

## Chapter 3: Eligibility to Receive Public Funds

### § 3-01 Candidates Must Demonstrate Eligibility.

(a) No payments from the Fund shall be made to a candidate unless the Board has determined that such candidate has demonstrated that such candidate has met all eligibility requirements set forth in the Act and these rules, including the threshold for eligibility pursuant to § 3-703(2) of the Code.

(b) *Ballot status.* In order to be eligible to receive public funds, a candidate in a covered election must meet all of the requirements to appear on the ballot as provided in Article 6 of the New York State Election Law, and be opposed by at least one other candidate on the ballot, or, for an optional early public funds payment, certify that the candidate intends to meet all the requirements of law to have such candidate's name on the ballot for the primary or general election.

(c) *Preliminary determinations.* Throughout the audit process or as a result of an investigation, the Board may make a preliminary determination that a candidate is ineligible to receive public funds. In the event of a preliminary determination of ineligibility, the Board will send written notification to the candidate and the candidate may request reconsideration of such determination pursuant to 52 RCNY § 7-09.

(d) *Basis for ineligibility determination.*

(i) *Pre-election.* The Board may determine that a pre-election public funds payment will not be paid to a candidate if:

(A) the candidate fails to submit a disclosure statement required by these rules;

(B) the candidate fails to provide to the Board, upon its request, documents or records required by 52 RCNY Chapter 4, or other information that verifies campaign activity;

(C) the difference between the candidate's reported receipts and documented receipts, or between the candidate's reported expenditures and documented expenditures, exceeds a maximum threshold percentage. The threshold percentage for each election cycle will be determined and publicized by the Board on or before July 11 in the year before the year of the election;

(D) the number of matching claims for which a candidate has failed to provide complete and accurate documentation exceeds a maximum threshold percentage of such candidate's total matching claims. The threshold percentage for each election cycle will be determined and publicized by the Board on or before July 11 in the year before the year of the election;

(E) the number of contributions for which a candidate has failed to report employer information as required by 52 RCNY §4-05(c)(ii)(A) exceeds a maximum threshold percentage of the total number of contributions exceeding \$99 received by such candidate. The threshold percentage for each election cycle will be determined and publicized by the Board on or before July 11 in the year before the year of the election;

(F) the candidate or such candidate's representative fails to attend a compliance training by the deadline provided in 52 RCNY §2-06; or

(G) there is reason to believe that the candidate has committed a violation of the Act or these rules not otherwise enumerated in paragraph (ii) of this subdivision, and which is not a basis for withholding pursuant to 52 RCNY §7-06.

(ii) *Pre-election or post-election.* The Board may determine that neither a pre-election nor a post-election public funds payment shall be paid to a candidate if:

(A) the candidate has failed to meet one of the eligibility criteria of the Act or these rules;

(B) the candidate is required to repay public funds previously received, as described in 52 RCNY §§ 9-01 and 9-02, or the candidate has failed to pay any outstanding claim of the Board for the payment of civil penalties or the repayment of public funds against such candidate or such candidate's authorized committee or an authorized committee of such candidate from a prior covered election, provided that the candidate has received written notice of the potential payment obligation and potential ineligibility determination in advance of the certification deadline for the current covered election and an opportunity to present reasons for such candidate's eligibility for public funds to the Board;

(C) previous public funds payments to the candidate for the election equal the maximum permitted by the Act;

(D) the candidate fails to demonstrate compliance with § 12-110 of the Code, as required pursuant to § 3-703(1)(m) of the Code and 52 RCNY § 3-05;

(E) the candidate endorses or publicly supports such candidate's opponent for election pursuant to § 3-705(9) of the Code;

(F) the candidate loses in the primary election but remains on the ballot for the general election and fails to certify to the Board, as required by § 3-705(10) of the Code, that such candidate will actively campaign for office in the general election, provided that such certification must be complete on or before the 32-day pre-general election disclosure statement deadline; or the candidate certifies to the Board that such candidate will actively campaign for office in the general election but thereafter fails to engage in campaign activity that shall include but not be limited to, raising and spending funds, and broadly soliciting votes;

(G) the candidate has exceeded the applicable expenditure limits provided in § 3-706 of the Code;

(H) the candidate has been found by the Board, in the course of Program participation, to have committed fraud or material misrepresentation or to be in breach of certification pursuant to 52 RCNY § 3-01(e); or

(I) there is reason to believe that, in the course of Program participation, the candidate has engaged in conduct detrimental to the Program that is in violation of any other applicable law.

(e) *Breach of certification.*

(i) The Board considers any of the following to be a fundamental breach of a candidate's 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;

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

(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 candidate exercises authority to conceal from the Board expenditures that directly or indirectly assist or benefit the candidate's nomination or election.

(ii) In the event of a fundamental breach of a candidate's certification, the candidate will be deemed by the Board to be ineligible for public funds for the covered election and to have forfeited all public funds previously received for the elections covered by the Certification. Additionally, the candidate will be subject to such civil and criminal sanctions as are applicable under § 3-711 of the Code and other applicable law.

(iii) This section is not intended to be an enumeration of all circumstances that may constitute a fundamental breach of a candidate's certification, as may be determined by the Board.

(Added City Record 8/16/2019, eff. 9/15/2019; amended City Record 5/22/2020, eff. 6/21/2020; amended City Record 1/19/2021, eff. 2/18/2021)

### **§ 3-02 Disqualification from Ballot.**

(a) *Notice of appeal.* The candidate must notify the Board immediately, in writing, if the disqualified candidate is seeking to appeal or otherwise remedy a disqualification. This notice must say whether a judicial appeal is being taken as of right or by permission and the specific nature of any judicial remedy sought.

(b) *Disqualification reversed.* The candidate must immediately inform the Board, in writing, if the disqualification of the candidate or the opponent is reversed by a court.

(Added City Record 8/16/2019, eff. 9/15/2019; amended City Record 5/22/2020, eff. 6/21/2020)

### **§ 3-03 Write-In Candidates.**

A candidate who is seeking nomination or election to a covered office as a write-in candidate must promptly notify the Board in writing.

(Added City Record 8/16/2019, eff. 9/15/2019)

### **§ 3-04 Termination of Candidacies.**

(a) The Board may send a notice to a candidate that such candidate's candidacy has been deemed terminated if such candidate is not on the ballot for that election.

(b) If the terminated candidate is seeking nomination or election as a write-in candidate, or, in the case of a participant, intends to submit a petition for public funds pursuant to 52 RCNY § 7-01(e)(ii), the candidate must notify the Board within five business days after receiving the notice of termination, in which case the Board may reverse the termination.

(c) A candidate may also request that the Board deem such candidate's candidacy terminated because such candidate has ceased campaigning and has verified that fact in a written request for termination submitted in the form and manner required by the Board.

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

(Added City Record 8/16/2019, eff. 9/15/2019; amended City Record 1/19/2021, eff. 2/18/2021)

### **§ 3-05 Proof of Filing with the Conflicts of Interest Board; Payment of Penalties.**

(a) *Requirements.* In order to be eligible to receive public funds, a candidate must comply with the requirements in § 12-110 of the Code, including payment of any penalties assessed by the conflicts of interest board. The Board may confirm the candidate's compliance with the conflicts of interest board. The failure of a candidate to demonstrate compliance by the deadline established pursuant to §§ 3-703(1)(m) and 12-110 of the Code may result in a delay of any payment by the Board.

(b) *Due dates.* A candidate may submit proof of compliance to the Board. Proof is timely if it is submitted to the Board on or before the deadline to file a Certification for the covered election, except as provided by paragraph (a).

(Added City Record 8/16/2019, eff. 9/15/2019; amended City Record 5/22/2020, eff. 6/21/2020)