GUIDELINES FOR STAFF RECOMMENDATIONS FOR PENALTY ASSESSMENTS FOR CERTAIN VIOLATIONS

2017 Citywide Elections

INTRODUCTION

The 2017 Penalty Guidelines will be used by the staff of the Campaign Finance Board (the "CFB" or "Board") to make penalty recommendations for violations of the Campaign Finance Act (the "Act") and Board Rules (the "Rules") during the 2017 elections. See Section 3-711 of the New York City Administrative Code (the "Admin. Code").

The guidelines provide standard penalties for violations of the Act and Rules. CFB staff recommendations may depart from the standard amounts if there are aggravating or mitigating circumstances or if the total amount of penalties is disproportionate to the size of the campaign.

The Board may assess penalties that are higher or lower than the staff's recommendations. Candidates, their treasurers, and their campaign committees are jointly and severally liable for the payment of penalties. See Admin. Code § 3-711(1).

Prior to the assessment of penalties, campaigns will receive a penalty notice, to which they will have the opportunity to respond by providing information and documentation and by appearing in person either before the Board or before an administrative law judge ("ALJ"). The opportunity to respond provided in the penalty notice shall be the only such opportunity, and information and documentation not received in a timely fashion may, at the Board's sole discretion, be disregarded. Notwithstanding the opportunity to respond to the penalty notice, the failure to submit timely documentation in response to the draft audit report ("DAR") is a violation of the Act and Rules.

If a campaign chooses to appear before an ALJ, the ALJ will hear the case and then transmit a report to the Board containing findings of fact along with a recommended penalty determination. The campaign and CFB staff will then have the opportunity to submit a written response to the ALJ's report. After considering the ALJ's report and the entire written record of the case (as well as any additional testimony the Board may, at its discretion, request), the Board will issue a final penalty determination which may or may not follow the ALJ's findings and recommendations.

Similarly, prior to final public funds determinations, CFB staff will send a public

funds notice detailing the staff's recommendations for payment, non-payment, or repayment of public funds. The process for responding to a public funds notice is very similar to the process for responding to the penalty notice and will take place simultaneously – campaigns will have the opportunity to respond in writing and to appear before the Board or an ALJ prior to the Board's final public funds determination.

A campaign's final board determination ("FBD") will be sent after the Board makes penalty and public funds determinations, and will be posted on the CFB website along with the campaign's final audit report ("FAR").

CALCULATION OF STAFF PENALTY RECOMMENDATIONS

While the CFB expects the standard penalties to be appropriate in most cases, CFB staff may increase or decrease the amount of a recommended penalty – *or recommend no penalty at all* – if warranted based on aggravating or mitigating circumstances. CFB staff may also lower recommended penalties if applying the standard amounts would result in total or individual penalties disproportionate to the size of the campaign.

No penalty will be recommended or assessed for a violation that is cured by the campaign prior to receiving notice of the violation from the CFB. In addition, in certain circumstances, prompt response to a CFB notice will cure the violation. Further, staff members may, at their discretion, recommend no violation or a violation no penalty ("VNP") for *de minimis* violations.

Aggravating and Mitigating Circumstances

The CFB staff's recommendations will depart from the standard penalty amounts only in unusual circumstances. The standard amounts reflect the CFB's presumption that noncompliance is unintentional. Candidates and their treasurers are ultimately responsible for complying with the Act and Rules, and the particular reasons why a given violation occurred generally are not relevant to the recommendation or assessment of penalties.

CFB staff may recommend a penalty above the standard amount if the violation appears to have been willful or the result of reckless disregard for the Act and Rules. In the most egregious circumstances, CFB staff may recommend a penalty of up to $10,000 per violation, the statutory maximum for most violations, and/or recommend a finding of breach of certification which would require the return of all public funds received. See Admin. Code § 3-711; Board Rule 2-02.

CFB staff may recommend a penalty below the standard amount – *or no penalty at all* – in the case of a violation that was the result of specific efforts to avoid a violation, for

instance where a transaction was misreported as a result of an effort to fix a previous reporting error.

If CFB staff recommends a penalty above the standard amount, the campaign will be informed of the reason for the increase in the penalty notice and will be given an opportunity to respond to the allegation that the campaign acted willfully or with reckless disregard for the Act and Rules.

Penalties Disproportionate to the Size of the Campaign

To avoid penalties that would be disproportionate to the size of a campaign, total penalties will be capped at 15% of the greater of the amount raised or spent (based on the campaign's reporting or bank records or CFB staff's estimate). For example, CFB staff would recommend no more than $1,500 in penalties against a campaign that both raised and spent $10,000.

However, the 15% cap will not apply to campaigns that received or will receive public funds or to campaigns that failed to provide all disclosure statements and all bank statements.

In addition, the 15% cap will not apply to the following violations: violations that involve fraud, misrepresentation, or submission of false information; violations that are willful or the result of reckless disregard for the Act and Rules; exceeding the expenditure limit; converting campaign funds to a personal use; accepting and/or failing to report in-kind contributions arising from coordinated activity; or failing to respond or responding late to the initial documentation request ("IDR"), DAR, or other audit requests.

When there are violations that are not eligible for the 15% cap, CFB staff will apply the 15% cap only to eligible violations. For example, in the case of a campaign that raised and spent $10,000, if staff is alleging reporting violations and late response to the DAR, staff will cap the recommended penalties for the reporting violations at $1,500 (15% of $10,000) and recommend an additional penalty for the late response to the DAR.

In applying the 15% cap, CFB staff will not reduce recommended penalties to less than $50 each.

Infractions

A single disclosure statement that was late – *but no more than 10 days late* – may be considered an "infraction," unless the campaign has additional penalties totaling more than $1,000. <u>See</u> Admin. Code § 3-710.5; Board Rule 7-01(a)(ii).

Enforcement Thresholds

A candidate who was not on the ballot generally will not be subject to enforcement unless there is evidence of fraud, material misrepresentation, or other egregious violations. A candidate who was on the ballot but raised and spent less than three times the contribution limit generally will not be subject to enforcement unless (a) there is evidence of fraud, material misrepresentation, or other egregious violations, or (b) the candidate has reporting discrepancies, is missing disclosure or bank statements, or may be eligible to receive public funds.

If total recommended penalties would be $500 or less (before applying the 15% cap, if applicable), staff will treat the issues only as audit findings in the FAR.

STANDARD PENALTIES

A. CONTRIBUTION VIOLATIONS

A1. Accepting Contributions from Corporations, Limited Liability Companies, or Partnerships. Campaigns may not accept, either directly or by transfer, a campaign contribution (monetary or in-kind) or loan, or guarantee or other security for such loan, from any corporation, limited liability company (LLC), or partnership. See N.Y.C. Charter § 1052(a)(13); Admin. Code §§ 3-702(8), 3-703(l)(l), 3-719(2)(b); Board Rules 1-04(c)(l), (e), (g), 1-05.

If return following notification from CFB was after the deadline*	If return was after the deadline and there is an aggravating factor **	If not returned following notification from CFB
The greater of $125 or 25% of the amount of the contribution	The greater of $250 or 50% of the amount of the contribution	The greater of $250 or 50% of the amount of the contribution, plus the amount of the contribution

* The deadline will be indicated in the CFB's first notification regarding the contribution.

** "Aggravating factors" include: failing to return a contribution before the election; returning a contribution only after the third notice; accepting a contribution from a prohibited source that is also over the contribution limit; accepting a loan from a prohibited source; failing to report a contribution; and evidence of willful or reckless noncompliance.

Commentary:

No violation recommended if the contribution is returned by the first deadline provided by CFB staff (or, if an extension is granted, by the new deadline), absent evidence of willful or reckless noncompliance.

Contributions from the same source will not be aggregated (i.e., staff will recommend a separate penalty for each prohibited contribution).

A2. Accepting Contributions from Unregistered Political Committees. Campaigns may not accept a contribution (monetary or in-kind) from a political committee unless the political committee is registered with the CFB or registers with the CFB within 10 days of receipt of the contribution. See Admin. Code §§ 3-702(11), 3-703(l)(k), 3-707, 3-719(2)(b); Board Rules 1-04(c)(l), (d), (g), 1-05.

If return following notification from CFB was after the deadline *	If return was after the deadline and there is an aggravating factor **	If not returned following notification from CFB
The greater of $125 or 25% of the amount of the contribution	The greater of $250 or 50% of the amount of the contribution	The greater of $250 or 50% of the amount of the contribution, plus the amount of the contribution

* The deadline will be indicated in the CFB's first notification regarding the contribution.

** "Aggravating factors" include: failing to return a contribution before the election; returning a contribution only after the third notice; accepting a contribution from an unregistered political committee that is also over the

contribution limit; failing to report the contribution; and evidence of willful or reckless noncompliance.

Commentary:

No violation recommended if the contribution is returned by the first deadline provided by CFB staff (or, if an extension is granted, by the new deadline), absent evidence of willful or reckless noncompliance.

Contributions from the same source will not be aggregated (i.e., staff will recommend a separate penalty for each prohibited contribution).

A3. Accepting Over-the-Limit Contributions. Campaigns are prohibited from accepting contributions (monetary or in-kind) in excess of the applicable contribution limit. See Admin. Code §§ 3-702(8), 3-703(l)(f), (11), 3-719(2); Board Rules 1-04(c)(1), (h), 1-07(c). In addition, campaigns may not accept contributions in excess of the "doing business" contribution limits from individuals or entities that have business dealings with the city: $250 (for candidates for City Council); $320 (for candidates for borough president); and $400 (for candidates for public advocate, comptroller, and mayor). See Admin. Code §§ 3-702(8), (18), (20), 3-703(1-a), (1-b), 3-719(2); Board Rules 1-04(c)(1), (h).

If return of the overage following notification from CFB was after the deadline *	**If return of the overage was after the deadline and there is an aggravating factor ****	**If overage not returned following notification from CFB**
The greater of $125 or 25% of the amount of the overage	The greater of $250 or 50% of the amount of the overage	The greater of $250 or 50% of the amount of the overage, plus the amount of the overage

* The deadline will be indicated in the CFB's first notification regarding the contribution.

** "Aggravating factors" include: failing to return the overage before the election; returning the overage only after the third notice; failing to report the contribution; and evidence of willful or reckless noncompliance.

Commentary:

No violation recommended if the overage is returned by the first deadline provided by CFB staff (or, if an extension is granted, by the new deadline), absent evidence of willful or reckless noncompliance.

Contributions from the same source will not be aggregated (i.e., staff will recommend a separate penalty for each contribution that caused the contribution(s) from that contributor to exceed the limit).

Doing Business Contributions:

- *No violation recommended for a single failure to timely return the over-the-limit portion of a doing business contribution, if the return was no more than 7 days late (and the contribution was not also over the regular contribution limit).*

- *Where a candidate accepted a doing business contribution of $320 or $400 during the period before he/she declared an office, and failed to return the excess portion of the contribution within 20 days of the date he/she declared an office with a lower limit, no additional notice is required. See AO 2010-3 (September 16, 2010).*

Loans:

- *Loans outstanding on the day of the election are considered to be contributions. Staff will recommend a penalty for an over-the-limit loan even if the overage is returned by the deadline set in the staff's first notice. The standard penalty is the greater of $125 or 25% of the amount of the overage unless an aggravating factor applies. The standard penalty will not include the amount of the overage unless there is evidence that the loan was forgiven or repaid by a third party.*

B. DISCLOSURE STATEMENT VIOLATIONS

B1. **Filing Late Disclosure Statements.** Campaigns are required to file complete and timely disclosure statements on scheduled dates. See N.Y.C. Charter § 1052(a)(8); Admin. Code §§ 3-703(6), (12), 3-708(8), 3-719(1); Board Rules 1-09, 3-02.

	City Council	Borough President	Public Advocate, Comptroller	Mayor
Daily Penalty	$50	$75	$100	$200

B2. **Failing to File Disclosure Statements.** Campaigns are required to file complete and timely disclosure statements on scheduled dates. See N.Y.C. Charter § 1052(a)(8); Admin. Code §§ 3-703(6), (12), 3-708(8), 3-719(1); Board Rules 1-09, 3-02.

	City Council	Borough President	Public Advocate, Comptroller	Mayor
Penalty	$750	$1,125	$1,500	$3,000

A statement that is not filed by the due date of the next statement is considered a "failure to file." If the January 15 statement due in the year after the election (i.e., the last statement for the election) is not filed within 30 days, it will be considered a "failure to file." A submission that is not substantially complete may be rejected and considered a "failure to file."

Commentary:

One late statement, no more than 10 days late, will be a VNP (or an infraction if the campaign's other penalties total no more than $1,000).

Statements that are not "substantially complete": this would include statements rejected after one week solely due to the failure to provide backup documentation for matching claims. Staff will recommend a VNP if the backup documentation is submitted within one week and the statement is accepted, or if no backup documentation is submitted but there

were no more than five matching claims. If a statement is rejected solely for the lack of backup documentation, the penalty notice will make this clear and the Board may apply mitigation.

Standard penalties for late and missing pre-election-year statements will be reduced by 50%, or FAR only if the standard penalty would be less than $50.

The penalty for late filing will be capped at the amount of the penalty for failure to file (the penalty will still be called "late filing").

B3. Failing to Report/Late Reporting of Transactions in Daily Pre-Election Disclosure Statements. All aggregate contributions and/or loans from a single source in excess of $1,000, and all aggregate expenditures to a single vendor in excess of $20,000, received or made within 14 days of an election, must be disclosed to the Board within 24 hours. See Admin. Code §§ 3-703(6), (12), 3-708(8), 3-719(1); Board Rules 1-08(b), 1-09, 3-02(e).

The standard penalties for failing to report transactions in daily pre-election disclosure statements are: $250 (1-5 transactions); $300 (6-10 transactions); $500 (11-20 transactions); and $2,000 (21 or more transactions).

The standard penalty for the late reporting of transactions in daily pre-election disclosure statements is $10 per day per transaction, up to the applicable maximum amount above. VNP for transactions reported before the end of the first week of the two-week reporting period.

Commentary:

Failing to report, or late reporting, of very large transactions or large numbers of transactions may indicate a willful violation and may merit an increased penalty.

Campaigns are required to report expenditures in excess of $20,000 in daily disclosures if the expenditure was made, pursuant to Rule 1-08(b), within two weeks of the election. If goods or services are received prior to the election, the expenditure is required to be reported, notwithstanding the date of the invoice or payment.

The reporting of contributions is based on the date the campaign received the contributions.

In-kinds are considered contributions for purposes of the daily disclosure rules ($1,001 threshold).

Unreported candidate personal political committee contributions (contributions made from personal funds to political committees not authorized by the candidate) to any single entity, made within 14 days of the election, will not be subject to a penalty under this rubric unless such contributions total $20,000 or more.

C. REPORTING AND DOCUMENTATION VIOLATIONS

C1. <u>Failing to Demonstrate Compliance with Reporting Requirements for Receipts</u>. Campaigns are required to demonstrate compliance with the reporting requirements and are required to provide bank records, including bank statements and deposit slips. <u>See</u> Admin. Code §§ 3-703(l)(d), (g), (6), (11), (12), 3-719(1); Board Rules 1-09, 3-03(c), (d), (e), 4-01.

	Amount raised			
Percentage of under- or over-reporting of receipts ("receipts variance")	**Up to $50K**	**More than $50K to $150K**	**More than $150K to $300K**	**More than $300K**
4% - 5.9%	No action	No action	$250	$500
6% - 7.9%	No action	$250	$500	$1,000
8% - 19.9%	$250	$500	$1,000	$2,000
20% - 50%	$500	$1,000	$2,000	$4,000
More than 50%	$1,000	$2,000	$4,000	$10,000

<u>Commentary</u>:

The receipts variance calculation is: (reported receipts – receipts as documented by bank statements) ÷ reported receipts.

C2. **Failing to Report Transactions**. Campaigns are required to report all financial transactions in disclosure statements filed according to the schedule provided by the Board. See Admin. Code §§ 3-703(l)(d), (g), (6), (11), (12), 3-719(1); Board Rules 1-09, 3-02, 3-03(a), (c), (d), (e), 4-01.

The standard penalty for failing to report transactions is 2% of the amount of the transactions, if the total is $10,000 or less, and 5% of the amount of the transactions if the total is over $10,000.

Commentary:

Staff will recommend separate penalties for unreported transactions and a receipts variance. In all other cases where an unreported transaction is subject to a penalty for a different violation (e.g., corporate contribution, converting campaign funds to a personal use), the transaction will not be included in the penalty for "Failing to Report Transactions."

Campaigns must provide a reasonable cost breakdown for joint expenditures in order to demonstrate that the campaign reported its full share of the expenditure and/or the full amount of any in-kind received or made.

This violation will apply where the campaign only reported part of the transaction (e.g., the payment of the credit card bill but not each underlying credit card purchase; the total payroll amount but not the itemized payroll expenditures; an advance but not the reimbursement of the advance; payment for literature for a joint expenditure but not the receipt of payment from other campaigns for their share of the expenditure).

Examples of specific transactions: contributions, expenditures, in-kind contributions, advances/advance repayments, loans/loan repayments/loans forgiven, petty cash transactions, transfers in/out, other receipts.

Campaigns may cure this violation by amending their disclosure statements in response to the DAR. However, after the penalty notice is issued it will be too late to submit amendments.

C3. **Failing to Document Transactions**. Campaigns are required to document all financial transactions. See Admin. Code §§ 3-703(l)(d), (g), (11), (12), 3-715, 3-719(1)(b); Board Rules 1-09, 4-01(a), (c), (g), (k), 4-03.

The standard penalty for this violation is the greater of 5% of the amount of the transaction or $50.

Commentary:

Staff will not recommend a penalty for failing to document individual transactions under $500. However, undocumented loans, in-kind contributions, liabilities, and other transactions associated with the same source will be aggregated, and a single penalty will be assessed, if the aggregate amount is $500 or more.

Because this violation applies both to reported and unreported transactions, transactions that were both unreported and undocumented will be penalized under this rubric.

Campaigns must provide documentation along with a reasonable estimate of the fair market value for in-kind contributions.

C4. Failing to Report and Document Basic Campaign Functions/Activities. Campaigns are required to report and document all financial transactions, including basic categories of expenditures such as postage, printing, rent, fundraising, utilities, and petitioning. See Admin. Code §§ 3-702(8), 3-703(l)(d), (g), (6), (11), (12), 3-719(1); Board Rules 1-02, 1-04(g), 1-08(a), (b), (c), (h), 1-09, 3-02, 3-03(e), 4-01.

The standard penalty for this violation is the greater of $500 per category of expenditure that was not reported or documented or, if the amount is subsequently determined, 5% of the amount that was not reported and documented.

Commentary:

This violation applies where a campaign did not report expenditures for postage, printing, rent, fundraising, utilities, or petitioning, and failed to explain why it had no such expenditures to report.

If CFB staff learns the value of unreported expenditures with reasonable certainty, the expenditures may be treated as unreported in-kind contributions.

C5. Failing to Demonstrate Compliance with Intermediary Reporting and Documentation Requirements. Campaigns are required to report the intermediary for each contribution that was delivered or solicited by an intermediary. In addition, campaigns are required to provide a signed intermediary affirmation statement for each intermediated contribution. See Admin. Code §§ 3-702(12), 3-703(l)(d), (g), (6), (11), 3-719(1); Board Rules 3-03(c)(7), 4-01(b)(5).

The standard penalty for failing to report and/or document intermediaries is

$100 per intermediary. If the campaign was cited for suspected intermediaries in the draft audit report but did not respond adequately to the finding, the penalty is $100 per suspected intermediary: this includes failing to respond adequately to the suspected intermediary report, failing to provide an intermediary statement, providing an intermediary statement that doesn't match the reporting, and unsigned forms. VNP if the contributions intermediated by a single intermediary total less than $500 and include fewer than five matchable contributions.

C6. Failing to Demonstrate Compliance with Subcontractor Reporting and Documentation Requirements. If a campaign makes an expenditure to a consultant or other person or entity that relied on subcontractors to provide finished goods or services to the campaign, and the cost of the subcontracted goods or services provided by a single subcontractor exceeds $5,000, the campaign must report, in addition to the expenditure, the name and address of the subcontractor, the amount(s) of the expenditure(s) to the subcontractor, and the purpose(s) of the subcontracting. The candidate must also obtain and maintain documentation from each vendor that used subcontractors. See Admin. Code §§ 3-703(l)(d), (g), (6), (11), 3-719(1); Board Rules 3-03(e)(3), 4-01(h).

The standard penalty for this violation is $50 per subcontractor.

Commentary:

Compliance with this requirement is accomplished by either submitting a subcontractor disclosure form completed by the vendor (whether or not the vendor in fact subcontracted goods or services of more than $5,000), or by submitting evidence of a good-faith attempt to contact the vendor to request that the vendor complete the form.

C7. Failing to Report Employment Information for Contributions in Excess of $99. Campaigns are required to report the occupation, employer, and business address of each contributor whose total contributions exceed $99. See Admin. Code §§ 3-703(l)(d), (g), (6), (11), 3-719(1); Board Rules 3-03(c)(1), (6).

Number of contributions over $99 for which employment information was not provided	Standard penalty
Fewer than 25	VNP
25 - 50	$100

51 - 100	$200
101- 250	$500
251 - 500	$1,000
501 - 1,000	$2,000
1,001 - 2,000	$4,000
2,001 or more	$10,000

Commentary:

Staff will recommend a VNP if there were fewer than 25 contributors lacking required employment information. Once the threshold is reached, all of the contributions lacking employment information will be included in calculating the penalty.

To cure this violation the campaign must report the employment information in C-SMART (the DAR response is the last opportunity).

D. EXPENDITURE VIOLATIONS

D1. **Exceeding the Expenditure Limit**. Candidates who participate in the Campaign Finance Program may not spend in excess of the expenditure limits. See Admin. Code §§ 3-703(l)(i), (11), 3-706, 3-711(2)(a); Board Rules 1-08(c), (d), (*l*), 7-05(b).

Percentage over the expenditure limit	Standard penalty
Spent less than 2.5% over the limit	Penalty is the amount spent over the limit
Spent 2.5% - 4.9% over the limit	Penalty increases to 1.5 times amount spent over the limit
Spent 5% - 9.9% over the limit	Penalty increases to 2 times amount spent over the limit
Spent 10% - 14.9% over the limit	Penalty increases to 2.5 times amount spent over the limit
Spent 15% or more over the limit	Penalty increases to 3 times amount spent over the limit (maximum by law)

Commentary:

Penalties for this violation are not subject to the 15% cap.

In egregious cases (e.g., where the violation appears willful or reckless, or where the campaign failed to report large amounts of expenditures), CFB staff may recommend the maximum penalty (the greater of $10,000 or three times the over-the-limit amount) regardless of the amount spent, and may also recommend a finding of breach of certification.

Staff may recommend additional penalties and a finding of breach of certification for expenditure limit violations that are the result of unreported coordinated expenditures.

Pursuant to the Act, the Board may assess a penalty of up to three times the amount spent over the limit; however, only the candidate and committee would be liable for any penalty amount over $10,000 for this violation. See *Admin. Code § 3-711(2)(a).*

D2. Converting Campaign Funds to a Personal Use. Campaigns are prohibited from converting campaign funds to a personal use. See Admin. Code § 3-702(21)(b); Board Rules 1-03(a), 2-02.

The standard penalty for purchasing goods or services for personal use, such as personal or household items, is 125% of the amount spent. However, the Board may assess a penalty of up to $10,000 per violation and require the candidate to return all public funds previously received pursuant to a finding of breach of certification.

Commentary:

Penalties for this violation are not subject to the 15% cap.

Pursuant to Admin. Code § 3-702(21)(b)(10), candidates may not use campaign funds for "[g]ifts, except for brochures, buttons, signs and other campaign materials and token gifts valued at not more than fifty dollars that are for the purpose of expressing gratitude, condolences or congratulations." Staff generally will recommend a VNP for gifts of not more than $100, and a penalty of 125% of the amount over $50 for gifts over $100.

Applies to both pre- and post-election spending.

If the expenditure is promptly reimbursed prior to notification, there should be no violation unless the violation appeared intentional or extremely reckless. If the expenditure is reimbursed after notification, for example if the candidate reimburses the campaign in response to the DAR or penalty notice, this could be considered mitigation.

D3. Failing to Demonstrate that Spending was in Furtherance of the Campaign. Campaigns are required to demonstrate that all spending was in furtherance of the campaign. See Admin. Code §§ 3-702(21)(a), (b), 3-703(l)(d), (g), (6), (11); Board Rules 1-03(a), 4-01(e).

The standard penalty for this violation is 25% of the amount of the transactions.

Commentary:

Minimum penalty of $125 (if transactions total less than $500, VNP).

This violation only applies to pre-election expenditures by participants who received public funds or are eligible for a post-election payment.

D4. **<u>Making Impermissible Post-Election Expenditures</u>.** After an election and before repaying leftover campaign funds to the Board, participants may spend campaign funds only to pay campaign-related expenses incurred in the preceding election and for "routine activities involving nominal cost associated with winding up a campaign and responding to the post-election audit." <u>See</u> Admin. Code §§ 3-702(21)(a)(8), 3-703(l)(d), (g), (6), (11), 3-710(2)(c); Board Rules 1-03(a), 1-08(b), 5-03(e)(2).

The standard penalty for this violation is 25% of the amount of transactions at issue.

<u>Commentary</u>:

Minimum penalty of $125 (VNP if expenditures total less than $500).

If funds were converted to personal use after the election, the violation would be "converting campaign funds to a personal use."

This violation applies only to participants who received public funds or are eligible to receive a post-election public funds payment (but all candidates may be penalized for "converting campaign funds to a personal use").

If the only result of impermissible post-election expenditures is debt (e.g., the campaign was never eligible to receive additional public funds and, before making the impermissible expenditures, already had no money left over after the election), staff will not recommend a finding of violation or a penalty because there was never a possibility of a return of public funds.

D5. **<u>Using Government Resources in Furtherance of the Campaign</u>.** Candidates who are elected officials or other public servants are prohibited from using government resources to send a mass mailing less than 90 days prior to an election, with certain exceptions. N.Y.C. Charter § 1136.1(2)(b).

The standard penalty for this violation is 25% of the amount spent.

<u>Commentary</u>:

The campaign may be required to provide documentation to verify the amount of the expenditure. The failure to provide such documentation may be considered an aggravating factor.

D6. **<u>Failing to Properly Identify Campaign Communications</u>**. Campaigns must include the words "paid for by," followed by information identifying the candidate or committee, in the form stipulated in the Board Rules, on all campaign literature, advertisements, and other communications. Communications authorized by a campaign and paid for by a third party must include the words "authorized by" followed by information identifying the authorizing candidate or committee. <u>See</u> Admin. Code § 3-703(16); Board Rule 2-13.

The standard penalties, applicable to each communication, are: $100 for City Council; $150 for borough president; $200 for comptroller and public advocate; and $300 for mayor.

<u>Commentary</u>:

Given that this is a new requirement, staff will not recommend a penalty for the first violation, if such violation does not appear to be willful.

The standard penalty applies to each communication design that is distributed, regardless of the amount of the expenditure.

No violation for small mistakes in wording or form (using "authorized by" instead of "paid for by," failing to list the candidate's first name if required, failing to use a box, etc.) unless willful.

Failing to identify or misidentifying the source of a negative communication could merit an increased penalty.

E. BANK ACCOUNT VIOLATIONS

E1. **<u>Failing to Disclose a Bank Account or Political Committee</u>.** Campaigns are required to disclose to the Board the existence of all currently active political committees as well as all committee bank accounts. <u>See</u> Admin. Code §§ 3-703(l)(d), (e), (g), (6), (11), (12), 3-719(1); Board Rules 1-08(c), 1-11, 2-01, 4-01.

The standard penalty for this violation is $100.

<u>Commentary</u>:

This violation applies to the failure to disclose committee bank accounts and active political committees, whether or not used in furtherance of the campaign.

Staff will recommend a penalty for this violation in addition to any penalties for violations related to financial transactions associated with the undisclosed bank accounts or political committees.

If the campaign appears to have used an undisclosed committee or bank account in order to avoid disclosure or to evade the contribution or spending limits, a penalty up to $10,000 and a finding of breach of certification could be appropriate.

E2. Failing to Maintain a Separate Campaign Bank Account; Using an Undisclosed Bank Account in Furtherance of the Campaign; Commingling Campaign Funds with Personal or Business Funds or Funds Accepted for a Different Election. Campaigns are required to establish and maintain a separate campaign bank account and to report all bank, merchant, and depository accounts used for campaign purposes. See Admin. Code §§ 3-703(l)(c), (d), (g), (6), (10), (11), 3-719(1); Board Rules 1-11(d), 2-06, 4-01(f). Campaigns are prohibited from commingling campaign funds with personal or business funds or funds accepted for another election. See Board Rules 2-06(b), (e).

The standard penalty for each of these violations is the greater of 5% of the amount at issue or $250. However, the Board may assess a penalty of up to $10,000 for such violations.

Commentary:

If penalties are recommended for using an undisclosed bank account in furtherance of the campaign, staff will not recommend penalties for failing to report the transactions. However, financial activity in the account may be the basis for other penalties. For example, the transactions will be counted towards the expenditure limit calculation.

"Commingling" occurs when either (a) non-campaign money is deposited into an account used by the candidate for the covered election (e.g., deposits of personal funds or contributions intended for a State committee into the candidate's authorized committee bank account) or (b) campaign funds are deposited into a non-campaign account. No violation for inadvertent commingling that was corrected unless the amount was over $500 and the campaign failed to correct the problem promptly after notification.

If personal funds or contributions for a different election were deposited into the campaign account and used for the campaign, staff may also recommend a penalty for "failing to report transactions," "accepting over-the-limit contributions," or fraud and misrepresentation, as appropriate.

E3. Failing to Provide Bank, Credit Card, and Merchant Account Statements. Campaigns are required to provide copies of bank, credit card, and merchant account statements, for all accounts used for each election. See Admin. Code §§ 3-703(l)(d), (g), (11), 3-719(1); Board Rules 3-03(f), 4-01(f)(1).

The standard penalty for failing to provide bank and credit card statements is: $100 per statement for candidates for City Council; $150 per statement for candidates for borough president; $200 per statement for candidates for public advocate and comptroller; and $250 per statement for candidates for mayor.

The standard penalty for failing to provide merchant account statements is $50 per statement.

The standard penalty for late filing of bank, credit card, and merchant account statements is one-half the standard penalty for failing to provide the statements. Statements that are not provided by the deadline for responding to the IDR are considered late.

Commentary:

Bank and Credit Card Statements:

The maximum penalty for failing to provide statements should not exceed four times the standard penalty, absent aggravating factors.

Staff will recommend a penalty for missing statements even if there is also a penalty for failing to respond to the IDR or DAR.

Staff should recommend a $50 penalty if they believe there was less than $100 of activity in the account during the period covered by the missing statement.

Merchant Account Statements:

Staff will recommend a $50 penalty but with no maximum. No violation recommendation if it appears that there was little or no activity in a statement.

F. CASH VIOLATIONS

F1. **Maintaining a Petty Cash Fund Greater than $500.** Campaigns are prohibited from maintaining more than $500 in a petty cash fund. See Board Rule 4-01(e)(2).

	Standard penalty
1 - 3 instances of a petty cash fund in excess of $500, none greater than $750	Violation No Penalty
Any impermissible instance of maintaining a petty cash fund not eligible for VNP	The greater of $50 or 10% of the value of the impermissible portion of the fund

If the campaign either has more than three violations, or has at least one violation greater than $750, each violation will be subject to the $50/10% standard penalty.

Commentary:

If a campaign violates the $500 petty cash fund limit solely because it made a cash expenditure (i.e., by making a cash withdrawal and cash payment in excess of $500), then (a) the violation will be addressed only as a cash expenditure greater than $100, but (b) the violation shall count when determining eligibility for a VNP for other petty cash fund violations.

F2. **Failing to Demonstrate Compliance with Cash Receipts Reporting and Documentation Requirements**. Campaigns are required to report all cash receipts, deposit them into the bank account listed on the candidate's filer registration and/or certification within ten business days of receipt, and provide the deposit slips for the account to the Board. See Admin. Code §§ 3-703(l)(d), (g), (6), (10), (11), (12), 3-719(1); Board Rules 1-04(a), (b), 2-06(a), 3-03(c), 4-01(a), (b)(1), (3), (f).

The standard penalty for this violation is 25% of the difference between the amount reported and the amount received.

Commentary:

The standard penalty applies regardless of the direction of the variance. Under-reporting indicates that the source of the cash was not properly reported and the campaign may have received cash in excess of $100 from a single contributor or from prohibited sources. Over-reporting indicates that cash may not have been deposited and/or may have been used in violation of the Act and Rules.

F3. **Making Cash Expenditures Greater than $100.** Campaigns are prohibited from making an expenditure greater than $100 using cash. See Board Rules 1-08(i) and 4-01(e)(2).

	Standard penalty
1 - 3 impermissible cash expenditures, each less than $150	Violation No Penalty
Any impermissible cash expenditure(s) not eligible for VNP	The greater of $50 or 50% of the amount of the expenditures over the limit

If the campaign either has more than three impermissible cash expenditures, or has at least one impermissible cash expenditure equal to or in excess of $150, all of the campaign's impermissible cash expenditures are subject to the $50/50% standard penalty.

Commentary:

Cash expenditures over $500 will be penalized under this rubric although they also constitute violations of the petty cash rules.

G. FAILING TO RESPOND/LATE RESPONSE TO DOCUMENTATION AND INFORMATION REQUESTS (INITIAL DOCUMENTATION REQUEST, DRAFT AUDIT REPORT, OTHER REQUESTS)

Campaigns are required to maintain records, such as copies of checks, invoices, and bank records, to verify financial transactions reported in disclosure statements, and campaigns are required to provide such records to the Board upon request and to respond to specific questions regarding compliance with the Act and Rules. See Admin. Code §§ 3-703(l)(d), (g), (6), (11), (12), 3-708(5), 3-710(1), 3-719(1)(b); Board Rules 1-09(a), 4-01, 4-05(a). Candidates who fail to respond to the DAR may be subject to a penalty of up to 10% of total public funds received. See Admin. Code § 3-711(2)(b).

	Public funds received?	**Late response**	**Failure to respond**
Post-Election Request for Audit Documentation: "Initial Documentation Request" ("IDR")	Yes	$50 per day late, up to the greater of 2% of public funds received or $500	Greater of 10% of public funds received, up to $10,000, or $1,000
	No	$50 per day late, up to the greater of 0.2% of aggregate contributions or expenditures or $250	Greater of 1% of aggregate contributions or expenditures, up to $10,000, or $500
Draft Audit Report ("DAR")	Yes	$50 per day late, up to the greater of 2% of public funds received or $500	Greater of 10% of public funds received or $1,000
	No	$50 per day late, up to the greater of 0.2% of aggregate contributions or expenditures or $250	Greater of 1% of aggregate contributions or expenditures or $500
Other Specific Requests for Information and Documentation	Receipt of public funds does not affect penalty	$50 per day late, up to the greater of 0.2% of aggregate contributions or expenditures or $100	Greater of 1% of aggregate contributions or expenditures, up to $10,000, or $250

Commentary:

Penalties for this violation are not subject to the 15% cap.

In the case of late submissions, staff will generally only count the number of days between the last deadline and the date the submission was received. "Gap days," – the days between a deadline and the granting of a new deadline – should not be included unless any single gap was more than 14 days.

If a campaign has not responded to the IDR at the time the DAR is issued, the campaign will be considered to have failed to respond to the IDR.

A campaign that responds to the DAR as part of its response to the penalty notice is

considered to have failed to respond to the DAR.

Staff will recommend penalties for failing to respond to the IDR and DAR in addition to penalties for related violations. For example, failing to provide bank statements and failing to respond to the IDR merit separate penalties even though a request for the bank statements was included in the IDR.

Similarly, staff will recommend penalties for responding late or failing to respond to "Other Specific Requests for Information and Documentation" in addition to penalties for responding late or failing to respond to the DAR, even if the information or documentation was requested in the DAR.

Pursuant to Section 3-711(2)(b) of the Code, the candidate and the committee "shall" be liable for a penalty of up to 10% of total public funds received for failing to respond to the DAR. Therefore, if the Board assesses a penalty over $10,000 for this violation (or for an expenditure limit violation, the only other exception to the $10,000 limit on penalties), the treasurer will not be liable for the amount over $10,000.

If a campaign fails to respond to the DAR, but has no other findings that lead to penalties, staff will not pursue enforcement against the campaign, even if the penalty for failing to respond to the DAR would exceed the $500 enforcement threshold.

H. ACCEPTING AND/OR FAILING TO REPORT IN-KIND CONTRIBUTIONS ARISING FROM COORDINATED ACTIVITY

Cooperation in nominally independent expenditures is potentially one of the most serious violations of the Campaign Finance Act and the Board's Rules. The Board may assess a penalty of up to $10,000 per violation and/or require the candidate to return all public funds previously received pursuant to a finding of breach of certification. See Admin. Code § 3-711; Board Rule 2-02. If the campaign also violated the expenditure limit, the Board may assess a separate penalty for that violation in an amount up to three times the amount by which the campaign exceeded the limit.

The following are considered to constitute a "fundamental breach of the obligations affirmed and accepted by the participant or limited participant in the certification":

> (c) cooperation in alleged independent expenditures, whereby material or activity that directly or indirectly assists or benefits a participant's or limited participant's nomination or election, which is

> purported to be paid by independent expenditures, was in fact authorized, requested, suggested, fostered, or cooperated in by the participant or limited participant;
>
> (d) use of a political committee or other entity over which a participant or limited participant exercises authority to conceal from the Board expenditures that directly or indirectly assist or benefit the participant's or limited participant's nomination or election ….

Board Rule 2-02.

See also, Admin. Code §§ 3-702(8), 3-703(l)(d), (g), (6), (11), 3-719(1); Board Rules 1-04(g), 1-08(f), 3-03, 4-01(c).

Commentary:

Penalties for this violation are not subject to the 15% cap.

Staff will consider the totality of the circumstances in recommending penalties and/or a finding of breach of certification for this violation.

Staff may recommend a violation for "Failure to Report Specific Transactions," "Accepting an Over-the-Limit Contribution," or "Accepting a Contribution from a Prohibited Source" as an alternative if the activity is limited in scope such that the standard penalty for one of these violations would be appropriate.

I. MATERIAL MISREPRESENTATION; FRAUD; SUBMISSION OF FALSE OR FICTITIOUS INFORMATION

The Board may assess a penalty of up to $10,000 per violation. The Board may also require the candidate to return all public funds previously received pursuant to a finding of breach of certification.

The following are considered to constitute a "fundamental breach of the obligations affirmed and accepted by the participant or limited participant in the certification":

> (a) submission of a disclosure statement which the participant knew or should have known includes substantial fraudulent matchable contribution claims;

(b) use of public funds to make or reimburse substantial campaign expenditures which the participant knew or should have known were fraudulent;

***

(e) submission of substantial information which the participant or limited participant knew or should have known was false, or the submission of substantial documentation which the participant or limited participant knew or should have known was fabricated or falsified, which would avoid a finding of violation or public funds repayment determination.

Board Rule 2-02.

In addition:

> The intentional or knowing furnishing of any false or fictitious evidence, books or information to the board … or the inclusion in any evidence, books, or information so furnished of a misrepresentation of a material fact, or the falsifying or concealment of any evidence, books, or information relevant to any audit by the board or the intentional or knowing violation of any other provision of this chapter shall be punishable as a class A misdemeanor in addition to any other penalty as may be provided under law ….

Admin. Code § 3-711(3).

Commentary:

Penalties for this violation are not subject to the 15% cap.

The Board has wide latitude to decide what acts represent separate violations. In recommending penalties and/or a finding of breach of certification pursuant to Rule 2-02, the staff will consider the totality of the circumstances surrounding the alleged violations.

J. FAILING TO ATTEND A MANDATORY TRAINING

The candidate, campaign manager, treasurer, or another person with significant managerial control over the campaign must attend a training provided by the Board on compliance and the use of C-Smart software, by the deadline set by the Board.

(Applies to participants and limited participants only.) See Admin. Code § 3-703(15); Board Rule 2-12(a).

The standard penalty for this violation is $500.

Commentary:

The CFB publishes a training schedule on its website and publicizes the deadline for attending a training. The 2017 deadline was August 7, 2017 (the disclosure cutoff date for the 32-day pre-primary statement).

K. FAILING TO ATTEND A MANDATORY DEBATE

Participating and limited participating candidates for mayor, comptroller, and public advocate are required to participate in debates held pursuant to Admin. Code § 3-709.5. In addition to civil penalties, a candidate who fails to participate in a required debate shall be liable for the return of any public funds previously received and shall be ineligible to receive additional public funds for the current election unless the Board determines that the failure to debate occurred under circumstances beyond the control of the candidate. See Admin. Code § 3-709.5(9), (10).

The standard penalty for this violation is the greater of $1,000 or 1% of aggregate contributions, up to a maximum of $10,000.

Commentary:

The Board may consider requests for mitigation:

> Following the submission of a petition on behalf of the candidate and a hearing before the board, the sanction or sanctions provided in subdivision nine of this section applicable to a candidate for failure to participate in any debate as required under this section may be waived upon a determination by the board that the failure to participate in the debate occurred under circumstances beyond the control of the candidate and of such nature that a reasonable person would find the failure justifiable or excusable.

Admin. Code § 3-709.5(10).

L. VIOLATIONS RELATED TO TRANSITION AND INAUGURATION ACTIVITIES

Candidates elected to the office of mayor, public advocate, comptroller, borough president, or member of the City Council may raise and spend funds for transition and inauguration activities through a transition and inauguration entity ("TIE"). The Board is authorized to assess penalties of up to $10,000 against the candidate, the treasurer of a TIE, or any other agent of the candidate, for violations related to transition and inauguration activities. In addition, a TIE that accepts an over-the-limit donation may be subject to a penalty of up to three times the amount by which the donation exceeds the donation limit. See Admin. Code §§ 3-801(8), 3-802; Board Rule 11-01.

L1. Failing to Register a TIE. Candidates must use a registered TIE to raise and spend funds for transition and inauguration activities. See Admin. Code §§ 3-801(1), (2)(a); Board Rules 11-02, 11-04(a), (b).

The standard penalty for this violation is the greater of $100 or 2% of the amount raised and spent outside of the TIE.

L2. Failing to File/Late Filing of Periodic Disclosure Reports. Candidates must file complete and accurate disclosure reports on scheduled dates. See Admin. Code §§ 3-801(5), (6); Board Rules 11-03(a), (b), (c).

The standard penalties for these violations are the same as for failing to file/late filing of disclosure statements.

L3. Failing to Report Transactions. Candidates are required to accurately report all financial transactions related to transition and inauguration activities. See Admin. Code §§ 3-801(5)(a), (b), (6); Rule 11-03(a),

The standard penalty for this violation is 2% of the unreported amount.

L4. Accepting Prohibited Donations. Candidates are prohibited from accepting donations from: (a) any corporation, limited liability company, limited liability partnership, or partnership; (b) any person listed in the Doing Business Database as of the date of such donation, unless the donor is the candidate or a close family member of the candidate; (c) any political committee that has not registered with the Board pursuant to section 3-707 of the Code; or (d) any political committee authorized by the candidate. See Admin. Code §§ 3-702(18), 3-801(2)(d), (3); Board Rule 11-04(b).

If the prohibited donation has been returned, the standard penalty is the greater of 50% of the amount of the donation or $250. If the prohibited donation has not been returned, the standard penalty is the amount of the donation plus the greater of 50% of the amount of the donation or $250.

L5. Accepting Over-the-Limit Donations. Candidates are prohibited from accepting donations in excess of the donation limits. See Admin. Code §§ 3-801(2)(b), (4), 3-802(2); Board Rules 11-04 (b), (c), (d), (g).

If the over-the-limit portion of the donation has been returned, the standard penalty is the greater of 50% of the amount of the overage or $250. If the over-the-limit portion of the donation has not been returned, the standard penalty is the amount of the overage plus the greater of 50% of the amount of the donation or $250.

L6. Exceeding the $500 Petty Cash Limit; Making Cash Expenditures Over $100; Accepting Cash Donations Over $100. TIEs are prohibited from maintaining a petty cash account in excess of $500, from making individual cash expenditures over $100, and from accepting cash donations over $100 from a single donor. See Board Rules 11-04(b)(5), 11-05(d).

The standard penalty is 25% of the amount of the overage, in the case of petty cash and cash expenditure violations, and 25% plus the amount of the overage in the case of cash donations over $100.

L7. Improper Use of TIE Funds. TIE funds may not be used for any purpose other than the candidate's transition or inauguration into office. In addition, incumbents are presumed to have no transition expenses. See Admin. Code §§ 3-801(1), (2)(c), (6), (7); Board Rules 11-04(b)(4), (e), (f).

The standard penalty for this violation is 25% of the amount of the prohibited spending.

L8. **Failing to Properly Wind Down TIE Activities.** After January 31st in the year following the election, a TIE may not make expenditures except (i) to satisfy liabilities incurred prior to January 31st or (ii) to make routine and nominal expenditures associated with and necessary to satisfying such liabilities and terminating the TIE, such as routine and nominal overhead costs, bank fees, taxes, and other reasonable expenses for compliance with applicable tax laws. In addition, the TIE must return all donations remaining after all liabilities have been extinguished and may not continue in existence after April 30th in the year following the year of the election or, in the case of a special election, more than 60 days after inauguration. See Admin. Code §§ 3-801(1), (2)(c), (6), (7); Board Rules 11-04(a), (b)(6), (7), (e), (f).

The standard penalty is $100 per violation. However, the Board may assess a higher or lower penalty based on the nature of the violation. See Admin. Code § 3-802(l).

L9. **Late Response/Failure to Respond to Requests for Information or Documentation.** Candidates are required to maintain TIE records for six years after the date of registration and to provide information and records to the Board upon request. See Board Rule 11-05.

The standard penalties for these violations are the same as for responding late or failing to respond to "Other Specific Requests for Information and Documentation."

L10. **Submission of False Information; Misrepresentation.** The Board may recommend a penalty up to $10,000 for the intentional or knowing furnishing to the Board of any false or fictitious evidence, books, or information related to TIE activity, or the inclusion in any evidence, books, or information so furnished of a misrepresentation of a material fact, or the intentional or knowing violation of any other provision of the Act and Board Rules related to transition and inauguration activity. In addition, this violation may be punishable as a class A misdemeanor. See Admin Code § 3-802(3).

Commentary:

Staff will not recommend individual penalties of less than $50 or pursue enforcement if total recommended penalties would be less than $250.