

GUIDELINES FOR STAFF RECOMMENDATIONS FOR PENALTY ASSESSMENTS FOR CERTAIN VIOLATIONS

2021 Citywide Elections

INTRODUCTION

The 2021 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 New York City Charter (the “Charter”), Campaign Finance Act (the “Act”), and Board rules (the “Rules”) during the 2021 elections. *See* Section 3-711 of the New York City Administrative Code (the “Admin. Code”).

The guidelines provide standard penalties for violations of the Charter, 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; elected candidates and their TIEs; and independent spenders and their authorized representatives are jointly and severally liable for the payment of penalties. *See* Admin. Code §§ 3-711(1), 3-802; Board Rules 10-01(b), 10-03, 14-08.

Prior to the assessment of penalties and/or post-election public funds determinations, the campaign, TIE, or independent spender will receive an enforcement notice, to which it 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 enforcement 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.

If a campaign, TIE, or independent spender chooses to appear before an ALJ, the ALJ will hear the case and then submit a report to the Board containing findings of fact along with a recommended penalty and public funds determination. The campaign, TIE, or independent spender, 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 determination, which may or may not follow the ALJ’s findings and recommendations.

A final board determination (“FBD”) will be sent after the Board makes penalty and public funds determinations, and will be posted on the CFB website. For campaigns, the FBD is posted along with the final audit report (“FAR”).

DEVIATIONS FROM 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 the circumstances described below. 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, independent spenders and their authorized representatives, and elected candidates are ultimately responsible for complying with the Charter, Act, and Rules. The basis for CFB staff’s recommendation is the fact of the violation or infraction, not the reasons why it occurred. Certain mitigating factors – e.g., personal circumstances – may be considered at the sole discretion of the Board.

No Penalty

No penalty will be recommended or assessed for a violation that is cured by the campaign, TIE, or independent spender 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. (*See, e.g.,* Contribution Limit violations). Further, CFB staff may, at their discretion, recommend no violation or a violation no penalty (“VNP”) for *de minimis* violations.

Staff will not recommend penalties of less than \$100. If a violation would result in a penalty of less than \$100, it will become a FAR-only finding (for campaigns), be included in the close-out letter (for TIEs), or become a VNP (for independent spenders). Individual violations below this threshold may be aggregated if multiple counts of the same violation are committed; for example, if a campaign, TIE, or spender commits the same violation on three instances, each carrying a penalty of \$50, these penalties would be aggregated and exceed the threshold.

Enforcement Thresholds

A candidate who was not on the ballot generally will not be subject to enforcement unless 1) there is evidence of fraud, material misrepresentation, or other egregious violations, or 2) the candidate received a public funds payment prior to the termination of his or her campaign. A candidate who was on the ballot but raised and spent less than ten times the non-participant contribution limit generally will not be subject to enforcement unless 1) there is evidence of fraud, material misrepresentation, conversion, or other egregious violations, or 2) the candidate is missing disclosure or bank statements, or received or may be eligible to receive public funds.

If a campaign’s total recommended penalties would be \$500 or less (for City Council candidates), \$1,000 (for borough president candidates), or \$1,500 (for citywide candidates), staff will treat the issues only as audit findings in the FAR (“FAR only”). This applies both before and after the 15% cap (described below), meaning that if even a campaign falls below \$500 only as a result of the cap, it will still become FAR only.

Staff will not pursue enforcement against a campaign that did not receive public funds if the campaigns total recommended penalties would not meet the above thresholds but for any of the following violations:

- filing late disclosure statements (B1)
- failure to file disclosure statements (B2)
- failure to respond/late response to documentation and information requests (Initial Documentation Request, Draft Audit Report, other requests) (G)

Staff will not pursue enforcement against a TIE or an independent spender if the recommended penalties would total less than \$250.

Reduced Penalties

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.

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 1) received or will receive public funds, 2) filed no disclosure statements, or 3) submitted no 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 law; 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"), draft audit report ("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.

An individual penalty that would be less than \$100 after applying the 15% cap will become a VNP.

Increased 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 law. 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, for campaigns, recommend a finding of breach of certification which would require the return of all public funds received. *See* Admin. Code § 3-711; Board Rule 3-01(e).

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

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(1)(1), 3-718(2)(b); Board Rules 5-03(a), 5-07.

| If the return (following notification from CFB staff) was after the deadline * | If the return (following notification from CFB staff) was after the deadline and there is an aggravating factor ** | If the contribution is not returned following notification from CFB staff |
|--|--|---|
| 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 amount of the contribution, plus the greater of: 1) \$250 or 2) 50% of 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.

If the value of the contribution is unknown, the standard penalty is \$250.

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

If a campaign provides incomplete documentation of a contribution refund (e.g., the front of the check but not the back), but there is no reason to believe that the refund 1) did not clear the campaign’s account or 2) was cashed or deposited by someone other than the contributor, the

contribution will be considered refunded for enforcement purposes. The incomplete documentation is an audit issue only. This is true both for bank/cashier's checks and for committee checks, provided that the bank statements show that the funds left the account.

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 the receipt of the contribution. *See* Admin. Code §§ 3-702(11), 3-703(l)(k), 3-707, 3-718(2)(b); Board Rules 5-04(a), 5-07.

| If the return (following notification from CFB staff) was after the deadline * | If the return (following notification from CFB staff) was after the deadline and there is an aggravating factor ** | If the contribution is not returned following notification from CFB staff |
|---|---|---|
| The greater of \$50 or 10% of the amount of the contribution | The greater of \$125 or 25% of the amount of the contribution | The amount of the contribution, plus the greater of: 1) \$125 or 2) 25% of 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.

If the value of the contribution is unknown, the standard penalty is \$125.

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

If a campaign provides incomplete documentation of a contribution refund (e.g., the front of the check but not the back), but there is no reason to believe that the refund 1) did not clear the campaign's account or 2) was cashed or deposited by someone other than the contributor, the contribution will be considered refunded for enforcement purposes. The incomplete

documentation is an audit issue only. This is true both for bank/cashier’s checks and for committee checks, provided that the bank statements show that the funds left the account.

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(1)(f), (11), 3-718(2); Board Rules 5-01(a), 5-07. 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), 3-718(2); Board Rules 5-01(a), 5-07(f).

| If the overage return (following notification from CFB staff) was after the deadline * | If the overage return (following notification from CFB staff) was after the deadline and there is an aggravating factor ** | If the overage was not returned following notification from CFB staff |
|--|--|---|
| 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 amount of the overage, plus the greater of: 1) \$250 or 2) 50% of 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; failing to provide requested documentation that is related to 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.

If a campaign provides incomplete documentation of a contribution refund (e.g., the front of the

check but not the back), but there is no reason to believe that the refund 1) did not clear the campaign's account or 2) was cashed or deposited by someone other than the contributor, the contribution will be considered refunded for enforcement purposes. The incomplete documentation is an audit issue only. This is true both for bank/cashier's checks and for committee checks, provided that the bank statements show that the funds left the account.

Doing Business Contributions:

- No violation if the contribution is refunded within 20 days of CFB notification. *See* Admin. Code § 3-703(1-b).
- 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 after the 20-day grace period (and the contribution was not also over the regular contribution limit).
- Where a candidate accepts a doing business contribution of \$320 or \$400 during the period before he/she declared an office, the CFB sends a notice that the contribution was over \$250, but no violation will be recommended if the candidate runs for an office with a higher limit. If the candidate failed to return the excess portion of the contribution within 20 days of the date he/she declared an office with a lower limit, a violation will be recommended. *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 include the amount of the overage unless the loan was repaid by the campaign.

A4. Accepting Anonymous Contributions.

Campaigns are prohibited from accepting contributions from anonymous sources. *See* N.Y. Elec. Law § 14-120; Board Rule 5-03(c). Because anonymous contributions cannot be refunded to the contributor, they must be disgorged to the general treasury of the state of New York. *See* N.Y. Elec. Law § 14-128; Board Rule 5-07(a).

| If disgorgement (following notification from CFB staff) was after the deadline * | If disgorgement was after the deadline and there is an aggravating factor ** | If not disgorged following notification from CFB staff |
|---|---|---|
| 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 amount of the contribution, plus the greater of: 1) \$250 or 2) 50% of the amount of the contribution |

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

** “Aggravating factors” include: failing to disgorge before the election; disgorging only after the third notice; failing to report the contribution; failing to provide requested documentation that is related to the contribution; and evidence of willful or reckless noncompliance.

Commentary:

No violation recommended if disgorgement is made 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.

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), 3-718(1); Board Rules 1-04(b), 4-05.

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

B2. Failure 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), 3-718(1); Board Rules 1-04(b), 4-05.

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

Commentary:

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. *See* Admin. Code § 3-710.5. If the campaign’s other penalties total more than \$1,000, the single late statement will be a VNP.

If a statement is filed timely, but the backup documentation is submitted late, staff will recommend a VNP or infraction (depending on whether it is otherwise eligible for the infraction policy as detailed above) if 1) the backup documentation is submitted within one week of the filing deadline, or 2) the statement contains no more than five matching claims. If the backup documentation is submitted more than a week after the deadline, and the statement contains more than five matching claims, the filing is considered late. The daily penalty will be calculated according to when the backup documentation is submitted.

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”). The standard penalty for late filing disclosure statements after the

first semi-annual statement following the general or special election shall be reduced by 50%.

A statement that is not filed by the due date of the next statement is considered a “failure to file.” If a post-election semiannual disclosure statement 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.”

The standard penalty for failure to file disclosure statements after the first semi-annual statement following the general or special election shall be reduced by 50%. The maximum penalty for failure to file disclosure statements after the first semi-annual statement following the general or special election should not exceed two times the standard penalty for missing one statement, absent aggravating factors. Staff may recommend a lower penalty or VNP if it is clear that there was very little activity in the statement.

B3. Failure 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), 3-718(1); Board Rules 1-04(b), 4-05(a), 4-06.

The standard penalty for failure to report transactions in daily pre-election disclosure statements is \$50 per transaction.

The standard penalty for late reporting of transactions in daily pre-election disclosure statements is \$10 per day per transaction. VNP for transactions reported before the end of the first week of the two-week reporting period.

Commentary:

During the 14 days before an election, in addition to reporting contributions and/or loans from a single source adding up to more than \$1,000, and expenditures to a single vendor adding up to more than \$20,000, candidates must also report any future contributions and/or loans from the same source, as well as any future expenditures to the same vendor. For example, if a candidate accepts, from a single source, a \$500 contribution six days before the election, a \$600 contribution five days before the election, and a \$100 contribution four days before the election, the candidate must report both the \$500 and \$600 contributions within 24 hours of when the \$600 contribution was received (since this brought the total to over \$1,000), and must also report the \$100 contribution within 24 hours of when it was received.

A filing is considered failed if not submitted within three days of its due date or by Election Day, whichever is earlier.

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 6-01(h)(v), 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 (\$1,000 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.

Staff may recommend lower penalties or no penalty for the failure to report, or late reporting, of transactions that are required to be reported only because the contributor or vendor otherwise met the \$1,000 or \$20,000 threshold and would not have been required to be reported on their own.

C. REPORTING AND DOCUMENTATION VIOLATIONS

C1. Failure to Demonstrate Compliance with Reporting Requirements for Receipts.

Campaigns are required to report all receipts and to provide bank records, including bank statements and deposit slips, to substantiate their reporting. *See* Admin. Code §§ 3-703(1)(d), (g), (6), (11), (12), 3-718(1); Board Rules 1-04(b), 4-01(a), (b), 4-05.

The standard penalty for failure to demonstrate compliance with reporting requirements for receipts is 50% of the amount of the variance between the amount reported and the amount reflected on bank records.

C2. Late Reporting of Expenditures.

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(1)(d), (g), (6), (11), (12), 3-718(1); Board Rules 1-04(b), 4-05.

The standard penalty for late reporting of expenditures is 1% of the amount of the expenditures.

Commentary:

This violation applies only to pre-election reporting of expenditures aggregating in excess of \$20,000 to a single vendor made starting on the first day of the first filing period for which a campaign first submits a matching claim, or the first day of the 32-day pre-election filing period, whichever is earlier. It does not apply to daily pre-election disclosure.

C3. Failure 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(1)(d), (g), (6), (11), (12), 3-718(1); Board Rules 1-04(b), 4-05.

The standard penalty for failure 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.

An undocumented, over-the-limit, or prohibited in-kind contribution that is also unreported will not be treated as an unreported transaction for violation and penalty purposes.

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.

Staff will not recommend a penalty for underreporting joint expenditures unless the unreported amount appears to be greater than \$1,000. The \$1,000 threshold refers to each campaign's share, rather than the total cost of the expenditure. The threshold may be disregarded if there is evidence that a campaign willfully failed to report and/or document a portion of a joint expenditure. Evidence of willfulness includes a circumstance in which a campaign has more than two unreported or underreported joint expenditures, even if each underreported amount is less than \$1,000, or in which the unreported amount would cause the campaign to exceed the expenditure limit.

If a campaign does not provide an invoice for a joint expenditure, but it is clear on the face of the reporting that each campaign paid the appropriate share, the finding will be dropped, and no violation or penalty will be recommended. This will be the case even if an invoice was previously requested by CFB staff.

Costs for palm cards and other printed materials will generally be allocated based on how much of the card is dedicated to each candidate. In most cases, the entire cost of the piece must be accounted for; for example, if a card has three candidates on one side and a slogan or message, but no candidate names or images, on the other side, the entire cost of the card (rather than half the cost) will be divided by three to determine each candidate's share.

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).

Campaigns may cure this violation by amending their disclosure statements in response to the DAR. However, after the enforcement notice is issued, amendments are no longer permitted. If a finding that could be remedied via an amendment was discovered after the DAR based on information or documentation previously in the possession of CFB staff, then the finding becomes FAR only. However, if the finding was discovered after the DAR based on new information or documentation that the campaign was previously required to provide, but did not do so, then the finding may become a violation, and the campaign will not be permitted to amend its reporting after the enforcement notice, even if the enforcement notice is the first notification of the issue.

C4. Failure to Document Transactions.

Campaigns are required to document all financial transactions. *See* Admin. Code §§ 3-703(1)(d), (g), (11), (12), 3-715, 3-718(1)(b); Board Rules 1-04(b), 4-01, 4-04, 4-05(c)(ii)(B)(2).

The standard penalty for this violation is the greater of 5% of the amount of the transaction or \$50 per transaction for most types of documentation. For the Campaign Communications form, the Fundraiser Disclosure form, the Joint Expenditure form, and the Family Member form, the standard penalty is the greater of either 10% of the amount of the transaction(s) or \$100 per document.

Commentary:

This violation applies to the following types of documentation: contracts; leases; payroll records; samples of campaign communications; contribution and expenditure refund documentation*; documentation related to a contribution reported as corporate where the contributor does not appear in the Department of State database; documentation related to other receipts, loans, joint expenditures, in-kind contributions, advance purchases in excess of \$250, outstanding liabilities, and potential liabilities based on uncleared transactions; petty cash journals; documentation for an expenditure suspected to be made to a family member but not reported as such; and inconsistent or incomplete expenditure documentation that does not rise to the level of non-campaign related.

Staff will not recommend a violation or 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.

*Contribution refund documentation should not be penalized under this rubric if the failure to document the refund is also the basis for a prohibited or over-the-limit contribution violation.

C5. Late Submission of Documentation.

Campaigns are required to document all financial transactions. *See* Admin. Code §§ 3-703(1)(d), (g), (11), (12), 3-715, 3-718(1)(b); Board Rules 1-04(b), 4-01, 4-04.

The standard penalty for this violation is the greater of either 2.5% of the amount of the transaction or \$25 for most types of documentation. For the Campaign Communications form, the Fundraiser Disclosure form, the Joint Expenditure form, the Family Member form, and bank statements, the standard penalty is the greater of 5% of the amount of the transaction(s) or \$50 per document.

Commentary:

This violation applies only to documentation submitted for the first time in response to the enforcement notice, which was specifically requested at least once prior to the notice (e.g., in the DAR and/or the IDR), where the campaign has not provided an explanation for its previous failure to submit the documentation. The documentation will be considered late if it is not provided by the time the notice is issued.

This violation applies only to documentation that would be the basis for a specific violation if not provided (e.g. bank statements, intermediary statements, and the types covered under C4). It does not apply to documentation requested solely for the purpose of resolving a violation (e.g. refund documentation for an over-the-limit or prohibited contribution).

If the documentation is not within the campaign's control (e.g. an invoice from a vendor or from another campaign to substantiate a joint expenditure), the campaign can resolve this violation by submitting evidence of a good-faith attempt to obtain the documentation (e.g. an email to the vendor or the other campaign).

C6. Failure 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(1)(d), (g), (6), (11), (12), 3-718(1); Board Rules 1-02, 1-04(b), 4-01, 4-05, 5-06, 6-01(h)(v), 6-01(h)(i).

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, and there are indicia that the expenditures were paid for by a third party or provided for free or below cost, the expenditures may be treated as unreported in-kind contributions and staff may recommend a penalty for a prohibited or over-the-limit in-kind contribution, if applicable.

Staff should use its discretion in deciding whether to recommend a penalty if the campaign likely spent very little, if anything, on these types of expenditures.

The final opportunity to report is in response to the DAR; however, if the campaign fully documents an expenditure, staff may reduce the recommended penalty by 50%. A reported but undocumented expenditure may be penalized as a failure to document.

C7. Failure 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(1)(d), (g), (6), (11), 3-718(1); Board Rules 4-01(b)(ii)(A)(7), (C)(4), 4-05(c)(ii)(A), (v).

The standard penalty for failure 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 failure to respond adequately to the suspected intermediary report, failure to provide an intermediary statement, providing an intermediary statement that doesn't match the reporting, and providing unsigned forms. VNP if the contributions intermediated by a single intermediary total less than \$500 and include fewer than five matchable contributions.

Commentary:

If an unsigned form is provided, but the reporting is correct, staff will recommend a VNP.

C8. Failure 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), 3-718(1); Board Rules 4-01(c)(vii), 4-05(c)(iv)(D).

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. If failing to report the subcontractor is the only issue, and there is no missing documentation, the finding is FAR only.

C9. Failure 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), 3-718(1); Board Rules 4-05(c)(ii)(A)(1), (C).

The standard penalty for this violation is \$4 per contribution for which employment information was not provided.

Commentary:

Staff will recommend a VNP if fewer than 25 contributions, or 10% of the campaign's total contributions (whichever is greater), lacked the 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 using 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 Rule 6-01.

| 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 3-01(e), 5-11(a)(ii).

The standard penalty for purchasing goods or services for personal use, such as personal or household items, is 125% of the amount spent. However, for conversion of significant value that appears to be willful, 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 enforcement notice, this could be considered mitigation.

If the amount of converted funds exceeds \$10,000 and the candidate received public funds and has a final bank balance, the amount of converted funds in excess of \$10,000 should be added to the final bank balance.

D3. Failure 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(1)(d), (g), (6), (11); Board Rules 4-01, 5-11(a)(ii).

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

Commentary:

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

D4. Making Impermissible Post-Election Expenditures.

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.” *See* Admin. Code §§ 3-702(21)(a)(8), 3-703(l)(d), (g), (6), (11), 3-710(2)(c); Board Rules 5-11(a)(ii), 6-01(h)(v), 9-02(c).

The standard penalty for this violation is the amount of transactions at issue. The penalty may be increased to 125% of the amount of the transactions if either 1) the expenditures are in the form of excessive additional payments to pre-election staff (e.g., a staff member’s pay rate during the post-election period increases significantly from their pre-election pay rate without sufficient explanation), or 2) the amount of the expenditures is 25% or more of the amount that the campaign would otherwise be required to repay in public funds.

Commentary:

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 based on outstanding liabilities (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. Using Government Resources in Furtherance of the Campaign.

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. *See* N.Y.C. Charter § 1136.1(2)(b).

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

Commentary:

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. Failure to Properly Identify Campaign Communications.

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. *See* Admin. Code § 3-703(16); Board Rule 6-06.

For failure to include a “paid for by” or “authorized by” notice, or use of a misleading notice, the standard penalty is the greater of \$250 or 25% of the cost of the communication (if known).

For use of a “paid for by” or “authorized by” notice that is not of a “conspicuous size and style” or clearly spoken, the standard penalty is the greater of \$100 or 10% of the cost of the communication (if known).

Commentary:

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.

Staff may recommend 50% of the standard penalty, or VNP, if the source of the communication is clearly identified in a form other than a paid for by notice. 50% of the standard penalty should be applied if there are other candidates listed or pictured on the communication; VNP if the candidate who paid is the only one whose name/likeness appears.

If the value of the communication is not apparent from the reporting and documentation, the standard penalty may be calculated based on CFB staff’s estimate of the value of the communication. If CFB staff is unable to make an estimate, the standard penalty will be the flat dollar amount provided.

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

E. BANK ACCOUNT VIOLATIONS

E1. Failure to Disclose a Bank Account or Political Committee.

Campaigns are required to disclose to the Board the existence of all currently active political committees as well as all committee bank accounts. *See* Admin. Code §§ 3-703(l)(d), (e), (g), (6), (11), (12), 3-718(1); Board Rules 2-01, 2-02, 4-01, 6-01(h), 6-05, 15-03.

The standard penalty for this violation is \$100.

Commentary:

This violation applies to the failure to disclose committee bank accounts and active political committees, whether or not used in furtherance of the campaign. However, if there is no evidence that a political committee engaged in financial activity during the time period in question, there is no violation and no penalty. Payments of penalties and repayments of public funds to the Board do not constitute financial activity for these purposes.

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. Failure 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), 3-718(1); Board Rules 2-01, 4-01(d), 5-11. Campaigns are prohibited from commingling campaign funds with personal or business funds or funds accepted for another election. *See* Board Rule 5-11.

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. Failure 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), 3-718(1); Board Rules 4-01(d), 4-05(a)(i), (c)(ix).

The standard penalty for failure to provide bank or 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 failure to provide merchant account statements is \$50 per statement.

Statements that are not provided by the deadline for responding to the Enforcement Notice are considered late. The penalty for late submission is covered in C5, Late Submission of Documentation.

Commentary:

Bank and Credit Card Statements:

The maximum penalty for failing to provide statements should not exceed four times the standard penalty for one missing statement, absent aggravating factors. This maximum is applied per account; for example, if a campaign for City Council is missing ten statements each from two different checking accounts, the maximum total penalty would be \$800 (\$400 for each account).

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 VNP if they believe there was less than \$100 of activity in the account during the period covered by the missing statement. If staff believes that there was no activity in the account during the period covered by the missing statement, it should be FAR only.

Merchant Account Statements:

Staff will recommend a \$50 penalty per statement 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(c)(ii).

| Violation | Standard penalty |
|--|--|
| 1 – 3 instances of a petty cash fund in excess of \$500, none greater than \$750 | VNP |
| 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 (e.g., 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. Failure 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 CFB registration 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), 3-718(1); Board Rules 4-01(a), (b), (d), 4-05(c)(ii), 5-11(a).

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 4-01(c)(ii), 6-02(b).

| Violation | Standard penalty |
|---|---|
| 1 - 3 impermissible cash expenditures, each less than \$150 | VNP |
| 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.

F4. Accepting Cash Contributions Greater than \$100.

Campaigns are prohibited from accepting cash contributions greater than \$100. *See* New York Election Law §14-118(2); Board Rule 5-03(e).

The standard penalty for this violation is 25% of the overage plus the amount of the overage. If the over-the-limit portion is refunded, the penalty is 25% of the overage.

G. FAILURE 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 Charter, Act, and Rules. *See* Admin. Code §§ 3-703(1)(d), (g), (6), (11), (12), 3-708(5), 3-710(1), 3-718(1)(b); Board Rules 1-04(b), 4-01, 10-01(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 enforcement 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 the total penalties related to the DAR findings would not exceed the \$500 enforcement threshold, then the campaign will become FAR only, even if the penalty for failing to respond to the DAR would exceed the \$500 threshold.

H. 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. *See* Admin. Code § 3-703(15); Board Rule 2-06.

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 2021 deadline is May 17, 2021 (the final day of the disclosure period reported in the 32-day pre-election primary disclosure statement), except that candidates seeking an early public funds payment must complete a training 30 days before the applicable payment date.

No violation for nonparticipants who are eligible for the small campaign registration requirements, pursuant to Board Rule 2-01(f).

I. 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.

J. 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 Act and 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 3-01(e). 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”:

- (E) coordination in alleged independent expenditures, whereby material or

activity that directly or indirectly assists or benefits a candidate'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 candidate; and

(F) the 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 candidate's nomination or election.

Board Rule 3-01(e)(i).

See also Admin. Code §§ 3-702(8), 3-703(l)(d), (g), (6), (11), 3-718(1); Board Rules 4-01(b)(ii)(E), 4-05(c), 5-06, 6-04.

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.

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

The Board may assess a penalty of up to \$10,000 per violation.

For submission of false contribution documentation, the standard penalty is \$100 plus the amount of the contribution for each contribution. The campaign may reduce the penalty to \$100 per contribution by disgorging the contribution to the Campaign Finance Fund. Campaigns will not be instructed to refund such contributions because the identity of the true contributor is unknown.

The Board may also require the candidate to return all public funds previously received, or find the candidate ineligible to receive public funds, 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) the submission to the Board of documentation or information that the candidate knew or should have known was false or fictitious in whole or in part, including a

disclosure statement which the candidate knew or should have known includes substantial fraudulent matchable contribution claims;

(B) the misrepresentation of a material fact in any submission of such documentation or information to the Board;

(C) the falsifying or concealment of any such documentation or information; or

(D) the use of public funds to make or reimburse substantial campaign expenditures that the candidate knew or should have known were fraudulent;

Board Rule 3-01(e)(i).

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 3-01(e), the staff will consider the totality of the circumstances surrounding the alleged violations.

L. VIOLATIONS RELATED TO TRANSITION AND INAUGURATION ENTITIES

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 13-03(a).

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 13-01, 13-03.

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 Rule 13-02.

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); Board Rule 13-02.

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 13-03(a).

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: 1) 50% of the amount

of the donation or 2) \$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 Rule 13-03(a).

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: 1) 50% of the amount of the donation or 2) \$250.

Note that the penalty for this violation is capped at three times the amount by which the donation exceeded the donation limit. *See* Admin. Code § 3-802(3).

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 13-03(a)(ii)(D), 13-03(b)(v).

The standard penalty is 25% of the amount of the overage, in the case of petty cash and cash expenditure violations, and 25% of the overage plus the amount of the overage in the case of cash donations over \$100. If the over-the-limit portion of a cash donation is refunded, the penalty is 25% of the overage.

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 shall not incur transition expenses. *See* Admin. Code §§ 3-801(1), (2)(c), (6), (7); Board Rules 1-02, 13-03(b).

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 31 in the year following the election, a TIE may not make expenditures except for (i) to satisfy liabilities incurred on or before January 31, or fundraising to satisfy such liabilities, or (ii) to make routine and nominal expenditures associated with and necessary for satisfying such liabilities, terminating the TIE, and responding to the post-election audit, 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 30 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 1-02, 13-03(b)(iii), (iv), (c).

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(1).

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 13-04.

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).

M. VIOLATIONS RELATED TO INDEPENDENT SPENDERS

When an independent spender makes covered expenditures aggregating \$1,000 or more during an election cycle for communications that refer to a specific candidate or ballot proposal, it must report these communications and associated communications, and each future communication associated with an expenditure of \$100 or more that refers to that candidate or ballot proposal. *See* Board Rule 14-02(b), (c).

Additionally, when an independent spender that is an entity makes covered expenditures of \$100 or more aggregating \$5,000 or more in the twelve months preceding the election for communications that refer to any single candidate, it is required to report all contributions accepted from other entities since the first day of the calendar year preceding the year of the covered election, and all contributions aggregating \$1,000 or more accepted from an individual during the 12 months preceding the election. *See* Board Rule 14-02(d).

For each entity from which the independent spender has accepted contributions aggregating \$50,000 or more in the 12 months preceding the election (the “major contributor”), the independent spender must report the name, address, and type of each entity that contributed \$25,000 or more to the major contributor in the 12 months preceding the election, as well as the name, residential address, occupation, and employer of each individual who contributed \$25,000 or more to the major contributor in the 12 months preceding the election. *See* Board Rule 14-02(d)(i)(B).

When an independent spender makes covered expenditures of \$100 or more aggregating \$1,000 or more during an election cycle, the communication associated with the expenditure that meets the \$1,000 threshold and all subsequent communications, regardless of dollar value, must include a “paid for by” identification. *See* Board Rule 14-04.

M1. Late Filing.

Independent spenders are required to file complete and timely disclosure statements on scheduled dates. Expenditures made within two weeks of the election must be reported within 24 hours. *See* NYC Charter § 1052(a)(15)(b); Board Rules 14-02, 14-03.

| | Regular Filing | Daily Disclosure |
|-----------------------------------|--|---|
| Day 1 Penalty | \$50 | Greater of \$100 or 1% of the value of the total expenditures and contributions reported late. |
| Subsequent Daily Penalties | Greater of \$50 or 1% of the value of total expenditures and contributions reported late. These amounts double each day, i.e., the third day is \$100 or 2%. | Greater of \$200 or 4% of the value of the total expenditures and contributions reported late. These amounts double each day, i.e., the third day is \$400 or 8%. |

Commentary:

The penalty stops accruing when a subsequent filing containing the unreported information is submitted.

Penalties are cumulative. For example, the first day penalty during daily disclosure is 1%. The second day’s penalty is 4%, for a total of 5% over two days.

The penalty for late filing is capped at 15% of the value of total expenditures and contributions reported late.

A filing is considered failed if not submitted before the deadline of the subsequent report, or in the case of daily disclosure, within three days of its due date or two days prior to Election Day, whichever is earlier.

M2. Failing to File.

Independent spenders are required to file complete and timely disclosure statements on scheduled dates. *See* NYC Charter § 1052(a)(15)(b); Board Rules 14-02, 14-03.

If a filing indicates a prior filing should have been made, and was not, the standard penalty for failure to file is the greater of \$250 or 25% of the value of the expenditures and contributions that should have been in the filing.

If a communication that appears to be reportable has been observed and no filing was made, the standard penalty is 25% of the value of the communication. If the value is not known, the initial penalty will be based on the communication method:

| Initial Penalty When Value of Expenditure is Unknown | |
|---|-----------------------|
| Communication Method | Penalty |
| Broadcast by TV, cable, satellite, etc. | \$10,000 |
| Mailer for a Citywide Candidate | \$10,000 |
| Mailer for a Borough President Candidate | \$2,000 |
| Mailer for a City Council Candidate | \$1,000 per candidate |
| Print Ad or Billboard | \$2,000 |
| Radio Ad | \$1,000 |
| Other | \$1,000 |

Commentary:

A filing is considered failed if not submitted before the deadline of the subsequent report, or in the case of daily disclosure, within three days of its due date or by two days before Election Day, whichever is earlier.

As there is no requirement to file absent reportable activity, failure to file is based on either information reported in a subsequent filing or an investigation of observed activity.

Failure to file is not the same as failure to respond (to an inquiry from the CFB), which is discussed below.

If a mailer mentions candidates for more than one office and the value of the expenditure is unknown, the initial penalty is the largest of the applicable penalties. For example, for one City Council candidate and one Borough President candidate, the penalty would be \$2,000 (the Borough President penalty). For three City Council candidates and one Borough President, the penalty would be \$3,000 (\$1,000 per City Council candidate).

M3. Failing to Report a Specific Transaction.

Independent spenders are required to report all covered communications as well as any design, production, or distribution expenditures related to those communications. In addition, independent spenders meeting certain criteria must report information about contributions. *See* NYC Charter § 1052 (a)(15)(b); Board Rule 14-02.

| Transaction Type | Penalty |
|-------------------------------|---|
| Communication | The greater of \$250 or 25% of the value of the communication |
| Expenditure | The greater of \$100 or 10% of the value of the expenditure |
| Contributions | 10% of the total of all expenditures reported to date |
| Funding of Major Contributors | 10% of the contributions received from the major contributor |

Commentary:

If the value of a communication is unknown, the penalty will be calculated based on the communication method, using the table found in section M2.

Being penalized for late filing does not preclude being penalized for failure to report specific transactions contained in the late filing. In general, reporting penalties that aggregate to less than filing penalties will be waived or reduced to avoid penalizing twice for the same transactions. Higher reporting penalties will be imposed though they can be reduced; i.e. the higher penalty for failure to report a communication cannot be generally be avoided by simply filing late.

In the event that major funders are not reported, demonstrated efforts to obtain the information

will be considered a mitigating factor.

M4. Failing to accurately report a specific expenditure or contribution.

Independent spenders are required to accurately report their activities. *See* NYC Charter § 1052(a)(15)(b); Board Rule 14-02.

| Transaction Type | Penalty |
|-------------------------------|--|
| Expenditures or Contributions | The greater of \$100 or 10% of the difference between the actual amount and what was reported. |
| Funding of Major Contributors | 2.5% of the difference between the actual amount and what was reported. |

Commentary:

This penalty is applied after an amendment or investigation reveals a discrepancy. Filing an amended transaction prior to notification by the CFB will be considered a mitigating factor.

No penalty should be recommended in cases where a spender reports a good faith estimate of the value of an expenditure (when the exact value is undetermined at the time of disclosure) and later supplies a corrected amount.

M5. Failing to Provide an Accurate Copy of a Communication in a Timely Manner.

Independent spenders must provide copies of any communications included in a disclosure statement. *See* NYC Charter § 1052 (a)(15)(b); Board Rules 14-02(b)(i)(D), (E).

The standard penalty is \$250 per occurrence for the first three occurrences, and \$500 for each subsequent occurrence.

Commentary:

Reporting a communication in an amendment prior to both Election Day and notification by the CFB will be considered a mitigating factor.

M6. Failing to Provide a Copy of an Invoice or Other Documentation.

Independent spenders must include invoices or other documentation for any expenditures included in a disclosure statement. *See* NYC Charter § 1052 (a)(15)(b); Board Rule 14-02(c)(i)(E).

The standard penalty is 5% of the value of the expenditure.

Commentary:

An invoice not provided within 30 days or by the next regular filing (whichever is later) will be considered a failure, unless a reasonable explanation is provided. In general, the invoice must be provided when it becomes available. An invoice provided late will be considered a failure only if the invoice date indicates that it could have been filed in a prior report, or since that report, and only if it leads to a significant change in the reported value of the expenditure or indicates other disclosure issues.

M7. Failing to Report Leaders.

Independent spenders must disclose their owners, officers, and board members, as well as the owners, officers and board members of any organizational contributor. *See* NYC Charter § 1052 (a)(15)(b); Board Rules 14-02(a)(ii)(D), (E).

| Missing Leadership Type | Penalty |
|--------------------------------|--|
| Spender Leadership | \$500 per week until information is reported |
| Contributor Leadership | \$100 per week until information is reported |

Commentary:

This penalty is not assessed until a week after the spender has been notified that is required to disclose this information.

M8. Failing to Disclose the Name of a Contributor, Funder, Vendor, or Leader.

The names of contributors, funders, vendors, or leaders must be reported. They may not remain anonymous. *See* NYC Charter § 1052 (a)(15)(b); Board Rule 14-02.

The standard penalty is \$250 per instance.

Commentary:

The first instance of this violation will not be penalized if the information is reported promptly upon notification.

M9. Failing to Report Address or Employer Information for a Contributor, Funder, Vendor, or Leader.

Independent expenditure reports must include address and employment information for contributors, funders, vendors, and leaders. *See* NYC Charter § 1052 (a)(15)(b); Board Rule 14-02.

The standard penalty is \$10 per percentage point of people for whom required information

is not reported. This penalty is capped at \$50 per missing item. For example, missing address information for four out of ten contributors would result in a penalty of \$400 (40 percentage points x \$10).

For contributors who are reported to have made over \$10,000 in contributions, failure to report address/employer information will result in a penalty of 2.5% of the amount of their contributions.

Commentary:

The \$50 penalty cap for each missing item is meant to avoid situations wherein a spender with a small number of contributors, funders, vendors, or leaders would be disproportionately penalized for missing information. If a spender only has two contributors and fails to provide address information for one of them, the cap is \$50 instead of the \$500 (50 percentage points x \$10) that would otherwise be levied.

M10. Failing to Include a “Paid For By” Notice, or Use of a Misleading “Paid for By” Notice.

Independent spenders are required to include a “paid for by” notice including a statement of independence and information about the spender, its leaders and its contributors with all communications. *See* NYC Charter § 1052 (a)(15)(c); Board Rule 14-04.

The standard penalty is the greater of \$250 or 25% of the cost of the communication. If the value of the communication is unknown, the penalty will be based on the table found in section M2.

M11. Using a “Paid for By Notice” not of Conspicuous Size and Style, not Clearly Spoken, or not Complete.

“Paid for by” notices on visual materials are required to be conspicuous in size and style and within the borders of the communication. For video and audio communications, the voiceover must be clearly spoken and intelligible. All paid for by notices must contain the elements defined in the Rules. *See* NYC Charter § 1052 (a)(15)(c); Board Rule 14-04.

The standard penalty is the greater of \$150 or 15% of the cost of the communication. If the value of the communication is unknown, the penalty will be based on the table found in section M2.

Commentary:

Clear identification of the source of a communication in a form other than a complete paid for by notice will be considered a mitigating factor, although only for communications produced and distributed before contact from CFB staff.

M12. Late Response or Failing to Respond to Requests for Documentation.

Independent spenders must provide documents and other information requested by CFB

staff in a timely manner. *See* NYC Charter § 1052 (a)(15)(b); Board Rule 14-07.

The standard penalty is \$50 per day, up to 1% of total spending.

Commentary:

This penalty only relates to documentation other than the communication and expenditure documentation required as part of filing. Failure to provide that documentation will be penalized per sections M5 and M5 above.

M13. Failing to Maintain/Provide Documentation of Non-Reportable Contributions.

Certain types of income are exempt from reporting. However, spenders must maintain documentation of this income, and provide it upon request. *See* NYC Charter § 1052(a)(15)(b); Board Rule 14-07.

The standard penalty is the greater of \$100 or 1% of the difference between total spending and total contributions reported.

Commentary:

Spenders are not required to report membership dues from individuals, revenue from the sale of goods or services, or contributions earmarked for non-electoral purposes. The spender must maintain records relating to these income sources in the event that the spender needs to demonstrate that they were not reportable. This penalty will generally not be applied in the event that reported contributions exceed reported expenditures.

M14. Material Misrepresentation, Fraud, or Submission of False or Fictitious Information.

A spender may not furnish false or fictitious evidence, books or information to the board; falsify or conceal materials relevant to an inquiry audit by the board; or cooperate with a campaign to conceal coordinated expenditures. *See* NYC Charter §§ 1052 (a)(15)(d), (e); Board Rules 10-04, 14-08.

The penalty for these violations may be up to \$10,000 per violation. Intentional or knowing violations may be punishable as misdemeanors. In the event of cooperation with a campaign, the campaign will also be subject to penalties.