosure statement filing requirements,
- the resignation or removal of campaign treasurers,
- records retention,
- public funds payments and repayments,
- increases to the expenditure limits and the maximum public funds payable to candidates in the event of a delayed or postponed election, and
- text message disclosure requirements for candidates and independent spenders.

These amendments are being made to ease the administrative burden on campaigns by enabling them to submit all required electronic filings solely with the Board, pursuant to New York State Election Law § 14-105, facilitate the resignation or removal of campaign treasurers, enable the Board to effectively respond to public health or other emergencies requiring the delay or postponement of elections, clarify the disclosures that candidates and independent spenders must include in text message communications, protect public funds from waste and fraud, and improve the administration and efficiency of the public matching funds program.

When and where is the Hearing? The Board will hold a public hearing on the proposed rules online. The public hearing will take place at 10:00 a.m. on December 21, 2020.

Join through the Internet:

- To join the hearing via your internet browser, click on the following URL link: <http://www.nyccfb.info/media/advisories/public-meeting-december-proposed-rules/>.
- Then, follow the instructions to join the meeting using Microsoft Teams in your browser or on your device.

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, 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, 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.

What if I need assistance to participate in the hearing? Accessibility accommodations are available. If you require assistance to participate in the hearing, you must contact the Board to request a reasonable accommodation at the hearing. You can also request a reasonable accommodation by email at Access@nyccfb.info or by phone at (212) 409-1800. Advance notice is required to allow sufficient time to arrange the accommodation. Please request any accommodations by December 18, 2020.

Is there a deadline to submit written comments? Yes, written comments must be submitted by December 18, 2020.

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 candidate registration and certification, disclosure statement filing dates and requirements, the resignation or removal of campaign treasurers, and records retention. On November 8, 2019, Governor Cuomo signed into law S. 3134, which removed the need for candidates to file electronic disclosures with both their local campaign finance boards and the New York State Board of Elections (“BOE”). The bill is now codified as New York State Election Law § 14-105 (“Section 14-105”) and went into effect in January 2020. On April 27, 2020, the BOE determined that the CFB was eligible to act as the sole recipient of electronic filings from candidates and their authorized political committees, pursuant to Section 14-105. The CFB is proposing these amendments to conform to the Election Law, as required under Section 14-105, and to ease the administrative burden on campaigns.

The CFB is proposing amendments to several of its rules regarding increases to the expenditure limits and the maximum public funds payable to candidates in the event of a delayed or postponed election. The New York City Administrative Code (the “Code”) authorizes the CFB to promulgate rules for the application of separate expenditure limits and distribution of additional public funds to eligible participating candidates in the event of “an additional day for voting held pursuant to section 3-108 of the New York state election law, an election held pursuant to court order, or a delayed or otherwise postponed election.” *See* N.Y.C. Admin. Code § 3-705(5)(b), 3-706(1)(b)(ii). In response to the outbreak of the novel coronavirus in New York, Mayor de Blasio and Governor Cuomo declared a public health emergency and rescheduled special elections for Queens Borough President and City Council District 37. Currently, the CFB has no rule addressing expenditure limits or public funds payments in delayed or postponed elections. While the CFB also has no rule increasing contribution limits for delayed or postponed elections, the Code automatically increases contribution limits for delayed or postponed elections. *See* N.Y.C. Admin. Code § 3-703(1)(f). The CFB is proposing these amendments because it is in the interest of fairness to increase expenditure limits and make additional public funds available to candidates who are required to campaign for an extended time period as a result of unforeseen postponements or delays.

The CFB is further proposing amendments to its rules regarding “paid for by” disclosure requirements. The CFB is proposing these amendments to clarify the application of section 3-703(16) of the Code and section 1052(a)(15)(c)(i) of the New York City Charter (the “Charter”) to text message communications sent by candidates or independent spenders.

Lastly, the CFB is proposing amendments to various rules to conform to existing Board practice and procedure and to improve the administration and efficiency of the Campaign Finance Program (the “Program”).

The following is a summary of the substantive changes.

Summary of Proposed Rules

Proposed amendments to implement Section 14-105 of the Election Law

Amendments to the following rule sections are described below: Sections 2-01(e), 2-03(a), 2-03(c), 3-04(a)-(d), 4-02, 4-05(b)(ii)(A), 4-07, 6-01(h)(iv)(B)(2), 9-02(c), 15-02(c), 15-02(d)(iii), and 15-02(d)(v).

Chapter 2:

Section 2-01(e) is amended to require that the Filer Registration include a sworn statement from the candidate authorizing the committee to aid or take part in their election and to submit all required filings on their behalf, and a sworn statement from the treasurer that the candidate has authorized the committee to aid or take part in their election. Previously, candidates and treasurers submitted authorizing statements to the BOE. *See* Election Law §§ 14-104(1), (2), 14-112. However, as a result of the BOE’s determination that the CFB may serve as the sole recipient of all required filings, campaigns will submit the statements directly to the CFB.

Section 2-03(a) is amended to clarify that candidates must notify the Board of any material change to the information in their Filer Registration or Certification occurring within five years from the later of the filing of a final statement showing satisfaction of all outstanding liabilities and disposition of all assets (a “Final Statement”) or the issuance of their final audit report. Previously, candidates were only required to notify the Board of such changes occurring within five years of the date of the covered election. However, the Election Law requires candidates to maintain records of financial activity for five years from the date of filing a Final Statement. *See* Election Law § 14-118(1). This change is to conform to the Election Law.

A new subsection (c) is added to section 2-03 to clarify that, if a treasurer of an authorized or principal committee resigns or is removed, the candidate will serve as the treasurer until such time as a new treasurer is designated in a properly executed amended Filer Registration or Certification filed with the Board. Under the Election Law and NYCRR, political committees may not receive or expend anything of value without an active treasurer. *See* Election Law § 14-118(1); 9 NYCRR § 6200.7(b). Previously, the BOE monitored the termination and removal of committee treasurers and committees’ compliance with the restrictions on engaging in financial activity without an active treasurer. However, as a result of the application of Section 14-105, the CFB is now responsible for receiving filings related to the resignation or removal of a primary or principal committee treasurer. This change is to ensure candidates’ compliance with the Election Law and NYCRR, ease the administrative burden on campaigns, and to minimize potential interruptions to regular campaign activities caused by the resignation or removal of a treasurer.

Chapter 3:

Section 3-04(a) and (c) are amended to permit the Board to terminate committees that have received public funds and to permit all committees to terminate voluntarily, pursuant to section 3-04(c). Previously, the Board would not terminate committees that had received or were seeking public funds under section 3-04(a) and did not permit candidates who had received or were seeking public funds to voluntarily terminate their candidacies under section 3-04(c) because terminated committees were not required to submit future disclosure statements to the Board. However, as a result of the implementation of Section 14-105, all candidates and committees must file ongoing semi-annual disclosure statements until they file a Final Statement. *See also* Sections 3-04(d), 4-07(a), (b). As such, the Board will now terminate committees regardless of their receipt of public funds and will permit candidates who have received public funds to terminate their candidacies. These changes are to ease the administrative burden on candidates and to conform to the Election Law.

Sections 3-04(b) and (d) are amended to require that committees that are terminated by the Board pursuant to section 3-04(a) must continue to file disclosure statements as required under section 4-05(b)(ii) until they have filed a Final Statement with the Board, showing that they have extinguished all outstanding liabilities and disposed of all assets. Previously, committees that were terminated by the Board were still obligated to file disclosure statements with the BOE, but not the CFB, until they filed a Final Statement. *See* Election Law § 14-108(1). However, as a result of the application of Section 14-105, committees that are terminated pursuant to section 3-04(a) must continue to file any required disclosure statements with the CFB, until they file a Final Statement. *See also* Section 4-07. These changes are to conform to the Election Law.

Chapter 4:

Section 4-02 is amended to clarify that candidates must retain records for five years from the date on which the candidate files a Final Statement with the CFB. Previously, candidates were required to maintain documentation for five years from the date of the covered election. However, the Election Law requires that treasurers maintain documentation for their committees for five years from the date of the filing of a Final Statement. *See* Election Law § 14-118(1). This change is to conform to the Election Law.

Section 4-05(b)(ii)(A) is amended to require candidates to continue to file post-election semi-annual disclosure statements until they have filed a Final Statement with the CFB. Previously, the CFB required only one post-election semi-annual disclosure statement filing—on January 15 following the date of the election. As a result of the application of Section 14-105, candidates must now continue to file post-election semi-annual disclosure statements until they file a Final Statement with the CFB. *See* Election Law § 14-108(1); 9 NYCRR § 6200.2. This change is to conform to the Election Law and New York State Codes, Rules, and Regulations (the “NYCRR”).

New subdivisions (a) and (b) are added to section 4-07 to clarify that candidates are now required to continue to file semi-annual disclosure statements until they have filed a Final Statement with the CFB, even if they have terminated their candidacies under sections 3-04, unless they receive an exemption from the Board. Previously, candidates were not required to

file disclosure statements with the CFB after their termination pursuant to section 3-04. However, as a result of the application of Section 14-105, candidates must continue to file semi-annual disclosure statements with the CFB until they file a Final Statement, even after their termination pursuant to section 3-04. *See* Election Law § 14-108(1); 9 NYCRR § 6200.2. This change is to conform to the Election Law and NYCRR (*see also* Section 3-04(d)), to facilitate the efficient administration of the Program, and to ease the administrative burden on campaigns.

Chapter 6:

Section 6-01(h)(iv)(B)(2) is amended to clarify that prospective candidates will no longer file political committee authorization statements with the BOE and will instead authorize their primary or principal political committee to make all required filings on their behalf within the Filer Registration or Certification submitted to the Board. Previously, authorization statements were filed with the BOE. However, as a result of the application of Section 14-105, prospective candidates must now file these statements with the CFB. This change is to ease the administrative burden on campaigns and conform to the Election Law.

Chapter 9:

Section 9-02(c) is amended to modify the Board's presumption regarding the amount of campaign funds remaining in a special election committee account. Candidates who receive public funds are required to pay to the Board an amount equal to the campaign funds remaining in their accounts after the election. *See* Admin. Code § 3-710(2)(c). Previously, the Board presumed that the amount of campaign funds remaining was equal to the amount of the committee bank balance on the last day of the reporting period for the final required disclosure statement. The presumption facilitated the post-election audit and public funds calculation. However, as a result of the application of Section 14-105, candidates must continue to file semi-annual disclosure statements with the CFB until they file a Final Statement, whereas previously they were only required to file a limited number of post-election disclosure statements with the CFB. As a result, the Board will now presume that the amount of campaign funds remaining is equal to a candidate's authorized committee bank account balance on the later of the last day of the reporting period for the 27-day post-election disclosure statement or the last day of the reporting period for the first semi-annual disclosure statement following the date of the special election.

Chapter 15:

Section 15-02(c) is amended to clarify that, to use an existing committee for a special election, candidates must amend their Filer Registration or Certification to reflect the change in election. Previously, candidates were required to amend their registration with the BOE. However, as a result of the application of Section 14-105, candidates must file such amendments with the CFB.

Section 15-02(d)(iii) is amended to clarify that all special election candidates must continue to file semi-annual disclosure statements after the date of a special election. Previously, candidates were only required to file either a 27-day post-election disclosure statement or the next occurring semi-annual disclosure statement with the CFB. However, as a result of the application of

Section 14-105, candidates must now continue to file disclosure statements with the CFB until they file a Final Statement.

Section 15-02(d)(v) is amended to clarify that candidates must continue to file semi-annual disclosure statements after the date of a special election until they file a Final Statement with the CFB and that the 27-day post-election filing may be filed jointly with the January or July semi-annual disclosure statements in certain circumstances. Previously, candidates were only required to file a 27-day post-election disclosure statement and a semi-annual disclosure statement following the election. However, as a result of the application of Section 14-105, candidates must now continue to file disclosure statements with the CFB until they file a Final Statement.

Proposed amendments to require candidate and independent spender disclosures within text messages

Amendments to the following sections are described below: Sections 6-06(c), 14-02, and 14-04(a).

Chapter 6:

Section 6-06(c) is amended to include a new paragraph v, which describes the disclosure that candidates must include in text messages. Campaigns are required to include such “paid for by” disclosures in all communications. *See* Admin. Code § 3-703(16). However, the Board had not previously prescribed the manner of their inclusion in text messages within its rules. This change is made to articulate current Board guidance and practice.

Chapter 14:

Section 14-02 is amended to add the definition of “text message communication.”

Section 14-04(a) is amended to add a new paragraph v, which requires independent spenders to include the words “paid for by” and the name of the independent spender and other relevant information in any text message communications, as defined in section 14-02. Independent spenders are required to include such disclosures in certain communications. *See* N.Y.C. Charter § 1052(a)(15)(c)(i). However, the Board had not previously prescribed in its rules the disclosures that independent spenders must include in text messages. This change is made to codify Board practice and prior guidance.

Proposed amendments to expenditure and public funds limits in delayed or postponed elections

Amendments to the following sections are described below: Sections 6-01 and 7-01(c).

Chapter 6:

Section 6-01 is amended to include a new subdivision l, which provides for increased expenditure limits for participating candidates in the event that an election is delayed or otherwise postponed. Previously, the Board had no rule providing for an increase to the expenditure limit applicable to candidates in the event of a delayed or postponed election. However, the Code mandates the Board promulgate rules for increasing the expenditure limit in

the event of a delayed or postponed election. *See* Admin. Code § 3-706(1)(b)(ii). Based on an analysis of candidate spending reported in prior special, primary, and general elections, the CFB is proposing to increase the spending limit for all offices by 0.5% for each day an election is delayed or postponed, up to a maximum of 130% of the original spending limit. This change is to promote the efficient administration of the Program and is in the interest of fairness to candidates who are required to campaign for an extended time period as a result of unforeseen postponements or delays.

Chapter 7:

Section 7-01(c) is amended to provide for an increase to the maximum public matching funds payable to participating candidates in the event that an election is delayed or otherwise postponed. Previously, the Board had no rule providing for an increase to the maximum public funds payable to candidates in the event of a delayed or postponed election. However, the Code mandates the Board promulgate rules for the issuance of additional public matching funds in the event of a delayed or postponed election. *See* Admin. Code § 3-705(5)(b). Based on an analysis of candidate spending reported in prior special, primary, and general elections, the CFB is proposing to increase the maximum public funds payment for all offices by 0.5% for each day an election is delayed or postponed, up to a maximum of 130% of the original maximum public funds payment. This change is to promote the efficient administration of the Program and is in the interest of fairness to candidates who are required to campaign for an extended time period as a result of unforeseen postponements or delays.

Proposed amendments relating to the general administration of the Program and early public funds payments

Amendments to the following sections are described below: Sections 1-02, 2-01(a), 2-02(e), 2-06, 3-01(d)(i)(E), 4-05(b)(ii), 7-01(e), 9-02(d)-(j), and 9-02(j)(iii).

Chapter 1:

Section 1-02 is amended to remove the definition of “state form.” This term no longer appears in these rules.

Chapter 2:

Section 2-01(a) is amended to remove the statement that submitting a Filer Registration is not considered a statement of intent to run for any particular office. Previously, candidates were not required to designate an office sought when submitting their Filer Registration. However, as a result of a recent rulemaking, they are now required to do so under Section 2-01(e)(v). This change is made to conform to Section 2-01(e)(v) and to promote effective and efficient administration of the Program.

Section 2-02(e) is amended to remove a requirement that candidates file physical copies of their Certifications in certain circumstances. Previously, candidates who had already submitted a Filer Registration were required to submit a physical copy of their Certification if it designated a different treasurer than the Filer Registration. Section 2-02(e) will now permit candidates to

electronically file such Certifications. This change is made to ease the administrative burden on campaigns and to facilitate the Board's transition to an electronic registration system.

Section 2-06 is amended to clarify that candidates must complete a compliance training program by the earlier of the last day of the 32-day pre-primary election disclosure period or the 15th business day prior to a public funds payment. This change is made to promote the efficient administration of the Campaign Finance Program.

Chapter 3:

Section 3-01(d)(i)(E) is amended to clarify that a candidate may be ineligible for a pre-election public funds payment where reported contributions greater than \$99 lacking employer information exceeded a threshold percentage published by the Board. As amended in a recent rulemaking, Section 3-01(d)(i)(E) stated that the Board calculated the threshold percentage using matching claims rather than total contributions, and did not include the \$99 cutoff. This change is made to correct this error and conform to sections 3-703(6)(a) and (b)(iii) of the Code and sections 4-05(c)(ii)(A), (C), and (D).

Chapter 4:

Section 4-05(b)(ii) is amended to add a new subparagraph (E) to clarify that candidates may file a single, combined disclosure statement with the CFB in cases where the scheduled filing dates of two disclosure statements fall within five days of one another. This change is made to articulate existing Board practice and procedure and to conform to the Election Law.

Chapter 7:

Section 7-01(e) is amended to clarify that a candidate who does not expect to have a primary election may receive early public funds based on the expectation of a general election opponent, subject to the requirements of section 7-02(a)(ii). However, because the Board does not currently distinguish between primary and general election public funds payments, the early payment received by that candidate would not be specifically "earmarked" for the general election. Accordingly, this section is amended to clarify that a candidate on the ballot in only one election may not receive more than the maximum allowable amount of public funds for a single election.

Chapter 9:

Section 9-02(d) is relettered Section 9-02(j) and is amended to clarify that the Board will consider all possible grounds for repayment of public funds when determining the public funds repayment amount, and the amount owed will be the largest amount of all applicable grounds for repayment. This change is made to reflect existing Board policy.

Sections 9-02(f) and 9-02(j) are relettered Sections 9-02(e) and (i), respectively, and the new Sections 9-02(e) and (i)(iii) are amended to clarify the Board's treatment of public funds paid to candidates who do not qualify for the ballot or subsequently become unopposed. Previously, candidates could not receive public funds prior to the certification of the ballot for that election and candidates who were not opposed on the ballot could not receive public funds. However, as a result of amendments made to the City Charter by the 2018 Charter Revision Commission and

Local Law 128 of 2019, codified in section 3-705(4) of the Code, candidates may now receive public funds prior to the date of ballot certification. As a result, section 9-02(i)(iii) (formerly, section 9-02(j)(iii)) is amended to provide that the Board may seek immediate repayment of any remaining public funds from candidates who fail to make the ballot, and section 9-02(i)(iii) (formerly, section 9-02(j)(iii)) is amended to permit candidates who receive public funds prior to becoming unopposed to retain any remaining public funds for use in furtherance of a later election for the same office, subject to a deduction from any future public funds payments for such later election.

These amendments will apply in the event that a candidate receives a pre-ballot payment based on a reasonably anticipated primary election that does not occur because the candidate's sole opponent drops out or does not make the ballot. Expenditures made before the candidate's sole opponent exited the race may be considered qualified, subject to the ordinary review conducted as part of the post-election audit. However, the amount of public funds that the candidate received but did not spend for the primary will be deducted from the amount of public funds that the candidate is eligible to receive for the general election. For example, a candidate who received \$100,000 in December and spent \$30,000 between December and April, whose sole primary opponent was disqualified from the ballot in April, would retain all public funds received, but have \$70,000 deducted from their general election payment, effectively allowing the candidate to receive a maximum payment for the general plus the \$30,000 that could have been spent for the reasonably anticipated primary. This allows candidates to use public funds for legitimate expenditures spent in good faith anticipation of a primary, but avoids additional public funds being wasted on an election that does not occur.

Sections 9-02(e), (g), (h), and (i) are relettered Sections 9-02(d), (f), (g), and (h), respectively. This change is made to provide clarity in the organization of Section 9-02.

New material is underlined.

[Deleted material is in brackets.]

§ 1. The definition of the term “state form” in section 1-02 of chapter 1 of title 52 of the rules of the city of New York is removed in its entirety:

[“**State form**” means a statement of campaign receipts and expenditures required to be filed by a candidate or political committee with the State Board of Elections.]

§ 2. Subdivision (a) 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:

(a) Not a statement of intent. The submission of a Filer Registration shall not be construed as a statement of intent [to run for any particular office or] to join the Program.

§ 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) a sworn statement from the candidate authorizing the committee to make, on the candidate's behalf, any filings as may be required by the Board to disclose all financial activity, including that of the candidate, related to the candidate's campaign;

~~[(ii)]~~(iii) 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, and a sworn statement from the treasurer of such committee that the candidate has authorized the committee to aid or take part in this election;

~~[(iii)]~~(iv) 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]~~(v) by the earlier of the first disclosure statement filing or 15 business days following submission of the Filer Registration, 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 purposes of repaying debt from a previous election;

~~[v]~~(vi) the specific office to which the candidate is seeking nomination or election; and

~~[vi]~~(vii) other information as required by the Board.

§ 4. Subdivision (e) of section 2-02 of chapter 2 of title 52 of the rules of the city of New York is amended to read as follows:

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

§ 5. Subdivision (a) of section 2-03 of chapter 2 of title 52 of the rules of the city of New York is amended, and a new subdivision (c) is added, to read as follows:

§ 2-03 Amendments to Filer Registration or Certification.

- (a) The candidate must notify the Board of any material change in the information required to be listed on the candidate’s Filer Registration or Certification, including any new information or any change to any required information, concerning any political committee, bank account, merchant or payment processor account, candidate or treasurer employment, address, telephone number, or email address, in such manner as may be provided by the Board, [occurring] if such change occurs prior to the covered election or within a period of five years [following the covered election, including any new information or any change to any required information, concerning any political committee, bank account, merchant or payment processor account, candidate or treasurer employment, address, telephone number, or email address, in such manner as may be provided by the Board.]from the filing of a final statement showing satisfaction of all liabilities and disposition of all assets arising from the covered election, including payment of any penalties or repayment of public funds owed to the Board. Such notification must be submitted no later than the next deadline for filing a disclosure statement, or, in the case of changes that occur after the deadline for the last disclosure statement required to be filed, no later than 30 days after the date of the change[; provided, however, that if the candidate has extinguished all outstanding liabilities resulting from the applicable election, including payment of any penalties or repayment of public funds owed to the Board, the candidate need not notify the Board of any material change after the issuance of the candidate’s final audit report].

...

- (c) If the treasurer of a candidate’s principal committee resigns or is removed, the Board will consider the candidate to be the treasurer of the principal committee until the candidate submits an amended Filer Registration or Certification that designates a new treasurer.

§ 6. 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 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. The training must be completed on or before the final day of the 32-day pre-primary election disclosure period; provided, however, that for the candidate to be eligible to receive [an optional early]a public funds payment, such training must be completed [at least 15 business days before such payment is made]on or before the final day of the 32-day pre-primary election disclosure period or the 15th business day before the payment is scheduled to be made, whichever is earlier. The individual attending the training may be the candidate, the candidate’s campaign manager or treasurer, or another individual with significant managerial control over the campaign. 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.

§ 7. Subparagraph (E) of 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:

(E) the number of [matching claims]contributions 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 the total number of contributions exceeding \$99 received by 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.

§ 8. Section 3-04 of chapter 3 of title 52 of the rules of the city of New York is amended to read as follows:

(a) The Board may send a notice to a candidate that such candidate's candidacy has been deemed terminated if such candidate[: (1) has not received public funds; (2) has not submitted a petition for payment after final disqualification from the ballot, pursuant to 7-01(e)(ii); and (3)] is not on the ballot for that election.

(b) If the terminated candidate is seeking nomination or election as a write-in candidate, or, in the case of a participant, intends to submit a petition for public funds pursuant to section 7-01(e)(ii), the candidate must notify the Board within five business days after receiving the notice of termination, in which case the Board may reverse the termination. [A candidate whose termination has been reversed must continue to submit disclosure statements as required by these rules.]

(c) A candidate may also request that the Board deem such candidate's candidacy terminated because such candidate has [satisfied all three requirements of subdivision (a), or has satisfied requirements (1) and (2) of subdivision(a) and has]ceased campaigning and has verified that fact in a written request for termination submitted in the form and manner required by the Board.

(d) Terminated candidates are required to abide by Program obligations, such as maintaining requisite records, submitting documentation or information in response to requests by the Board, and paying penalties for violations of the Act and these rules. Terminated candidates must continue to file all required disclosure statements.

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

§ 4-02 Record retention. The candidate must retain all records and documents required to be kept under section 4-01 for five years [after the last disclosure statement deadline set by the Board for the covered election, or until the issuance of the candidate's final audit report and the candidate has extinguished all outstanding liabilities]from the filing of a final statement showing satisfaction of all liabilities and disposition of all assets resulting from the applicable election including payment of any penalties or repayment of public funds owed to the Board[, whichever is later].

§ 10. Subparagraph (A) of 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 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] each year thereafter, until a campaign submits a final statement showing satisfaction of all liabilities and disposition of all assets.

§ 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 add a new subparagraph (E), to read as follows:

(E) As provided pursuant to New York State Election Law, if the filing date of any disclosure statement scheduled to subparagraphs (B) and (C) otherwise falls within five days of a semi-annual disclosure statement scheduled pursuant to subparagraph (A), candidates may file a single combined disclosure statement on the date on which the latter of the two disclosure statements is due.

§ 12. Section 4-07 of chapter 4 of title 52 of the rules of the city of New York is amended to add new subdivisions (a) and (b), to read as follows:

§ 4-07 [Terminated candidacy]Final Statement.

(a) A candidate [need not submit any disclosure statements for periods subsequent to the termination of such candidate's candidacy, as described in section 3-04, unless the termination is reversed pursuant to section 3-04(b).] must file all disclosure statements required under section 4-05(b) until such time as the candidate files a final statement demonstrating the disposition of all committee assets and satisfaction of all committee liabilities, including the payment of any penalties or repayment of public funds owed to the Board.

(b) A candidate whose candidacy has been deemed terminated, as described in section 3-04(a), must continue to file all required disclosure statements; provided, however, that the Board may deem a candidate who has not received public funds for the current election cycle and is not seeking reconsideration of a public funds determination exempt from such filing requirements upon the filing of a signed, notarized statement from the candidate and treasurer indicating that the candidate has ceased campaigning and does not intend to raise or spend additional funds in connection with the covered election. Candidates who receive such an exemption are nevertheless required to abide by all other Program obligations, including maintaining records, submitting documentation or information in response to requests by the Board, and paying penalties for violations of the Act and Rules. If a candidate who has received an exemption under this subdivision resumes raising or spending funds in connection with the covered election, the

candidate must immediately notify the Board in writing and such candidate will be subject to all requirements applicable to a candidate whose candidacy has been terminated, as described in section 3-04.

§ 13. Item (2) of subparagraph (B) of paragraph (iv) of subdivision (h) of section 6-01 of chapter 6 of title 52 of the rules of the city of New York is amended to read as follows:

(2) The supporting documentation must demonstrate that the prospective candidate(s) engaged in activities that would lead a reasonable person to believe that such candidate(s) would participate in the primary election. Such activities may include:

- (I) authorizing a political committee with the Board [of Elections]for the primary election;
- (II) filing a Filer Registration or Certification with the Board;
- (III) engaging in petitioning activity; including the filing of petitions with the Board of Elections;
- (IV) producing and/or distributing campaign communications related to the primary election; and
- (V) campaigning for office or otherwise publicly declaring an intent to participate in the primary election.

§ 14. A new subdivision l of section 6-01 of chapter 6 of title 52 of the rules of the city of New York is added to read as follows:

(l) Delayed or postponed elections. The expenditure limit applicable to candidates in an election that is delayed or otherwise postponed shall be increased by 0.5% for each day by which the election is delayed or postponed; provided, however, that such increase shall not exceed 130% of the original limit.

§ 15. A new paragraph v of subdivision (c) of section 6-06 of chapter 6 of title 52 of the rules of the city of New York is added to read as follows:

(v) For a text message communication, the identification must be written at the beginning or end of the communication. If the identification is written at the end of the communication, the name of the candidate must also be clearly written at the beginning of the communication.

§ 16. Subdivision (c) 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:

(c) Payment amount. A candidate in any covered primary, general, or special election, having demonstrated eligibility to receive public funds, including by meeting the threshold for eligibility for public funding pursuant to § 3-703(2) of the Code, may receive public matching funds based on valid matchable contribution claims and the matching rate set forth in § 3-705(2)(a) of the Code, up to the maximum amount set forth in § 3-705(2)(b) or § 3-705(7) of the Code, as applicable. Payments are subject to withholdings and deductions as set forth in the Act and these rules. For an election that is delayed or otherwise postponed, the maximum amount of public funds payable shall be calculated as stated in § 3-720(e) of the Code, provided that the expenditure limit used as the basis for such calculation shall be the increased expenditure limit pursuant to section 6-01(I).

§ 17. 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 pay any candidate disqualified from the ballot by the Board of Elections or by a court or 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. 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, is not eligible to receive public funds, notwithstanding any write-in candidates in that election, except as otherwise provided in paragraph (ii) below, and may be required to return any public funds received. Notwithstanding § 3-704(2)(d) of the Code, such a candidate shall be ineligible to receive additional public funds for a later election held in the same calendar year unless the candidate demonstrates that they will appear on the ballot in that election. A candidate who appears on the ballot for a single election in an election cycle may not receive public funds exceeding the maximum public funds payable amount for a single election, pursuant to § 3-705(2)(b) of the Code, for that election cycle; provided, however, that a candidate who receives public funds based on a reasonably anticipated primary election that is not held, or for which such candidate does not appear on the ballot, such candidate may receive additional public funds for a different election held later in the same calendar year as provided in section 9-02(i)(iii).

§ 18. Subdivision (c) of section 9-02 of chapter 9 of title 52 of the rules of the city of New York is amended to read as follows:

(c) Final Bank Balance. Pursuant to § 3-710(2)(c) of the Code, the candidate and the principal committee are required to pay to the Board an amount equivalent to the campaign funds remaining in such candidate's principal committee account. The candidate must promptly pay to the Board such remaining funds; provided, however, that all remaining funds for a candidate shall be immediately due and payable to the Board upon a determination by the Board that the candidate has delayed the post-election audit process. The candidate must promptly pay to the board any additional remaining campaign funds based upon a determination made by the Board

at a subsequent date. The amount of remaining campaign funds shall be presumed to be equal to the candidate's authorized committee bank account balance on January 11 in the year following the election, or for special elections, on the last day of the reporting period for the ~~[final]~~later of the 27 day post-election disclosure statement or the first semi-annual disclosure statement the candidate is required to file with the Board ~~[for]~~following the date of such election, less any permissible documented post-election expenditures pursuant to paragraph (i) of this subdivision. The Board may also consider information revealed in the course of an audit or investigation in making a remaining funds determination, including, but not limited to, the fact that campaign expenditures were made in violation of law, that expenditures were made for any purpose other than the furtherance of the candidate's nomination or election, or that the candidate has not maintained or provided requested documentation. If a candidate repays to the Fund all funds remaining in such candidate's authorized committee bank account on or before December 31 in the year of the election, or, for special elections, on or before the last day of the month following the month in which the election took place, such candidate shall be presumed not to owe additional remaining funds, provided that any contributions received and expenditures made after such funds are repaid must be raised and spent in compliance with the Act and these rules.

§ 19. Subdivision (d) of section 9-02 of chapter 9 of title 52 of the rules of the city of New York is relettered to subdivision (j) and amended to read as follows:

~~[(d)]~~ (j) *Repayment is largest amount.* Where more than one grounds for repayment exists as provided in [subdivisions (a), (b), and (c) of] this section, the amount to be paid to the Board shall be the largest of the amounts.

§ 20. Subdivision (e) of section 9-02 of chapter 9 of title 52 of the rules of the city of New York is relettered to subdivision (d), as follows:

~~[(e)]~~ (d) *Breach of certification.* A candidate found to have breached such candidate's certification pursuant to section 3-01(e) may be deemed ineligible to receive public funds and may be required to return all public funds previously received.

§ 21. Subdivision (f) of section 9-02 of chapter 9 of title 52 of the rules of the city of New York is relettered to subdivision (e) and amended to read as follows:

~~[(f)]~~ (e) *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, or whose only remaining opponent has been finally disqualified or whose designating or nominating petitions may have been finally declared invalid by the Board of Elections or a court, may not spend public funds for any purpose other than the payment of previous liabilities incurred in qualified campaign expenditures, except as provided in section 9-02(i)(iii). All public funds in excess of those liabilities previously incurred shall be promptly repaid to the Board. The amount to be repaid 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) does not prevent the Board from determining that an additional repayment is required.

§ 22. Subdivisions (g) through (j) of section 9-02 of chapter 9 of title 52 of the rules of the city of New York are relettered subdivisions (f) through (i), as follows:

[(g)] (f) Ballot fraud. Pursuant to § 3-710(3)(a) of the Code, a candidate who has been disqualified by a court on the grounds that the candidate committed fraudulent acts in order to obtain a place on the ballot 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)] (g) 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)] (h) Ceasing to campaign. Pursuant to § 3-710(3) 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)] (i) Other reasons for repayment. The Board may require a candidate to repay public funds because:

§ 23. Subparagraph (iii) of subdivision (j), relettered above as subdivision (i) of section 9-02 of chapter 9 of title 52 of the rules of the city of New York is amended to read as follows:

(iii) the candidate has failed to demonstrate eligibility for the public funds paid 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. The Board may seek immediate repayment of the difference between the amount of public funds received by a candidate and the total amount spent by the candidate as of the date on which the candidate ceases to be on the ballot or ceases to be opposed on the ballot; provided, however, that the candidate may retain public funds previously received for that anticipated election to be used in furtherance of a different election (other than a special election to fill a vacancy) held later in the same calendar year in which the candidate seeks election for the same office, unless the candidate is seeking election exclusively as a write-in candidate in such later election; and further provided that the amount of such public funds retained for a later election will be deducted from the total amount of public funds the candidate is eligible to receive for such later election; or

§ 24. Section 14-02 of chapter 14 of title 52 of the rules of the city of New York is amended by adding a definition for “text message communication” in alphabetical order as follows:

“Text message communication” means 500 or more text messages of an identical or substantially similar nature sent within any 30-day period.

§ 25. A new paragraph v of subdivision (a) of section 14-04 of chapter 14 of title 52 of the rules of the city of New York is added to read as follows:

(v) Text message communications. For text message communications, the words “Paid for by” must appear, followed by: (i) the name of the independent spender; and (ii) the words “Not authorized or requested by any candidate, their committee, or agent. More information at nyc.gov/FollowTheMoney.” Such words must be written at the beginning or end of the communication.

§ 26. Subdivision (c) 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:

(c) Candidates raising funds for other elections within the same election cycle. Candidates who have already been raising funds for other elections occurring after the special election, but within the same election cycle, may use their existing committees and bank accounts in the special election, provided that they amend their [registration] Filer Registration or Certification with the Board [of Elections] to reflect the change in election, and further provided that once such committee and account have been used for the special election, they must not be used for any future election, including any other elections during the same election cycle.

§ 27. 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:

(iii) Semi-annual disclosure statements. [(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]in each year thereafter, until the candidate files a disclosure statement showing satisfaction of all liabilities and disposition of all assets.

[(B) Notwithstanding subparagraph (A) above:

(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 (v) is the last statement required for the special election; and

(2) for candidates in a special election who do not proceed to raise or spend funds for the following primary or general election, the first semi-annual disclosure statement due following the date of the special election shall be the last statement required for the special election; provided, however, that if the first semi-annual disclosure statement following the date of the special election is due less than 30 days after the deadline for filing the 27 day post-election disclosure statement, the second semi-annual disclosure

statement after the date of the special election shall be the last statement required for the special election.]

§ 28. 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-election disclosure statements. Post-election disclosure statements must be filed 27 days after the special election and on [the first] each January 15 [or] and July 15 following the election until the candidate files a final statement showing satisfaction of all liabilities and disposition of all assets. If the disclosure statement due 27 days after the special election is otherwise due within five days of a required disclosure statement, a single combined statement may be filed on the date on which the latter of the two separate disclosure statements is required to be filed.

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

RULE TITLE: Miscellaneous Amendments of Campaign Finance Rules

REFERENCE NUMBER: 2020 RG 093

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: November 10, 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: Miscellaneous Amendments of Campaign Finance Rules

REFERENCE NUMBER: HPD-50

RULEMAKING AGENCY: Department of Housing Preservation and Development

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/ Francisco X. Navarro

Mayor's Office of Operations

Month Day, 2019

Date