

New York City Campaign Finance Board

Final Rules: Summary of Substantive Changes **August 15, 2019**

Below is a brief summary of the most significant substantive changes contained in the Final Rules. More detail regarding these amendments can be found in the Notice of Final Rules and the accompanying crosswalk chart.

Rule 2-02(d) allows candidates who have already submitted a Filer Registration to file a Certification in electronic format, unless a new treasurer has been appointed.

Rule 3-01(d) clarifies that public funds may be denied if a candidate has committed fraud or material misrepresentation, been found in breach of certification, or engaged in conduct detrimental to the Program that is in violation of any other applicable law at any time in the course of that candidate's Program participation, which may include previous election cycles. Additionally, the rule distinguishes between bases for denial of public funds that apply only to pre-election payments, and those that apply to both pre-election and post-election payments. For example, accepting and failing to refund an over-the-limit or prohibited contribution is grounds for ineligibility to receive public funds prior to the election, but would not prevent the candidate from receiving a post-election public funds payment. Conversely, exceeding the expenditure limit would prevent the candidate from receiving any public funds both before and after the election.

Rule 4-05(a) requires that all backup documentation accompanying disclosure statements, including bank statements, be submitted electronically via the CFB's C-SMART software.

Rule 5-05(u) provides that contributions first reported in an amendment to a disclosure statement – rather than in the statement itself – are not matchable. Due to the administrative processes associated with reviewing disclosure statements and issuing public funds payments, it is crucial that matchable contributions be claimed and reported in a timely manner, and that all contributions that will be claimed for match are reported with the initial statement filing. If a contribution first reported in an amendment were permitted to be claimed for match, the auditor would be required to restart the review of the disclosure statement being amended, which might not allow sufficient time for all matching claims to be reviewed prior to the next public funds payment date.

Rule 5-05(v) clarifies that matching claims may not be submitted after January 15 in the year after the election, even for contributions that were timely reported.

Rule 5-06(d) provides that an extension of credit by a corporation, limited liability company, or partnership that is not commercially reasonable and is not made in the regular course of business is presumed to be a prohibited in-kind contribution.

Rule 6-04(g) provides that certain routine interactions between campaigns and outside entities will not, absent other factors suggesting non-independence, lead to a determination that

the campaign and the entity coordinated in an expenditure. This rule is a codification of CFB Advisory Opinion No. 2013-1 (January 10, 2013).

Rule 7-02(c) provides a more detailed description of the process of responding to invalid matching claims reports, and clarifies that failing to respond timely to an invalid claims report may lead to a delay in the payment of public funds to the campaign.

Rule 7-04(a) changes the deadline for filing a Certified Statement of Need. Statements must be filed no later than the 32-day pre-election disclosure statement deadline for the election in which the candidate is running, except that if the candidate's basis for filing the statement arises for the first time after that deadline, then the statement must be filed by the due date of the disclosure statement immediately prior to the next public funds payment date. For example, if, after the 32-day pre-election disclosure statement deadline, a candidate receives an endorsement as described in § 3-705(7)(a)(1)(B) of the Act, and no other basis for filing a statement of need previously existed in that race, the candidate's opponent may file a statement of need up until the disclosure statement immediately preceding the following payment date.

Rule 9-02(c)(iii) clarifies the requirements regarding bonus payments to staff. Generally, candidates who received public funds may not make post-election bonus payments to employees. However, a bonus payment to an employee may be considered a permissible pre-election expenditure, even if it is paid after the election, as long as the bonus is related to pre-election services; is based on measurable, merit-based criteria (e.g., amount of contributions raised); is not conditioned upon the result of the election (e.g., a "win bonus") or whether the campaign received public funds or has funds remaining after the election; is clearly detailed in a contract executed before the services in question were provided; and does not amount to more than 10% of total payments to the employee.

Rule 10-03(a)(ii) clarifies who has the authority to waive the right to an adjudication pursuant to section 1046 of the City Charter on behalf of a campaign, a TIE, and an independent spender. Such authority is held by the individual candidate, the elected candidate, and the independent spender or authorized representative, respectively, or an agent of any of those individuals. A waiver received from any of the individuals listed in the rule is considered to be on behalf of the treasurer and committee, the TIE, and the independent spender, as applicable.

Rule 10-03(b) clarifies that extensions to respond to enforcement notices may be granted only upon good cause shown, and must be requested prior to the response deadline. The rule specifies that a "complete response" must be submitted by the deadline, meaning that piecemeal responses, parts of which are submitted after the deadline, are not permitted. Information or documentation submitted after the deadline shall be disregarded, except that the Board may choose, under extraordinary circumstances, to accept it. Extraordinary circumstances are events beyond the control of the campaign, TIE, or independent spender that make it impossible for the candidate, treasurer, or independent spender/authorized representative to respond in a timely manner. Examples include serious health issues, disasters, and accidents. Campaigns, TIEs, and independent spenders will be required to submit documentation explaining and demonstrating these circumstances.

Rules 17-02(b)(i)(D) and 17-02(b)(ii)(A) provide that candidate print and video statements for the Voter Guide may not refer to any opposing candidate by name, and must not include statements, gestures, or materials that are patently offensive.