



## Term Limits Extension and the Campaign Finance Board: Candidate Guidance Document on Advisory Opinion No. 2008-7

On October 23, 2008, the New York City Council passed legislation extending term limits from two terms to three for current elected officials. On November 3, 2008, the legislation was signed into law by the Mayor. On the same day, the Campaign Finance Board (the “Board”) issued Advisory Opinion No. 2008-7 (the “A.O.”) to explain how the Act and Rules would apply in this new political landscape.

The A.O. attempts to make it practical for all candidates who wish to join the Program to do so. It attempts to treat both incumbents and potential challengers in 2009 and 2013 fairly and encourage competitive races. A more level playing field is achieved through Program participation. The A.O. strives to reach this goal, to the overall benefit of all candidates and the public.

The Board’s rules presume that all contributions and spending are for a candidate’s next election. However, many candidates have accepted contributions that are over the contribution limit for a lower office they may now choose to seek. More importantly, many candidates have spent well over the total expenditure limit for that lower office.

The A.O. identifies options for certain candidates affected by this change. This document explains in detail the options and gives you instructions on how to proceed.

### **The A.O. addresses two groups of affected candidates:**

**Group 1** Candidates with reported activity who will seek re-election to their current offices in 2009, instead of the higher offices they anticipated seeking in 2009.

The A.O. gives these candidates two options:

- (A) Restart your 2009 campaign by “freezing” your current committee until the 2013 election cycle and opening a new committee for the 2009 election.
- (B) Maintain your current committee, return contributions over the lower office limit, and demonstrate that spending prior to the date of the A.O. applied to the campaign for higher office.

**Group 2** Candidates with reported activity who now will not run in 2009, but will seek office in 2013.

The A.O. allows these candidates to keep their current committees and preserve their matching claims until the 2013 election cycle.

### **The A.O. does not apply to:**

- candidates who choose to continue to run for the same (or higher) office that they were running for prior to the passage of legislation extending term limits;
- candidates who were not or cannot demonstrate they were running for higher office;
- candidates who otherwise would fall into Group 1 but who fail to make a timely choice of Option 1-A or 1-B; and
- candidates who did not start to raise or spend money prior to November 3, 2008.

**If you are in a situation that does not fall into either group or require further guidance, you should request advice from the Board as soon as possible.**

## GROUP 1

### Who's in Group 1?

Candidates with reported activity who were demonstrably running for higher office, who will now seek re-election to their current offices in 2009.

### What's the first step?

If you are in this group and wish to choose one of the options (1-A or 1-B) outlined below, you must *first* demonstrate that you were originally running for a higher office in 2009.

### How do I demonstrate I was running for higher office?

You must complete the **Higher Office Proof form** (the "HOP" form).

- 1) If you previously declared the "office sought" on the Filer Registration form you submitted to the CFB, you do not need to do anything but check that box on the HOP form.
- 2) If you were previously undeclared, you need to provide some other evidence that you were seeking a higher office prior to October 23, 2008 (the date the law was changed). This evidence could be as simple as:
  - contributions solicited and/or received at a higher contribution limit (such as a printout from the CFB's searchable database showing larger contributions received before October 23, 2008 and/or an invitation to an event held before October 23, 2008 soliciting larger contributions);
  - records of statements in the press that you were seeking a higher office (such as press clippings); or
  - some other printed document(s) from before October 23, 2008 (such as a contribution card or a letter to supporters demonstrating that you were seeking a higher office, copies of consultant's contracts or work showing plans to run for higher office, or a lease for office space outside the area covered by your lower office).

You must attach your proof to the HOP form.

### When is the HOP form due?

**You must submit the HOP form by January 15, 2009.** It must be either delivered to the CFB's office or postmarked in the mail by midnight on January 15<sup>th</sup>.

*Note: Filing the HOP form does not mean you have to run for the lower office or any office. But you must file the form if you want to take advantage of either Option 1-A or 1-B.*

### What does this mean?

- 1) Your current committee will be “frozen”. That committee must have **no** activity between January 15, 2009 and January 12, 2010 (the beginning of the 2013 election cycle).
- 2) You must open a new committee before January 15, 2009. This involves:
  - a) **obtaining a new Employer Identification Number** (“EIN”) from the IRS;
  - b) **establishing a new committee** with the New York State and New York City Boards of Elections;
  - c) opening a **new** bank account in the name of the new committee;
  - d) submitting a **new Filer Registration** (FR) form to the CFB.

(See instructions on the [CFB website](#) for opening a new committee.)

### What are the benefits?

- 1) Your 2009 campaign gets a fresh start, which will allow you to join the Campaign Finance Program for the lower office.
- 2) You preserve the contributions raised by the “frozen” committee and their eligibility for matching funds for the 2013 election.
- 3) Most of your spending before November 3, 2008 (the date the A.O. was issued) will not count toward either the 2009 or 2013 **spending limits**.

### What happens to my contributions?

#### Contributions received by the “frozen” committee:

- 1) All contributions raised for your now “frozen” committee must remain in that committee’s bank account.
- 2) **You cannot accept money for the “frozen” committee**, except for interest provided by a financial institution. If you receive any contributions for the “frozen” committee after January 15, 2009, you must send them back to the contributor.
- 3) This committee will “unfreeze” on January 12, 2010, and all contributions will be subject to the 2013 contribution limits.

EXAMPLE: Candidate Rachel Owens was running for Public Advocate in 2009 using Owens for New York and received a contribution of \$4,950 from Jerry Clifton on May 5, 2008. However, she now intends to run for her current Council seat and “freezes” Owens for New York. Assuming the contribution limits remain the same in 2013, Owens for New York cannot receive any additional contributions from Jerry when it “unfreezes”.

## OPTION 1-A

Restart your 2009 election by freezing your current committee, creating a new committee for the 2009 election, and opening a new bank account.

- 4) Contributions in the “frozen” committee will be eligible for matching funds for the 2013 election.

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### Warning:

Any progress that you made toward meeting the two-part **threshold** requirement to be eligible for public funds will apply in 2013 (not in 2009).

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- 5) If you want to refund contributions received by your “frozen” committee, you must do so before you “freeze” that committee.

#### *Contributions received by the new committee:*

- 1) Your new committee will start with no money and **zero matching claims**.
- 2) Contributions to your new committee are subject to the 2009 contribution limit and are eligible to be matched.
- 3) You can receive contributions from people who already gave the maximum to your “frozen” committee.

EXAMPLE: Candidate Tom Wilson was running for Comptroller and received a contribution of \$4,950 from Jose Rodriguez on May 5, 2008. However, Tom now intends to run for his current Council seat. He chooses Option 1-A. This \$4,950 contribution remains in his “frozen account.” After Tom opens a new committee and bank account, he can solicit contributions up to the Council contribution limit of \$2,750 from Jose for the new committee.

- 4) Restrictions on contributions from those engaged in business dealings with the City (“doing business”) will apply to contributions to your new committee.

EXAMPLE: Mary Parker gave Tom Wilson’s Comptroller campaign \$3,000 in July 2007. Tom is now running for re-election to the City Council and chooses Option 1-A. Mary wants to give to his new committee. Because she is now in the Doing Business Database, she may only give up to \$250 and her contribution will not be matchable.

## What happens to my expenditures?

### Disbursed by the “frozen” committee:

- 1) Your “frozen” committee’s expenditures before November 3, 2008 (the date the A.O. was issued) will **not count toward your 2009 spending limit**.
- 2) All expenditures the “frozen” committee makes between November 3, 2008 and January 15, 2009 (the deadline to choose this option) **will count toward the 2009 spending limit**.
- 3) All outstanding liabilities, loans, and advances incurred prior to the issuance of the A.O. must be settled **before** you “freeze” your committee. They will not count toward the 2009 spending limit even though these payments are made after November 3, 2008. The committee must be able to document that the liabilities were incurred **before** November 3, 2008.

*Note: Any outstanding debts of the “frozen” committee that were not paid before January 15, 2009 can only be paid by the new 2009 committee. **These payments will count toward the 2009 spending limit.***

- 4) Your “frozen” committee may incur some costs associated with winding down its contracts. **These expenses will count toward the 2009 spending limit.** If the winding down is done before December 31, 2008, the spending will count toward the out-year spending limit.
- 5) No financial activity beyond the costs of maintaining the bank account for your “frozen” committee, such as bank fees, will be allowed until January 12, 2010.
- 6) An estimated fundraising cost **will** count toward your spending limit for the 2013 election.
  - a) Your “frozen” committee will have the benefit of using monies raised prior to freezing, as well as being able to receive matching funds for those contributions. The A.O. allocates a certain amount as the cost of raising these funds.
  - b) The CFB will calculate this fundraising allocation by assessing a 15% flat rate on the total amount of funds on hand in your “frozen” committee as reflected by its bank statement(s) on January 11, 2009 or the bank statement(s) closest to that date. This cost allocation applies to the pre-election year spending limit for the 2013 election.

EXAMPLE: Candidate Monica Sanchez was running for Public Advocate. As of January 11, 2009 her “frozen” committee had a balance of \$800,000. She now intends to run for re-election to her current Council seat. She chooses Option 1-A. Based on this option, 15% of \$800,000, or \$120,000, will count toward her out-year spending limit for her 2013 campaign.

*Note: A campaign's total expenditures before November 3, 2008 may be less than 15% of a campaign's funds on hand on January 11, 2009. In this case, the CFB will count the lower figure — the entire expenditure total — toward the campaign's 2013 spending limit.*

EXAMPLE: Candidate Sarah Lee was running for Brooklyn Borough President and received \$500,000 in total contributions. As of November 3, 2008 her "frozen" committee had spent \$25,000, leaving a balance of \$475,000. She now intends to run for re-election to her current Council seat. She chooses Option 1-A. Based on this option, if she chooses to run for Borough President, 15% of \$475,000 is \$71,250. However, because her "frozen" 2009 committee spent less than that amount prior to November 3, 2008, \$25,000 will count as her fundraising allocation for the 2013 election.

Disbursed by the new committee:

- 1) All expenditures made by the new committee will count toward the 2009 expenditure limit.
- 2) If the new committee anticipates using goods, such as computer equipment, other office equipment, furniture, supplies, or lists previously purchased by the "frozen" committee, the new committee must purchase these goods from the "frozen" committee before January 15, 2009 using a campaign check. The goods must be purchased at the same prices that were paid by the "frozen" committee.

EXAMPLE: Candidate Maggie Zimmerman was running for Bronx Borough President. Her committee bought a computer for \$1,500 on July 5, 2007. Her re-election campaign wants to use the computer. It must write a check for \$1,500 to the "frozen" committee before January 15, 2009.

- 3) The new committee must start new contracts with consultants and campaign employees, even if these vendors had a contract with the "frozen" committee.
- 4) The new committee is required to pay any costs associated with filing any disclosure statements for itself **and** for the "frozen" committee. **These costs will count toward the 2009 spending limit.**

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**Warning:**

You cannot transfer funds from your "frozen" committee to your new committee. Further, you cannot make loans from the "frozen" committee to the new committee. In addition, after January 15, 2009, the "frozen" committee may not sell or donate any additional goods to the new committee.

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## What are my reporting requirements?

### “Frozen” committee:

- 1) You will need to get a new version of C-SMART (C-SMART 2009F).
- 2) You need to contact your Candidate Services Liaison to receive step-by-step guidance on transferring data from your current C-SMART to C-SMART 2009F.
- 3) You will use C-SMART 2009F to:
  - a) File the 1/15/09 disclosure statement;
  - b) Enter the minimal post-January 11, 2009 account activity, such as bank fees;
  - c) File the January and July Periodic Reports (1/15/09, 7/15/09, and 1/15/10) with the City and State Boards of Elections (the BOE);
  - d) Enter transactions and report activity once it is “unfrozen” or reactivated on January 12, 2010 (first date for first disclosure statement period in 2013 election cycle).

*Note: The 2013 election cycle begins after the January 15, 2010 disclosure statement period.  
The Candidate Services Unit will provide more guidance as that election cycle approaches.*

- 4) To avoid confusion, C-SMART 2009F will:
  - a) Have an icon that differentiates it from the 2009 version of C-SMART.
  - b) Display a message when logging-on that alerts the user that this is the 2009F version of C-SMART for the “frozen” committee.

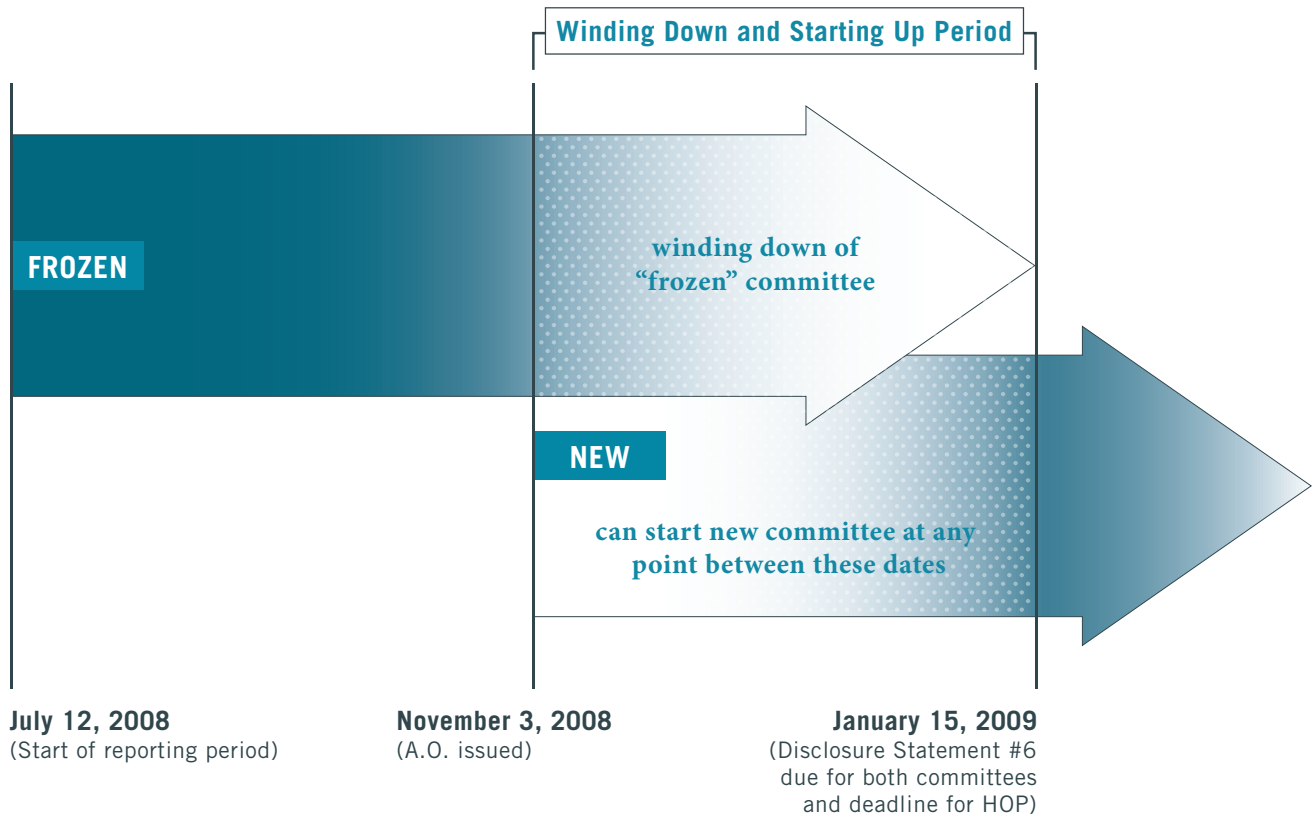
### New committee:

- 1) The CFB will issue a **new** 2009 version of C-SMART (C-SMART 2009) for your campaign to use for your new committee. It will contain:
  - a) Just the new 2009 committee information;
  - b) A new database, so the campaign starts fresh with no transactions.
- 2) You will use this new copy of C-SMART 2009 to enter all financial activity and file disclosure statements with the CFB and the BOE for the 2009 election.

## OPTION 1-A

Restart your 2009 election by freezing your current committee, creating a new committee for the 2009 election, and opening a new bank account.

For the 1/15/09 disclosure statement, the campaign must file for both the new and “frozen” committees using the two different versions of C-SMART (see diagram below).



*Note: If you decide to open your new committee after January 11, 2009, you will not be required to file a disclosure statement for the new committee on January 15, 2009, since there would be no activity to report. In this case, you would only file for the “frozen” committee.*



**What are the recordkeeping requirements?**

- 1) You must maintain all records for both the “frozen” and new committees in a separate and organized manner.
- 2) You must document outstanding liabilities paid for by the “frozen” committee after the issuance of the A.O. to show they were **incurred** before November 3, 2008.
- 3) You must keep all bank statements for the “frozen” and new committees.
- 4) Upon request from the CFB, you must be able to provide these records.
- 5) All backup documentation must be provided for Disclosure Statement Filing #6 for both committees.

**When do I have to decide?**

- 1) The deadline to choose and receive the benefits of this option is **January 15, 2009**.
- 2) Remember, you must first demonstrate that you were originally running for a higher office in 2009 (see [HOP form](#)).

**What happens between November 3, 2008 and January 15, 2009?**

- 1) Most spending by either the “frozen” **or** new committee counts toward the spending limit for your 2009 campaign.
- 2) You must open a new committee for the 2009 election.
- 3) You must file the [HOP form](#).

**What does this mean?**

- 1) You will continue to use your existing 2009 committee.
- 2) All over-the-limit contributions must be refunded to the contributors by **certified check** on or before June 10, 2009 (the Program Certification deadline) even if you choose not to participate.

**What are the benefits?**

- 1) There is no need to change your committee.
- 2) You preserve the eligibility for matching funds in 2009 for all contributions raised by your committee.
- 3) You keep reporting as you have been.
- 4) You will have until June 10, 2009 to refund over-the-limit contributions without penalty.

**What happens to my contributions?**

- 1) Your committee must abide by the contribution limit for the 2009 office. Candidates can only accept contributions within the legal limits.
- 2) The CFB will inform you which contributions are now over the contribution limit and must be returned. Whether or not you declare what office you are seeking, the CFB will use the contribution limit for your incumbent office in providing this notification.
- 3) You can also check C-SMART to see which contributions are over the limit.
- 4) All over-the-limit contributions must be refunded to the contributors by **certified check** on or before June 10, 2009.
- 5) All contributions received from NYC residents by the current committee that are eligible for matching funds will retain eligibility for the 2009 elections.
- 6) Valid matchable contributions filed for your current committee will be eligible to count toward your threshold for the lower office.

*Note: The threshold numbers requirement varies by office sought. For example, only matchable contributions from Council district residents count toward the Council threshold.*

### What about my expenditures?

- 1) The CFB will presume that expenditures are for the 2009 election.
- 2) Expenditures made before November 3, 2008 will not count toward the 2009 election **if you can show that the expenses were actually for the aborted 2009 campaign for higher office**. The CFB will allocate expenditures toward the 2009 re-election campaign based on Advisory Opinion No. 1997-6 (June 24, 1997).
- 3) Costs which provide a benefit to the 2009 campaign for lower office will apply to the 2009 spending limit, including:
  - All fundraising expenditures.
  - Contributions to other candidates and political organizations.
  - Any staff salaries, offices and equipment used for the campaign for the lower office.
- 4) Some costs that likely will **not** be applied to the 2009 spending limit include:
  - Polls and research for higher office.
  - Salaries for higher office campaign staff.
  - Campaign offices and equipment outside of the lower office geographical area.
  - Announcements, literature, and events for the higher office.
- 5) You will need to provide documentation to the CFB to prove that the above costs did not provide a benefit (or even an ancillary benefit) to the 2009 re-election campaign. Such documentation may include:
  - Detailed information about employees and work performed as shown by employee contracts or timesheets.
  - Detailed information about campaign office location and equipment usage.
  - Documents showing that public events and publications have an exclusively higher office association.
- 6) If an expense provides only a partial benefit to the 2009 re-election campaign, the expense will be allocated to the 2009 re-election campaign based on the estimated benefit.
- 7) When you choose Option 1-B, the CFB will immediately begin the process of apportioning expenditures based on Advisory Opinion No. 1997-6. This will be a back-and-forth process as the CFB will request documentation from you to help show that expenses do not apply to the 2009 re-election campaign.
- 8) The CFB will complete this analysis by the May 15, 2009 filing date and inform your campaign of the total amount of expenditures that will apply to the spending limit for the 2009 election.
- 9) The campaign must continue to abide by the current spending limits.

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#### Warning:

When deciding whether to choose Option 1-B, a candidate should consider that most expenditures incurred by the 2009 committee for the campaign for the higher office will likely apply to the 2009 spending limit for the re-election campaign.

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## OPTION 1-B

Keep your current committee and refund any over-the-limit contributions that result from your decision to run for re-election to your current seat.

### What are my reporting requirements?

- 1) Continue filing periodic disclosure statements with the CFB.
- 2) Report all contribution refunds accordingly.
- 3) Continue filing periodic disclosure statements with the BOE.

### What are my recordkeeping requirements?

- 1) Continue providing backup documentation for all matching claims with each disclosure statement filing.
- 2) Provide copies of all refund checks with each disclosure statement filing.
- 3) Keep copies of all documentation related to all of the committee's financial activity (including bank statements, deposit slips, invoices, etc.).

### When do I have to decide?

- 1) The deadline to choose and receive the benefits of this option is **January 15, 2009**.
- 2) Remember, you must first demonstrate that you were originally running for a higher office in 2009 (see HOP form).

## GROUP 1

### Key Provisions for Group 1

	Option 1A – Freeze current committee	Option 1B – Keep current committee
Do I have to refund contributions?	Not for “frozen” committee contributions.	Yes. For all contributions over the lower office limit, the over-the-limit portion must be refunded before June 10, 2009 by certified check.
Of the funds I raised so far, when will eligible contributions be matched?	2013	2009
Will I be able to retain my threshold status in 2009?	No. Any progress you made toward meeting the two-part threshold requirement will <b>not</b> apply to the new committee, but will apply to 2013.	Yes. Valid contributions for matching funds filed for your current committee <b>will</b> count toward your requirements for the lower office.
Of the funds I spent before November 3 <sup>rd</sup> , what will count toward the 2009 spending limit?	None.	Expenditures will be addressed on a case-by-case basis. Most expenditures <b>will</b> count toward the 2009 spending limit for the lower office.
Of the funds I’ve spent before November 3 <sup>rd</sup> , what will count toward the 2013 spending limit?	15% of the total funds on hand as of January 11, 2009 <b>or</b> the actual expenditures by your “frozen” committee (whichever is less) will count toward your 2013 election out-year spending limit.	N/A
Do I submit disclosure statement(s) on January 15, 2009?	Yes. You will file one statement for the “frozen” committee and one statement for the new committee (if opened prior to January 11, 2009).	Yes. Continue filing for your current committee as you have been.
Do I need to submit the HOP form demonstrating I was running for a higher office and selecting my option?	Yes, by <b>January 15, 2009</b> .	Yes, by <b>January 15, 2009</b> .

## GROUP 2

### Who's in Group 2?

Candidates with reported activity who choose not to run in 2009, but plan to seek office in 2013.

### What does this mean?

- 1) You will terminate your candidacy for the 2009 election.
- 2) You will use the committee you created for the 2009 campaign for the 2013 campaign instead.
- 3) You must submit a **Verification of Terminated Candidacy form** to the CFB. This will excuse you from further reporting obligations with the CFB for the 2009 election cycle, except for your next filing.

### What are the benefits?

- 1) You will have funds available to support a 2013 campaign.
- 2) For all valid matchable contributions, you preserve the eligibility for matching these funds for the 2013 election.
- 3) You maintain the progress that you have made toward meeting the two-part threshold requirement to be eligible for public funds in 2013.

### What happens to my contributions?

- 1) All contributions received both before and after November 3<sup>rd</sup> (the date the A.O was issued) will be eligible for matching funds in 2013.
- 2) All contributions will be subject to the 2013 contribution limits and regulations.

### What happens to my expenditures?

- 1) Expenditures that were incurred prior to November 3<sup>rd</sup> will **not** be applied to your 2013 election spending limit.
- 2) However, an estimated fundraising cost **will** count toward your spending limit for the 2013 election. The CFB will calculate the fundraising expenditure by assessing a 15% flat rate on the total amount of funds on hand in your committee as reflected by its bank statement(s) on January 11, 2010 or the bank statement(s) closest to that date.

EXAMPLE: Candidate Gloria Hernandez was running for City Council and decided to suspend her candidacy until 2013. She filed a **Verification of Terminated Candidacy** form with the CFB. As of January 11, 2010, her committee had a balance of \$30,000. Based on this option, 15% of \$30,000, or \$4,500, will count against her 2013 out-year spending limit.

## GROUP 2

Terminate your candidacy and use your 2009 committee for the 2013 election.

*Note: A campaign's total expenditures before November 3, 2008 may be less than 15% of a campaign's funds on hand on January 11, 2010. In this case, the CFB will count the lower figure — the entire expenditure total — toward the campaign's 2013 spending limit.*

- 3) All spending will be subject to the 2013 spending limits and regulations.

### What are my reporting requirements?

The following is a step-by-step process for you to fulfill your reporting obligations. Please contact your Candidate Services Liaison to walk you through each step.

- 1) Upon submitting the **Verification of Terminated Candidacy form**, you will be released from your reporting obligations with the CFB for the 2009 election cycle.
- 2) Once you terminate your 2009 committee (anytime up until June 10, 2009), you will file the next scheduled disclosure statement as your last statement with the CFB for the 2009 election (see chart below).

If you terminate by ...	Your last CFB disclosure statement will be ...
January 11, 2009	January 15, 2009 (Disclosure Statement #6)
March 11, 2009	March 15, 2009 (Disclosure Statement #7)
May 11, 2009	May 15, 2009 (Disclosure Statement #8)
<b>June 10, 2009</b> (this is your last chance to be included in Group 2)	July 15, 2009 (Disclosure Statement #9)

- 3) After your last CFB filing, you must continue filing periodic disclosure statements with the New York City and New York State Boards of Elections using C-SMART 2009.

### Warning:

Even though you use C-SMART to file your BOE statements, **keep a back-up copy of your 2009 C-SMART database in a safe place.** If you lose your C-SMART database, the CFB will not be able to recover the lost information.

- 4) You must file a new **Filer Registration form** for the 2013 election cycle in the beginning of 2010.
- 5) You must report all contributions received from your terminated 2009 committee for the 2013 election cycle on July 15, 2010. The 2013 election cycle begins after the January 15, 2010 disclosure period. The Candidate Services Unit will provide additional guidance as that election cycle approaches.

**What are my recordkeeping requirements?**

- 1) You must submit back-up documentation for matchable contributions with the remaining disclosure statements you file with the CFB for the 2009 election cycle.
- 2) You will submit your back-up documentation for contributions received after you submit your final 2009 disclosure statement with the CFB with your first disclosure statement for the 2013 election cycle, which is due on July 15, 2010.

*Note: You will not have to resubmit back-up documentation you already submitted for the 2009 election cycle with the July 15, 2010 statement even though that statement will cover **all** your campaign activity.*

- 3) Keep copies of all documentation related to all of the committee's financial activity (including bank statements, deposit slips, invoices, etc.).

**You must file a Verification of Terminated Candidacy form with the CFB by June 10, 2009—the Program Certification deadline.**



## For 2009 Candidates Who Do Not Fall Into Group 1 or 2

**Nothing changes. Continue raising and spending from your current committee and report all activity as you have been for all past filings.**

### What does this mean?

- 1) You will continue using the same committee and proceed with raising and spending money in accordance with the CFB's 2009 limits and requirements.
- 2) You will continue filing periodic disclosure statements with the CFB and the BOE.
- 3) Your contributions will not be affected.

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**Reminder for all candidates:** Please contact your Candidate Services Liaison for clarification or assistance, especially with your reporting obligations.

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08/02/10