

New York City Campaign Finance Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? In November 2013, the City Council passed Local Law 116 of 2013, which permits candidates running for offices covered by the Campaign Finance Act (“Act”) to accept contributions via text message. The legislation also makes text message contributions matchable by public funds, so long as all eligibility requirements under the Campaign Finance Program are met. To comply with Local Law 116, the Campaign Finance Board (“Board”) is proposing amendments to its rules. The proposed rules set minimum requirements for receiving text message contributions so that the Board can evaluate compliance with the Act and Board rules and eligibility for matching public funds.

When and where is the Hearing? The Board will hold a public hearing on the proposed rules. The public hearing will take place at 10:00 AM on November 24, 2014. The hearing will be in the Board’s board room at 100 Church Street, 12th Floor, New York, NY 10007.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Board through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to CFBRules@nyccfb.info.
- **Mail.** You can mail written comments to Sue Ellen Dodell, General Counsel, Campaign Finance Board, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to the Board, at (212) 409-1705.
- **Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling Giovanni Mejia, Campaign Finance Board Associate Counsel, at (212) 409-1800. You can also sign up in the hearing room before the hearing begins on November 24, 2014. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, written comments must be submitted by November 20, 2014.

Do you need assistance to participate in the Hearing? You must tell Giovanni Mejia, Campaign Finance Board Associate Counsel, if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 409-1800. You must tell us by November 17, 2014.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written

comments, and a summary of oral comments concerning the proposed rules will be available to the public on the Board's website at www.nyccfb.info.

What authorizes the Board to make these rules? Sections 1043 and 1052(a)(8) of the City Charter, sections 3-703(1-c), 3-703(1)(g), and 3-708(8) of the City Administrative Code, and section 4 of Local Law 116 for the year 2013 authorize the Board to make these proposed rules.

Where can I find the Board's rules? The Board's rules are in title 52 of the Rules of the City of New York and on the Board's website at <http://www.nyccfb.info/act-program/rules/>.

What rules govern the rulemaking process? The Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rules

In November 2013, the City Council passed Local Law 116 of 2013 (“LL 116”), which amended the City Administrative Code to permit candidates running for offices covered by the Campaign Finance Act (“Act”) to accept contributions via text message. The local law also makes text message contributions matchable with public funds, so long as all eligibility requirements under the Campaign Finance Program are met.

To comply with LL 116, the Board is proposing amendments to its rules. The proposed rules set minimum requirements for receiving text message contributions so that the Board can evaluate compliance with the Act and Board rules and eligibility for matching public funds. Specifically, the proposed rules:

- establish that public funds will not be used to match text message contributions until after those contributions are paid via the contributor’s phone bill and delivered by a mobile fundraising vendor to a candidate’s authorized committee;
- establish record keeping requirements for text message contributions, including records relating to the mobile fundraising vendor, the contributor, and the registered user of the mobile device used to make the contribution; and
- require a contributor to certify that he or she is the registered user of the phone and that the contribution will be made from his or her personal funds.

The proposed amendments do not prescribe any method for candidates to use in accepting text message contributions. The Board welcomes and encourages comments about ways to match contributions earlier in the process, including the feasibility of matching payments from a mobile fundraising vendor before delivery of a contributor’s funds to a candidate’s authorized committee.

Because the Board cannot anticipate every requirement that may apply to text message contributions, following the adoption of the final rules, the Board will also update training materials and other published guidance to assist candidates in ensuring that their receipt of text message contributions from contributors via mobile fundraising complies with all requirements of the Act and Board rules. For example, if a candidate receives aggregate contributions, whether by text message or other means, totaling more than \$99 from a contributor during an election cycle, the candidate will have to solicit employment information to comply with section 3-03(c)(4)-(6) of the Board rules. Similarly, if a candidate receives aggregate contributions, whether by text message or other means, from a contributor over an election cycle that reach the “doing business” limits, a candidate will be required to inquire whether the contributor is doing business with New York City in accordance with section 3-703(1-b) of the City Administrative Code. These and other similar issues will be addressed in training materials.

The Board's authority for these rules is found in sections 1043 and 1052(a)(8) of the City Charter, sections 3-703(1-c), 3-703(1)(g), and 3-708(8) of the City Administrative Code, and section 4 of LL 116.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of the Board, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 1-02 of chapter 1 of title 52 of the rules of the city of New York is amended to add the following definition:

"Text message contribution" means a text message contribution as defined in the Act.

§ 2. Subdivision (a) of section 1-04 of chapter 1 of title 52 of the rules of the city of New York is amended to read as follows:

(a) **Receipt.** A monetary contribution is received on the date it is delivered. Notwithstanding the foregoing, a text message contribution is received on the date it is delivered to an authorized committee by a wireless carrier or other mobile fundraising vendor. An in-kind contribution is received on the date the goods or services are received or rendered. Candidates must report the date of receipt of each contribution that is accepted and deposited on disclosure statements filed with the Board.

§ 3. Paragraph (4) of subdivision (b) of section 4-01 of chapter 4 of title 52 of the rules of the city of New York is amended to read as follows:

(4) **[Omitted.] Text message contributions.** Whenever a candidate accepts a text message contribution, the candidate must maintain:

(a) copies of all relevant third-party vendor agreements between the candidate and mobile fundraising vendor, copies of records maintained by a mobile fundraising vendor listing contributors and amounts pledged and paid, receipts indicating fees paid by the candidate to a mobile fundraising vendor and fees deducted by such vendor, and similar records relating to the solicitation or receipt of text message contributions;

(b) records demonstrating:

(1) the contributor's name, residential address, and phone number,

(2) the amount of the contribution,

(3) the name and residential address of the registered user of the specific mobile device used to initiate the contribution, to the extent that such information may be reasonably obtained under law; and

(4) that the contributor has certified via text message the following statement: "I certify I am the registered user of this phone and will personally pay the amount specified from my own funds.";

(c) copies of any content used by the candidate to solicit text message contributions; and

(d) copies of any templates or scripts used by a mobile fundraising vendor to communicate with a contributor in facilitating and processing a text message contribution.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Regulation of Text Message Contributions

REFERENCE NUMBER: 2014 RG 077

RULEMAKING AGENCY: Campaign Finance Board

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 16, 2014

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Regulation of Text Message Contributions

REFERENCE NUMBER: CFB-3

RULEMAKING AGENCY: CFB

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

October 16, 2014
Date