GUIDELINES FOR STAFF RECOMMENDATIONS FOR PENALTY ASSESSMENTS FOR CERTAIN VIOLATIONS

2025[1] Citywide Elections

[1] Beginning with the 2025 primary elections, the 2025 Penalty Guidelines will apply to all elections, including special elections, held prior to the 2029 primary elections.

Contents

INTRODUCTION

The 2025 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 2025 elections. *See* § 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 — both current and former — 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 then by appearing in person either before the Board or before an administrative law judge ("ALJ"). The opportunity to respond to the Enforcement Notice shall be the only such opportunity; information and documentation not received in a timely fashion will be disregarded absent extraordinary circumstances, to be determined at the Board's sole discretion. *See* Board Rule 10-03(b)(ii). When a campaign's response to the Enforcement Notice reveals substantial violations which CFB staff did not and could not have known at the time of the initial notice, CFB staff may issue an amended notice, or "revised notice," that includes additional penalties for any new violations or increased penalties for existing violations. *See* Admin. Code § 3-710.5.

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/or 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 to the Board. After considering the ALJ's report and the entire written record of the enforcement matter (as well as any additional testimony the Board may request at its discretion), 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 also be posted on the CFB website. Campaigns will also receive a 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., unforeseeable, or extenuating circumstances, including but not limited to serious health issues, disasters, accidents, and external events that, in the Board's judgment, significantly impact the campaign's compliance with the Act and Board rules — 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 recommend, at their discretion, no violation or a violation with no associated penalty ("violation, no penalty" or "VNP") for certain minor violations as indicated in the commentary below.

CFB staff will not recommend a penalty of less than $200. If a violation would result in a penalty of less than $200, it will become a Final Audit Report — or 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 independent spender commits the same violation in two instances, with each instance carrying a penalty of $100, these penalties would be aggregated and thus exceed the threshold for no penalty recommendation.

Enforcement Thresholds

A candidate who was not on the ballot will not generally 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 their campaign. A candidate who was on the ballot but raised and spent less than 15% of the expenditure limit will not generally be subject to enforcement unless: 1) there is evidence of fraud, material misrepresentation, conversion, or other egregious violations; 2) the candidate is missing disclosure or bank statements; or 3) the candidate received or may be eligible to receive public funds.

If a campaign's total recommended penalties would be $1,000 or less (for City Council candidates), $2,000 (for borough president candidates), or $3,000 (for citywide candidates), CFB staff will not pursue enforcement and treat the issues only as audit findings in the FAR ("FAR only"). This standard applies both before and after the 15% cap (described below). For example, if a City Council campaign's total penalty recommendation falls below $1,000 only as a result of

the cap, it will still become FAR only. These thresholds apply to all campaigns, regardless of whether they did or did not receive public funds.

For a campaign that did not receive public funds, staff will not pursue enforcement if the campaign's total recommended penalties meet the above thresholds only due to the following violations:

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

For example, a campaign for City Council did not receive public funds. The campaign's penalty recommendation is $200 for failing to document transactions, $750 for failing to file a disclosure statement, and $250 for submitting a late response to the Draft Audit Report. CFB staff would not pursue enforcement against this campaign because (1) it did not receive public funds and (2) the penalty recommendation — excluding the violations listed in the previous paragraph — totals less than $1,000, the enforcement threshold for the office sought.

CFB staff will not pursue enforcement against a TIE or an independent spender if the recommended penalties would total $500 or less.

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 (the "15% Penalty Cap")

To avoid penalties that would be disproportionate to the size of a campaign, total recommended 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 $15,000 in penalties against a campaign that both raised and spent $100,000. For the purposes of calculating the cap, the amount spent includes outstanding liabilities.

However, the 15% cap will not apply to campaigns that 1) received or will receive public funds, 2) filed no disclosure statements, 3) submitted no bank statements, or 4) have any violations involving fraud, misrepresentation, or submission of false information, or violations that are willful or the result of reckless disregard for the law.

In addition, the 15% cap will not apply to recommended penalties associated with the following violations: exceeding the expenditure limit (D1); converting campaign funds to a personal use (D2); accepting and/or failure to report in-kind contributions arising from coordinated activity (J); or failure to respond or responding late to the initial documentation request ("IDR"), draft audit report ("DAR"), or other audit requests (G).

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

$100,000, if staff is alleging reporting violations and late response to the DAR, staff will cap the recommended penalties for the reporting violations at $15,000 (15% of $100,000) and recommend an additional penalty for the late response to the DAR.

An individual penalty that would be less than $200 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 [2] 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 and may make the candidate ineligible to receive public funds in future election cycles. *See* Admin. Code § 3-711; Board Rules 3-01(d)(ii)(A)(9), (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.

[2] Failure to attend a mandatory training may be considered indicia of willfulness.

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)(l), 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 failure 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; failure to report a contribution; and evidence of willful or reckless noncompliance.

Commentary:

No violation will be recommended if the contribution is returned by the first deadline provided by CFB staff (or, if an extension is granted, by the new deadline), except that a penalty may be recommended if the campaign was in possession of the funds for more than 120 days.

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

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

If a contribution is the result of an unpaid liability that is paid in response to the Enforcement Notice, the violation will be resolved.

A2. <u>Accepting Contributions from Unregistered Political Committees.</u>

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: failure 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; failure to report the contribution; and evidence of willful or reckless noncompliance.

Commentary:

No violation will be 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, except that a penalty may be recommended if the campaign was in possession of the funds for more than 120 days.

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

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

If a contribution is the result of an unpaid liability that is paid in response to the Enforcement Notice, the violation will be resolved.

A3. <u>Accepting Over-the-Limit Contributions.</u>

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), 3-718(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: failure to return the overage before the election; returning the overage only after the third notice; failure to report the contribution; failure to provide requested documentation that is related to the contribution; and evidence of willful or reckless noncompliance.

Commentary:

No violation will be 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, except that a penalty may be recommended if the campaign was in possession of the funds for more than 120 days.

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

If a contribution is the result of an unpaid liability that is paid in response to the Enforcement Notice, the violation will be resolved.

Doing Business Contributions:

- No violation will be recommended if the contribution is refunded within 20 days of CFB notification. *See* Admin. Code § 3-703(1-b).

- No violation will be 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 and subsequently amends their filer registration or certification to run for an office with a lower limit, the candidate must refund the excess portion within 20 days of the amendment to avoid a violation.

Loans:

- Loans outstanding on the day of the election are considered to be contributions. Because they do not become contributions until after the election, the aggravating factor of failure to return the overage before the election is not applicable to loans.

- CFB staff will recommend a penalty for an over-the-limit loan even if the overage is returned. If the campaign has repaid the loan, the standard penalty is the greater of $125 or 25% of the amount of the overage unless an aggravating factor applies. If the campaign has not repaid the loan, the standard penalty is the amount of the overage, plus the greater of $250 or 50% of the amount of the overage, unless an aggravating factor applies.

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: failure to disgorge before the election; disgorging only

after the third notice; failure to report the contribution; failure to provide requested documentation that is related to the contribution; and evidence of willful or reckless noncompliance.

Commentary:

No violation will be 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, except that a penalty may be recommended if the campaign was in possession of the funds for more than 120 days.

B. DISCLOSURE STATEMENT VIOLATIONS

B1. Failure to File/Late Filing of 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**
Late Filing Daily Penalty*	$50	$75	$100	$200
Failure to File Penalty	$750	$1,125	$1,500	$3,000

* Daily penalty capped at 15 days, the amount of the penalty for failure to file.

Commentary:

A single disclosure statement that was late — *but no more than 10 days late* — may be considered an "infraction," or "FAR only" 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.

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 penalty for failure to file or late filing 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 or late filing disclosure statements after the first semi-annual statement following the general or special election should not exceed two times the penalty for missing one statement, absent aggravating factors.

CFB staff may recommend a lower penalty or VNP if it is clear that there was little to no activity in the statement.

B2. 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.

Failure 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 more than $20,000.

CFB 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(l)(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(l)(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(l)(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:

Transactions reported after the election will not be considered in determining the penalty amount for this violation.

CFB 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.

CFB 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, CFB staff will not recommend a violation or penalty. 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).

C4. <u>Failure to Document Transactions.</u>

Campaigns are required to document all financial transactions. *See* Admin. Code §§ 3-703(l)(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 $100 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 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.

CFB staff will not recommend a violation or penalty if the Campaign provides documentation sufficient to verify the accuracy of its reporting for the transaction in question.

CFB staff will not recommend a violation or penalty for failure 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. Undocumented expenditures and in-kind contributions may be aggregated if there is an indication that the payees were associated or were providing similar services.

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.

Documents covered by this violation 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.

C5. <u>Late Submission of Documentation.</u>

Campaigns are required to document all financial transactions. *See* Admin. Code §§ 3-703(l)(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 Enforcement 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. <u>Failure to Report and Document Basic Campaign Functions/Activities.</u>

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), 3-718(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 and undocumented in-kind contributions and staff may recommend a penalty for a prohibited or over-the-limit in-kind contribution, if applicable.

CFB 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.

If the campaign reports and fully documents an expenditure in response to the Enforcement Notice, staff may reduce the recommended penalty to 2.5% of the amount that was not originally reported and documented. 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(l)(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 $500 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 $500 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, CFB staff will recommend a VNP.

If a form is provided but the information is inaccurate, CFB staff may recommend a VNP or FAR only, if the inaccuracy is not material.

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

C9. <u>Failure to Report Employment Information for Contributions in Excess of $99.</u>

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:

CFB 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 resolve this violation the campaign must report the employment information using C-SMART.

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, where the campaign failed to report large amounts of expenditures, or where the violation is the result of unreported coordinated 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 in addition to any other applicable penalties. However, only the candidate and committee would be liable for any assessed penalty amount over $10,000 for this violation. *See* Admin. Code § 3-711(2)(a).

Outstanding liabilities are included as expenditures for the purposes of spending over-the-limit.

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 150% 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." CFB staff generally will recommend a VNP for gifts of $200 or less. For gifts over $200, the standard penalty is 125% of the amount over $50.

Applies to both pre- and post-election spending, and to both participants and non-participants.

If the expenditure is promptly reimbursed prior to notification, CFB staff will not recommend a violation or penalty. If the expenditure is reimbursed after notification, for example if the candidate reimburses the campaign in response to the DAR or Enforcement Notice, CFB staff will recommend a VNP. This paragraph does not apply if the violation appeared intentional or extremely reckless.

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. <u>Failure to Demonstrate that Spending was in Furtherance of the Campaign.</u>

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 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 may be 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." *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 may be eligible to receive a post-election public funds payment.

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

The standard penalty for this violation is 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. <u>Failure 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. *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 will be recommended for small mistakes in wording or form (using “authorized by” instead of “paid for by,” failure to list the candidate’s first name if required, failure to use a box, etc.) unless there are indicia of willfulness.

CFB 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 communication opposing a different candidate 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.

CFB 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, CFB staff will not recommend penalties for failure 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 will be recommended 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, CFB staff may also recommend a penalty for "failure to report transactions," "accepting over-the-limit contributions," or fraud and misrepresentation, as appropriate.

E3. <u>Failure to Provide Bank, Credit Card, and Merchant Account Statements.</u>

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:

<u>Bank and Credit Card Statements:</u>

- The maximum penalty for failure 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).

- CFB staff will recommend a penalty for missing statements even if there is also a penalty for failure to respond to the IDR or DAR.

- CFB 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 CFB 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:

- The maximum penalty for failure to provide merchant account statements should not exceed eight times the standard penalty for one missing statement, absent aggravating factors. This maximum is applied per account.

- No violation will be recommended 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 will 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).

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 failure to return the overage before the election; returning the overage only after the third notice; failure to report the contribution; failure to provide requested documentation that is related to the contribution; and evidence of willful or reckless noncompliance.

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(l)(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, CFB 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.

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

Similarly, CFB staff will recommend penalties for responding late or failure to respond to “Other Specific Requests for Information and Documentation” in addition to penalties for responding late or failure 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 Act, the candidate and the committee “shall” be liable for a penalty of up to 10% of total public funds received for failure 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 applicable enforcement threshold ($1,000 for City Council candidates, etc.), then the campaign will become FAR only, even if the penalty for failure to respond to the DAR would exceed the threshold.

H. FAILURE TO ATTEND A MANDATORY TRAINING

The candidate must attend a training on compliance, and the treasurer must attend both a training on compliance and a training on the use of the C-SMART application, 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:

CFB staff publishes a training schedule on its website and publicizes the deadline for attending a training. The deadline for any given candidate or treasurer to complete applicable training is 30 days or 45 days after registration (or replacement of a treasurer) depending on whether it is or is not an election year.

No violation will be recommended if a candidate or treasurer completes the training after the required deadline in a non-election year if it is clear that there was little or no financial activity before training is completed.

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

I. FAILURE 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 FAILURE 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.

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

CFB 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; BREACH

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 $250 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. Candidates who are found in breach of certification may also be deemed ineligible to receive public funds in future election cycles, pursuant to Board Rule 3-01(d)(ii)(A)(9).

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), CFB 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. Failure 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.

If the expenditures were made and contributions were received by the elected candidate's campaign, the standard penalty for this violation is the greater of $100 or 2% of the amount raised and spent outside of the TIE. If expenditures were made or contributions were received by another entity or individual, the standard penalty is the greater of $500 or 50% of the amount raised and spent.

L2. Failure 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 failure to file/late filing of disclosure statements.

L3. Failure to Report.

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. Failure to Document Transactions.

TIEs must keep records that enable the Board to verify the accuracy of disclosure reports and compliance with all requirements of the Act and Board rules. The records kept must be clear, accurate, and sufficient to demonstrate compliance. The records must be made and maintained contemporaneously with the transactions recorded, and maintained and organized in a manner that facilitates expeditious review by the Board. *See* Board Rule 13-04(a). Candidates are required to maintain TIE records for five years after the date of registration and to provide information and records to the Board upon request in a timely manner. *See* Board Rules 13-04(c), (d). Records required to be kept include copies of donation checks, contracts and invoices for goods and services provided, and bank and

depository statements. *See* Board Rule 13-04(b).

The standard penalty for this violation is 1% of the TIE's aggregate donations as reflected on its bank statements.

CFB staff will not recommend a violation or penalty if the TIE provides documentation sufficient to verify the accuracy of its reporting for the transaction in question.

L5. 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 before the next filing, the standard penalty is the greater of 25% of the amount of the donation or $125. 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.

If a Doing Business donation is refunded within 20 days of notification, the violation will be resolved.

If the prohibited donation is the result of an unpaid liability that is paid in response to the Enforcement Notice, the violation will be resolved.

L6. 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 25% of the amount of the overage or $125. 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.

The penalty for this violation is capped at three times the amount by which the donation exceeded the donation limit, even if that amount exceeds $10,000. *See* Admin. Code § 3-802(3).

L7. 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.

L8. 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.

L9. Failure 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 150% of the TIE's remaining bank balance 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).

The remaining bank balance amount is based on either the remaining reported balance or the bank balance as reflected in the TIE's most recent bank statement, whichever is higher.

The penalty for this violation may be reduced by 50% if the TIE winds down activities by the due date of the Enforcement Notice Response.

L10. 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 failure to respond to "Other Specific Requests for Information and Documentation."

This penalty will be applied separately to each request for a particular set of documentation or information. For example, if a letter requesting bank statements and invoices was sent on January 1, and a subsequent letter was sent on February 1 requesting the same bank statements and invoices, as well as donation documentation that was not previously requested, those would be treated as two separate requests. However, if the February 1 letter requested only the same documentation that was requested in the January 1 letter, the two letters would be treated as a single request.

L11. Submission of False Information; Misrepresentation.

The Board may assess 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 expenditures, 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 (the "major funder"). *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. <u>Failure to Provide Complete and Accurate Leadership Information.</u>

Independent spenders must provide the names, addresses, and employer information of their principal owners, board members, and officers, or their equivalents. *See* Board Rule 14-02.

The standard penalty is $500 per week until the information is reported.

Commentary:

A penalty is not assessed until one week after the spender has been notified of the omission and continues accruing until two months after the date of the relevant election.

No violation will be found if a Spender reports the information within one week of notification from CFB staff, or before Election Day, whichever is earlier.

M2. Late Reporting.

Independent spenders are required to file complete and timely disclosure statements on Mondays during the election year, and within 24 hours during the two weeks before an election ("daily disclosure"). 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 received. *See* NYC Charter § 1052(a)(15)(b); Board Rules 14-02, 14-03.

If the transaction is reported more than three days before Election Day, the standard penalty is:

Day(s) Late	Regular Weekly Filing	Daily Disclosure
1	$25	$50 or 2% of the value of the transaction, whichever is greater
2	$50 or 1% of the value of the transaction, whichever is greater	$150 or 10% of the value of the transaction, whichever is greater
3	$100 or 3% of the value of the transaction, whichever is greater.	$350 or 26%, whichever is greater*
4	$200 or 7% of the value of the transaction, whichever is greater	N/A (Failure to Report)
5	$400 or 15% of the value of the transaction, whichever is greater*	N/A (Failure to Report)
6 or more	$800 or 31% of the value of the transaction, whichever is greater*	N/A (Failure to Report)

*Capped at the greater of $250 or 25% if reported more than three days before the election.

If the transaction is reported three or fewer days before Election Day, or on or after Election Day, the standard penalty is the greater of $500 or 50% of the value of the transaction.

If the transaction is reported subsequent to notification by the CFB, a penalty for Failure to Respond Timely (M8) will also be imposed, accruing from the date the transaction

should have been reported.

Commentary:

If major funder information is reported late, the penalty is assessed at 50% of the penalty that would be imposed if the underlying contribution had been reported late.

Late reporting of a communication in its entirety is an aggravating factor.

M3. <u>Failure to Report Transactions.</u>

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.

The standard penalty is the greater of $500 or 50% of the expenditure or contribution. In addition, a violation for Failure to Respond Timely (M8) will be imposed, accruing from the earlier of four weeks before Election Day or the date the transaction should have been reported.

If the value of the Spender's total reported contributions is lower than the value of its total reported expenditures, the standard penalty is 10% of the difference between total expenditures and total contributions. This penalty can be remedied if the Spender provides an explanation for the lack of contribution reporting.

Commentary:

This penalty is based on information discovered by CFB staff, in the form of observed activity and/or non-CFB reporting.

If major funders are not reported, the penalty is assessed at 50% of the penalty that would be imposed if the underlying contribution had not been reported. Demonstrated efforts by the Spender to obtain the information from the contributor will be considered a mitigating factor.

Failure to Report is not the same as failure to respond (to an inquiry from CFB staff), which is discussed in M8.

Certain types of income are exempt from reporting. However, spenders must maintain documentation of this income and provide it upon request. *See* Board Rule 14-07. If a spender provides an explanation for why some or all income has not been reported, CFB staff will determine whether to require examination of documentation of the unreportable income before accepting this explanation, based on a number of factors, most notably whether the spender is an ongoing concern and/or formed in the year of the election.

M4. Failure to Report Accurate Information.

Independent spenders are required to accurately report complete information about expenditures, contributions, leaders, contributors, funders, and vendors. *See* NYC Charter § 1052 (a)(15)(b); Board Rule 14-02.

Failure to accurately report the value of a transaction:

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.

Failure to report the name of a contributor, funder, vendor, or its leaders:
The standard penalty is $100 per instance per week until the date of the relevant election. Pre-election disclosure of the missing information reduces the penalty by 50%.

Failure to accurately report address or employer information for a contributor, vendor, funder, or its leaders:
The standard penalty is $25 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 40 out of 100 contributors (40%) would result in a penalty of $1,000 (40 percentage points x $25), while missing information for four out of ten contributors (also 40%) would be capped at $200 (4 x $50).

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:

A penalty related to transaction value 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 transaction value 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.

The first instance of a missing contributor, vendor, or funder name will not be penalized if the information is reported promptly upon notification. Failure to report a contributor name includes failure to report the names of that contributor's leaders.

Reporting a transaction as anonymous or under a fictitious name is considered a failure to report

the transaction.

In the case of contributor leader and funder names, demonstration of attempts to obtain the information will be considered a mitigating factor.

The $50 penalty cap for each instance of missing address or employer information 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.

M5. Failure to Provide Complete and Accurate Documentation.

Independent spenders must provide copies of any communications and invoices or other documentation for any expenditures included in a disclosure statement. *See* NYC Charter § 1052 (a)(15)(b); Board Rules 14-02(b)(i)(D)–(F), 14-02(c) (E).

Failure to provide a complete and accurate communication copy:
The standard penalty is the greater of $1000 or 10% of the value of the communication.

Failure to provide a complete and accurate copy of an invoice or other documentation:
The standard penalty is $500 per occurrence.

Commentary:

Providing the documentation prior to both Election Day and notification by the CFB will be considered a mitigating factor.

In general, documentation must be provided when it becomes available and should be provided no later than the next filing after the associated transaction occurs. 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 amendment, and only if it leads to a significant change in the reported value of the expenditure or indicates other disclosure issues.

M6. Failure 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 $10,000, which may be adjusted based on the type of communication.

M7. 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 and are applicable as practicable. *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 $10,000, which may be adjusted based on the type of communication.

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.

M8. Failure to Respond Timely to Requests for Documentation and Information.

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 the greater of 1% of total spending or $1,000, per instance.

M9. 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 in expenditures reported to be independent, the campaign will also be subject to penalties.