

PART 6221 Public Campaign Finance Program

6221.1 Definitions

- (a) The term "authorized committee" shall mean the single political committee designated by a candidate pursuant to these rules to receive contributions and make expenditures in support of the candidate's campaign for such election.
- (b) The term "PCFB" shall mean the Public Campaign Finance Board established pursuant to Title II of Article 14 of the Election Law.
- (c) The term "contribution" shall have the same meaning as appears in subdivision nine of section 14-100 of the Election Law.
- (d) The term "contributor" shall mean any person or entity that makes a contribution.
- (e) The term "covered election" shall mean any primary, general, or special election for nomination for election, or election, to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Senator, or Member of the Assembly.
- (f) The term "election cycle" shall mean the two-year period starting the day after the last general election for candidates for the state legislature and shall mean the four year period starting after the day after the last general election for candidates for statewide office.
- (g) The term "expenditure" shall mean any gift, subscription, advance, payment, or deposit of money, or anything of value, or a contract to make any gift, subscription, payment, or deposit of money, or anything of value, made in connection with the nomination for election, or election, of any candidate. Expenditures made by contract are deemed made when such funds are obligated.
- (h) The term "fund" shall mean the New York state campaign finance fund established pursuant to Title II of Article 14 of the Election Law.
- (i) The term "immediate family" shall mean a spouse, domestic partner, child, sibling, or parent.
- (j) The term "item with significant intrinsic and enduring value" shall mean any item, including tickets to an event, that are valued at twenty-five dollars or more.
- (k) (1) The term "matchable contribution" shall mean a contribution not less than five dollars and not more than two hundred fifty dollars, for a candidate for public office to be voted on by the voters of the entire state or for nomination to any such office, a contribution for any covered elections held in the same election cycle, made by a natural person who is a resident in the state of New York to a participating candidate, and for a candidate for election to the state assembly or state senate or for nomination to any such office, a contribution for any covered elections held in the same election cycle, made by a natural person who is also a resident of such state assembly or state senate district from for which such candidate is seeking nomination or election, that has been reported in full to the PCFB in accordance with sections 14-102 and 14-104 of the Election Law by the candidate's authorized committee and has been contributed on or before the day of the applicable primary, general, or special election. Any contribution, contributions, or a portion of a contribution determined to be invalid for matching funds by the PCFB may not be treated as a matchable contribution for any purpose.

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- (2) The following contributions are not matchable:
- (i) loans;
  - (ii) in-kind contributions of property, goods, or services;
  - (iii) contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value;
  - (iv) transfers from a party or constituted committee;
  - (v) anonymous contributions;
  - (vi) contributions whose source is not itemized as required by these regulations and Title 2 of Article 14 of the Election Law;
  - (vii) contributions gathered during a previous election cycle;
  - (viii) illegal contributions;
  - (ix) contributions from minors, where "minor" means a natural person under the age of eighteen years at the time of the contribution;
  - (x) contributions from vendors for campaigns hired by the candidate or their authorized committee in furtherance of the nomination or election of the candidate for such election cycle;
  - (xi) contributions from lobbyists registered pursuant to subdivision (a) of section one-c of the Legislative Law; and
  - (xii) any portion of a contribution when the aggregate contributions are in excess of two-hundred fifty dollars in the election cycle from any one contributor to such participating candidate for nomination or election.
- (l) The term "nonparticipating candidate" shall mean a candidate for a covered election who has not filed a written certification in the form of an affidavit pursuant to section 14-203(d) of the Election Law and these regulations.
- (m) The term "participating candidate" shall mean any candidate for nomination for election, or election, to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Senator, or Member of the Assembly, who files a written certification in the form determined by the PCFB.
- (n) The term "post-election period" shall mean the period following an election when a candidate is subject to an audit.
- (o) The term "qualified campaign expenditure" shall mean an expenditure for which public matching funds may be used.
- (p) The term "threshold for eligibility" shall mean the amount of matchable contributions that a candidate's authorized committee must receive in total in order for such candidate to qualify for voluntary public financing under this title.

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(q) The term "transfer" shall mean any exchange of funds between a party or constituted committee and a candidate or any of their authorized committees.

(r) The term "surplus" shall mean those funds where the total sum of contributions received and public matchable funds received by a participating candidate and their authorized committee exceeds the total campaign expenditures of such candidate and authorized committee for all covered elections held in the same calendar year or for a special election to fill a vacancy.

### 6221.2 Public Campaign Finance Board

(a) Pursuant to section 14-207 of the Election Law, the Public Campaign Finance Board ("PCFB") consists of seven members, comprised as follows:

(i) Four commissioners of the State Board of Elections;

(ii) Two commissioners jointly appointed by the legislative leaders of each major political party in each house of the legislature;

(iii) One commissioner appointed by the Governor.

(b) The chair of the PCFB shall be designated by the PCFB. The chair must be one of the commissioners that is appointed pursuant to paragraphs ii and iii of subdivision (a) of this section. The term of the chair shall be one year, beginning on January 1<sup>st</sup> of each year. Upon a vacancy other than the expiration of a term, the PCFB shall designate a chair for the remainder of the term consistent with this section.

(c) Each commissioner must be a New York State resident and registered voter, and may not currently be, or within the previous five years of their appointment have been, an officer of a political party or political committee, or a registered lobbyist.

(d) Four commissioners of the PCFB shall constitute a quorum; provided, however, that any action taken by the PCFB shall be by majority vote of the total number of members of the commission without vacancy.

(e) A quorum is achieved by a commissioner's physical presence, or, in the alternative, via videoconferencing, including, but not limited to Skype, FaceTime, Zoom, Google Meet, or other similar applications. A commissioner may participate in a meeting via video teleconference if the public notice of the meeting indicates that videoconferencing will be used, specifies the location(s) for the meeting, and states that the public may attend at any of the locations consistent with section 41 of the General Construction Law and sections 102, 103, and 104 of the Public Officers Law.

(f) The commissioners of the PCFB shall be subject to sections seventy-three-a and seventy-four of the public officers law.

### 6221.3 Public Campaign Finance Board Staff

(a) Pursuant to subdivision 2 of section 14-107 of the Election Law, the PCFB and the state board of elections may utilize existing state board of elections staff and hire such other staff as are necessary to carry out its duties. It may expand its staffing, as needed, to provide additional candidate liaisons to assist candidates in complying with the requirements of the public campaign finance system, as well as

auditors, trainers, attorneys, technical staff and other such staff and in such numbers, as the PCFB determines is necessary to administer the program.

(b) On or before the first of every year, the PCFB shall submit to the governor and the division of the budget a request for appropriations for the next state fiscal year to fully support the administration of the public campaign finance program. Such requests shall be forwarded to the Speaker of the Assembly, Majority Leader of the Senate, and to the Minority Leaders of each house.

#### 6221.4 Advisory Opinions

(a) The PCFB, or its duly designated representatives, with input from the SBOE Counsels Office, shall render advisory opinions relative to questions regarding Title II of the Election Law upon written request of a candidate, an officer of a political committee or member of the public, within thirty days of the date of receipt.

(b) At its discretion, the PCFB, with input from the SBOE Counsels Office, may issue advisory opinions in the absence of a request.

(c) The PCFB, or its duly designated representatives, shall publish all questions of interpretation received and all advisory opinions rendered on its webpage.

(d) Identifying information will be redacted as the PCFB deems appropriate at its discretion.

(e) Pursuant to section 14-207(6) of the Election Law, PCFB management and/or staff designated by management may provide advice to any candidate or committee upon request. Such advice shall be presumptive evidence that an action, if taken in reliance on such advice, should not be subject to a penalty or repayment obligation where such candidate or such candidate's committee has confirmed such advice in a writing to PCFB Counsel, by registered or certified mail to the correct address, or by electronic or facsimile transmission with evidence of receipt, describing the action to be taken pursuant to the advice given and the PCFB or its staff has not responded to such written confirmation within seven business days disavowing or altering such advice, provided that the PCFB's response shall be by registered or certified mail to the correct address, or by electronic or facsimile transmission with evidence of receipt.

#### 6221.5 Filer Registration.

(a) Participating candidates may have only one authorized committee per elective office in which they seek to participate in the public campaign finance program. Such committee must be registered with the New York State Board of Elections, prior to making any contributions or expenditures, on forms prescribed by the PCFB and pursuant to 6200.1. Such authorized committee, treasurer, and candidate, as applicable, are subject to the provisions of 14-102, 14-104, 14-106, 14-108, 14-110, 14-112, 14-118, 14-120, 14-122, 14-124, 14-126 of Article 14 of the Election Law as well as Title II of Article 14 of the Election Law.

(b) A participating candidate shall also file a form as prescribed by the PCFB that shall include a statement from the candidate indicating the political committee that is the sole authorized political committee for the candidate for the covered elected office sought. A candidate may not have more than one authorized committee per elected office sought.

(c) Such form must contain any signatures and notarizations as may be required by the PCFB and include:

(1) the candidate's name, residential address, mailing address, telephone number, and email address;

(2) the name and mailing address of the candidate's sole authorized political committee;

(3) the name of the treasurer of the sole authorized political committee, as well as the treasurer's residential address, mailing address, telephone number, and email address;

(4) the name, mailing address, email address, and telephone number of any person authorized to sign checks for the sole authorized political committee;

(5) identification of all bank accounts and other depository accounts, including merchant and payment processor accounts, into which receipts have been, or will be, deposited, and all bank accounts used for the purpose of repaying debt from a previous election; and

(6) other information as required by the PCFB.

(d) The political committee must notify the State Board of Elections and the PCFB as applicable of any material change in the information required to be listed on the registration, including any new information, or any change to any required information, concerning any political committee, bank account, merchant or payment processor account, treasurer, address, telephone number, or email address, in such manner as may be provided by the State Board and the PCFB. Such notification must be submitted no later 2 days after the date of the change.

#### 6221.6 Public Website Publication and Searchable Database

(a) The State Board of Elections shall publish a cumulative list of political committees for covered offices on the State Board of Elections' website. This list shall be updated regularly.

(b) An interactive, searchable computer database will be provided that contains all relevant information concerning the Public Campaign Finance Program, including information on the contributions to and expenditures by candidates and their authorized committees, independent expenditures in support or opposition of candidates for covered offices, and distributions of moneys from the Program's funds. This database will be available to the public on the PCFB website.

(c) The PCFB shall make public and post on its website which districts are subject to a reduction with respect to the minimum dollar threshold pursuant to section 14-204(d) of the Election Law. Such post shall be made no later than two years before the first primary election for which funding is sought; provided, however, that in redistricting years, such posting shall occur as soon as practicable.

#### 6221.7 Certification

(a) To be eligible to receive funds pursuant to Title 2 of Article 14 of the Election Law, a candidate must submit a Certification in the form of an affidavit prescribed by the PCFB. Such certification shall be filed pursuant to a schedule released by the PCFB; provided, however, that a certification must be filed at least four months prior to the date of the primary election of the election year in question; or, for a special election, the certification must be filed on or before the last day in which a certificate of nomination may be filed for the office in question.

(b) The certification shall set forth a candidate's acceptance of, and agreement to, comply with the terms and conditions for the provision of such funds in each covered election. Such terms and conditions shall be prescribed by the PCFB, but, at a minimum, such terms and conditions shall include:

(1) The candidate and political committee will comply with any documentation requirements set forth in Article 14 of the Election Law or these rules;

(2) The candidate and political committee will ensure that the political committee will keep and furnish to the PCFB all documentation for matching fund submissions, any books, records (including bank records for all accounts), and supporting documentation and other information that the PCFB may request;

(3) The candidate and political committee will ensure that the political committee will keep and furnish to the PCFB all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this part, and other information that the PCFB may request;

(4) The candidate and political committee will permit an audit and examination of all documents related to campaign finance disclosure statements, including, but not limited to, receipts, expenditures, loans, and transfers and the candidate and political committee shall also provide any material required in connection with an audit, investigation, or examination conducted by the PCFB;

(5) The candidate, treasurer and/or political committee, as applicable, shall pay any amounts required to be repaid or pay any fine as required under this part;

(6) The candidate understands that the use of an entity other than the authorized committee, and/or party and/or constituted committees, to aid or otherwise take part in the election(s) that this Certification covers is a violation of Article 14 of the Election Law;

(7) Candidates, Treasurers, and campaign representatives should familiarize themselves with Title II of the Election Law and the requirements contained therein.

(c) The certification applies to the covered election the candidate is seeking. A committee need only file one Certification to cover both the primary and general election for the covered election cycle. Special elections require a separate Certification. Certification as a participating candidate for a particular election is not effective or official until the Certification Form submitted has been reviewed, accepted and approved as being complete by the PCFB and the candidate so notified. Notification shall be in a form determined by the PCFB.

#### 6221.8 Candidates must demonstrate eligibility

(a) No payments shall be made to a candidate unless the PCFB has determined that such candidate has demonstrated that they have met all eligibility requirements set forth in Title 2 of Article 14 of the Election Law and this subtitle.

(b) The PCFB may determine that a public funds payment will not be paid to a candidate if:

(1) the political committee fails to submit a disclosure statement required by these rules;

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(2) the candidate and/or political committee fails to provide to the PCFB, upon its request, all documents or records required;

(3) the candidate and political committee are required to repay public funds previously received, as described in this part, or the candidate or political committee has failed to pay any outstanding claim of the PCFB 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 and treasurer have 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 PCFB;

(4) previous public funds payments to the candidate for the election equal the maximum permitted by the Title 2 of Article 14 of the Election Law;

(5) the candidate has been found by the PCFB to have committed fraud or material misrepresentation in the course of participating in the public campaign finance program or to be in breach of certification pursuant to paragraph c of this section; or

(c) In the event of a fundamental breach of a candidate's certification, the candidate will be deemed by the PCFB 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 Title 2 of Article 14 of the Election Law and other applicable law.

(1) The PCFB can consider any of the following to be a fundamental breach of a candidate's certification:

(A) the submission to the PCFB of documentation or information that the candidate knew or reasonably should have known was false or fictitious in whole or in part, including a disclosure statement which the candidate knew or reasonably should have known includes fraudulent matchable contribution claims;

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

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

(D) the use of public funds to make or reimburse campaign expenditures that the candidate knew or reasonably 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 PCFB expenditures that directly or indirectly assist or benefit the candidate's nomination or election.

(2) 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 PCFB.

(3) (A) Prior to making a determination of a fundamental breach of a candidate's certification, staff of the PCFB shall provide notice of a preliminary determination to the committee and candidate via email and certified mail. The committee and/or candidate may, within three business days, request a hearing, to be conducted by a hearing officer appointed pursuant to section 3-104 of the Election Law.

(B) Upon such request, a hearing officer shall be randomly selected within one business day of receipt of the request.

(C) Staff of the PCFB shall forward its preliminary determination, along with any supporting documentation and relevant arguments within three business days of the selection of the hearing officer, and shall serve the candidate and committee by email and postal mail. The candidate and committee shall respond within five business days thereafter. PCFB staff may reply to the response within one business day of such response.

(D) If the hearing officer deems it necessary, a hearing may be held via telephone, or video teleconference. Such hearing must be recorded and be part of the record of the case.

(E) The hearing officer shall issue recommended findings of whether there was a fundamental breach of a candidate's certification, which shall be filed with PCFB's counsel and be served to the candidate and committee via email and postal mail.

(F) The PCFB may accept the hearing officer's recommendations, or, may alter such recommendations in a final determination. If the PCFB alters the hearing officer's recommendations, the Counsel for the PCFB, shall provide a justification explaining the rationale for such alteration.

(G) Except by consent of the parties, the Hearing Officer's findings of fact and conclusions of law shall be made within 5 days after, (i) the date of the hearing; or (ii) if no hearing was held, the date the response was served; or (iii) if no response is served, the date the response was due.

#### 6221.9 Eligibility Criteria

(a) In order to qualify for funds pursuant to Title 2 of Article 14 of the Election Law, the candidate must:

(1) be a candidate for a covered election;

(2) meet all of the requirements to appear on the ballot as provided in Articles 1 and 6 of the New York State Election Law and appear on the ballot;

(3) In the case of a covered general, primary or special election, be opposed by another candidate on the ballot who is not a write-in candidate;

(4) submit a certification as provided for in section 6221.7 of this part and be certified as a participating candidate by the PCFB;

(5) not make, and not have made, expenditures from their personal funds or property or the personal funds or property jointly held with his or her spouse, or unemancipated children in connection with the candidate's nomination for election or election to a covered office; provided, however, that the candidate may make a contribution to their authorized committee in an amount that does not exceed three times the applicable contribution limit from an individual contributor to candidates for the office that the candidate is seeking. ;

(6) meet the threshold eligibility outlined in section 6221.11 of this part;

(7) continue to abide by all requirements during the post-election period including audits and repayments to the fund as required by the PCFB;

(8) not have accepted contributions in amounts exceeding the contribution limits set forth for candidates in paragraphs a and b of subdivision 1 of section 14-114 of the Election Law during the election cycle which the candidate seeks funds;

- i. However, if a candidate accepted contributions exceeding such limits prior to being certified for participation in the program, such acceptance shall not prevent the candidate from being certified by the PCFB if the candidate pays to the fund or returns to the contributor the portion of any contribution that exceeded the applicable contribution limit prior to them being certified to participate in the program.6221;
  - a. If a candidate issues a refund for such portion of a contribution after the contribution has been deposited in the committee's account, the contribution and corresponding refund must be documented and reported to the PCFB. The documentation must demonstrate that the refund cleared the committee account and was cashed or deposited by the contributor.
  - b. If a candidate pays to the fund such portion of a contribution, the contribution and payment to the fund must be documented and reported to the PCFB. The documentation must demonstrate that the payment cleared the committee account and was received by the fund. Any such personal payment shall count towards the candidate's personal contribution limit and shall not be allowed in any amount that shall exceed that limit from the candidate or any candidate's family members.
- ii. If the candidate is unable to return such funds within a reasonable time of the submission of a certification form, because their campaign funds have already been depleted, acceptance of contributions exceeding the limits shall not prevent the candidate from being certified for participation by the PCFB if prior to that certification the candidate submits an affidavit agreeing that such amount shall be deducted from any matching payments due to them until such amount is fully accounted for.. Such reduction of funds for repayment shall occur at a rate of fifty percent until the total amount of the excess contributions is repaid to the fund.
  - a. If a candidate pays to the fund the portion of contributions exceeding the limit, the contribution and payment to the fund must be documented and reported to the PCFB. The documentation must demonstrate that the payment cleared the committee account and was received by the fund.
  - b. If a candidate has not paid to the fund the amount of contributions in excess of the contribution limit by the time of the first disbursement of public funds, the disbursement to the candidate shall be reduced by an amount equal to the amount of contributions in excess of contribution limits, unless that amount would exceed fifty percent of the otherwise applicable disbursement amount, in which case successive disbursements shall be reduced by the remaining amount of excess contributions, provided no such reduction exceeds fifty percent of the disbursement amount.

6221.10 Retaining Funds

(a) A candidate or political committee who retains funds lawfully raised during any previous election cycle is not required to forfeit such funds in order to participate in the public campaign finance program. Funds raised during a previous election cycle may be retained and used subject to the limitations in this section by the committee or candidate for the candidate's campaign in the next election cycle, but funds shall not qualify for satisfying the threshold for participating in the public campaign finance program; nor shall they be eligible to be matched. The date that such funds shall be considered funds from the previous election cycle shall be on or before Election Day in the year such contributions were made.

(b) Contributions received and expenditures made by the candidate or an authorized committee of the candidate prior to the effective date of title 2 of Article 14 of the Election Law shall not constitute a violation of such title. Unexpended contributions shall be treated the same as campaign surpluses under paragraph a of this section.

(c) Nothing in this part shall be construed to limit, in any way, any candidate or public official from expending any portion of pre-existing campaign funds for any lawful purpose other than those related to their campaign. Any preexisting funds that are intended to be used must be transferred to the sole authorized committee being used by a candidate for a covered election as soon as practicable, but no later than within five business days of the PCFB's approval of the certification required under 9 NYCRR 6221.27.

(d) A candidate who has raised matchable contributions but, in the case of a covered primary, general or special election, is not opposed by another candidate on the ballot who is not a write-in candidate, or who chooses not to accept matchable funds, may retain such contributions and apply them in accord with this title to the candidate's next campaign, should there be one, in the next election cycle. In the next cycle, such contributions shall be treated as campaign surpluses under paragraph a of this section. Such funds shall not qualify for satisfying the threshold for participating in the public campaign finance program; nor shall they be eligible to be matched.

#### 6221.11 Threshold

(a) The threshold for participating in the public campaign finance program shall be as follows:

(1) the threshold for eligibility for matching funding for participating candidates for the Office of the Governor shall be not less than \$500,000 of matchable contributions comprised of sums between \$5 and \$250 dollars per contributor, from 5,000 residents of New York State.

(2) the threshold for eligibility for matching funding for participating candidates for statewide office, other than Governor, shall be not less than \$100,000 of matchable contributions comprised of sums between \$5 and \$250 dollars per contributor, from 1,000 residents of New York State.

(3) the threshold for eligibility for matching funding for participating candidates for state senate shall be not less than \$12,000 of matchable contributions comprised of sums between \$5 and \$250 dollars per contributor, from 150 residents of the senate district, except as provided for in paragraph e of this section;

(4) the threshold for eligibility for matching funding for participating candidates for state assembly shall be not less than \$6,000 of matchable contributions comprised of sums between \$5 and \$250 dollars per

contributor, from 75 residents of the assembly district, except as provided for in paragraph f of this section;

(5) candidates for state senate in a district below the state's average median income shall be not less than \$8,000 of matchable contributions comprised of sums between \$5 and \$250 dollars per contributor, from 150 residents of the senate district;

(6) candidates for the state assembly in a district below the state's average median income shall be not less than \$4,000 of matchable contributions comprised of sums between \$5 and \$250 dollars per contributor, from 75 residents of the assembly district.

(b) No portion of any contributions exceeding two hundred and fifty dollars in the aggregate shall be matched; any portion of the contribution that had been previously matched shall be returned to the PCFB. Notwithstanding such contributions not being matchable, such contributions shall count towards reaching the monetary threshold.

(c) The average median income, as described in this section, shall be determined by the United States Census Bureau three years before such election for which public funds are sought. The PCFB shall make public on its website which districts are subject to such reduction no later than two years before the first primary election for which funding is sought.

(d) Any participating candidate meeting the threshold for eligibility in a primary election for one of the foregoing offices shall be applied to satisfy the threshold for eligibility for such office in any other subsequent election held in the same calendar year. Any participating candidate who is nominated in a primary election and has participated in the public financing program set forth herein, must participate in the program for the general election for such office.

#### 6221.12 Campaign Finance Disclosure Statement Forms

(a) Authorized Committees of participating candidates shall file campaign finance disclosure statements with the State Board of Elections.

(b) Such authorized committees shall file campaign finance disclosure statements using a form as prescribed by the State Board of Elections.

#### 6221.13 Reporting Contributions in Campaign Finance Disclosure Statements

(a) In regard to contributions, at a minimum, authorized committees of participating candidates shall disclose, on such reports, the following:

(1) the full name and residential address of the contributor; the occupation, and business address is also required for those contributors that make aggregate contributions of one hundred dollars or more to the committee;

(2) the date the contribution was received by the candidate;

(3) the amount of the contribution;

(4) the form of the contribution (cash, check, cashier's check, money order, credit card, other);

(5) the number of the check, cashier's check, or money order, if applicable;

(6) the date and amount of each contribution returned to a contributor, the account from which the funds used to make the return originated, and the number of the bank or certified check used to issue the return of funds;

(7) each previously reported contribution for which the check was returned unpaid;

(8) the cash balance at the beginning and end of the reporting period;

(9) total itemized and unitemized contributions, loans, and other receipts accepted during the reporting period, although unitemized contributions are ineligible to be matched;

(10) total itemized and unitemized expenditures made during the reporting period; and

(11) such other information as the PCFB may require.

(b) Contributions totaling \$99 or less from a single source need not be separately itemized in a disclosure statement, provided, however, that if a contributor contributes \$99 or less, but, has previously made a contribution in an election cycle, and the sum of such contributions exceed \$99 in the aggregate, then the political committee shall report each and every contribution consistent with this section.

#### 6221.14 Reporting Expenditures in Campaign Finance Disclosure Statements

(a) In regard to contributions, at a minimum, authorized committees of participating candidates shall disclose, on such reports, the following:

(1) the name and address of each vendor or payee;

(2) the bill or invoice date and amount;

(3) the purpose and/or explanation of each expenditure;

(4) the date and amount of each payment;

(5) the payment method, including check number and committee bank account;

(6) the amount of remaining outstanding liability to the vendor or payee; and

(7) such other information as the PCFB may require.

(b) In addition to reporting any expenditures to a vendor, if the vendor secures services from a subcontractor for benefit of the candidate, the candidate must, subject to the thresholds established in §6200.8 of this part, report the following:

(1) the name and address of that subcontractor;

(2) the amount(s) expended to the subcontractor for benefit of the candidate;

(3) the purpose and/or explanation of the vendor's services; and

(4) such other information as the PCFB may require.

(c) For expenditures paid with a credit card, or other such similar payment method, the candidate must report the specific transaction details, including vendor name, address, purchase price, and date of

transaction of any goods or services purchased. Simply identifying the credit card company, or similar payment method, such as PayPal, is insufficient.

(d) Expenditures made by contract are deemed made when such funds are obligated.

#### 6221.15 Reporting Loans in Campaign Finance Disclosure Statements

(a) Each disclosure statement shall include the following information about loans accepted, forgiven, or repaid by the candidate during the reporting period:

(1) for each loan accepted, the lender's, guarantor's or other obligor's full name, residential address, occupation, and business address;

(2) the date and amount of each loan, guarantee, or other security for a loan accepted;

(3) for each loan repayment made, the date, amount, check number, name of bank account or credit card, and name of any third-party payor; and

(4) the date and amount of any portion of a loan which has been forgiven or paid.

#### 6221.16 Timing of Campaign Finance Disclosure Statements

(a) Pursuant to section 6200.2 of this Part and section 14-201 of the Election Law, authorized committees for participating candidates shall submit disclosure reports on the following dates:

(1) Periodic disclosure statements are due January 15, March 15th and July 15 in each year;

(2) Pre-election disclosure statements are due 32 and 11 days before the election; and,

(3) Post-election disclosure statements are due 10 days after a primary election and 27 days after a general or special election.

(b) Political committees of participating candidates may also file additional disclosure statements as frequently as once a week on Monday of each week.

(c) If a disclosure statement is due to be submitted on a Saturday, Sunday, or legal holiday, submission must be made on the next business day.

#### 6221.17 Preliminary Review of Campaign Finance Disclosure Statements

(a) Pursuant to Election Law § 14-201(3)(b), the PCFB shall conduct a preliminary review of all disclosure statements filed. PCFB staff shall determine if the statements comply with the requirements of the Election Law, comply with the PCFB rules, and whether the political committee qualifies for matching funds.

(b) PCFB staff shall inform political committees of any relevant questions they may have in relation to their review.

(c) Political committees and participating candidates shall have an opportunity to respond to and correct potential violations and address questions the PCFB has concerning matchable contribution claims or other issues concerning eligibility for receiving public matching funds, prior to any fine being levied or enforcement action is initiated against them

6221.18 Duty to Keep Records

(a) Political committees shall keep records that enable the PCFB to verify the accuracy of disclosure statements, substantiate that expenditures were made in furtherance of the campaign, were qualified expenditures, or were permissible post-election expenditures, and confirm any matchable contributions claimed. Candidates must maintain and may be required to produce originals or copies of checks, bills, or other documentation to verify contributions, expenditures, or other transactions reported in their disclosure statements. Candidates must maintain clear and accurate records sufficient to show an audit trail that demonstrates compliance with Article 14 of the Election Law and these rules. 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 PCFB upon their request. The records maintained for each campaign finance transaction, whether maintained on paper or electronically, must be accurate and, if necessary, modified promptly to ensure continuing accuracy. Regardless of any request for the records, all back up documentation shall be provided with the first claim for matchable contribution payment pursuant to the applicable schedule established by the PCFB. Such supporting documentation must also be provided with each subsequent claim.

(b) If at any time a candidate or treasurer of the authorized committee becomes aware that a record of an expenditure is missing or substantially incomplete, the treasurer shall create a new record or modify an existing record. Such creation or modification must clearly identified as such, and shall also include in the record, a form of a signed, dated, and notarized statement by the candidate, treasurer, or other campaign representative having first-hand knowledge of the matter, explaining the reasons for and the circumstances of the creation or modification of the missing or incomplete record. If the missing or incomplete record is an invoice or contract from a vendor, the candidate or treasurer must in the first instance attempt to get a duplicate or more complete record directly from such vendor. The PCFB reserves the right not to accept such non-contemporaneous record created or modified pursuant to this paragraph if it deems that the record is not sufficient to document the actual transaction.

(c) All such records previously stated shall be maintained for a period of five years.

6221.19 Records to be Maintained

(a) Deposit slips. Treasurers of authorized committees must maintain copies of all deposit slips. The deposit slips must be grouped together with the monetary instruments representing the receipts deposited into the bank or other depository accounts held by the committee for an election. Where the bank or depository does not provide itemized deposit slips, treasurers must make a contemporaneous written record of each deposit. Such written record must indicate the date of the deposit, the amount of each item deposited, whether each item deposited was a check, a cashier's check, a money order, or cash, and the total amount deposited.

(b) Contribution Records. For each contribution received, all participating committees must maintain records demonstrating the source and details of the contribution as described herein. All records required to be maintained must be provided to the PCFB upon request.

(1) For each contribution in cash that is received from an individual contributor, the committee must have a record of the contributor's full name, residential address, phone number and e-mail address. Note that pursuant to Election Law 14-118(2) cash contributions may not exceed \$100 in the aggregate

from any contributor for a particular election. If such information is not itemized on the report for which it is received, these contributions shall not be matched, nor shall they count toward the required threshold monetary amount.

(2) For each contribution received via cashier's check or money order, the record must include a copy of the cashier's check or money order made out to the authorized committee. To accept a cashier's check or money order, the committee must have a record of the contributor's full name and residential address. For cashier's check or money order of \$100 or more in the aggregate, the committee must also have a record of the contributor's occupation and business address.

(3) For each contribution received via check, the record must include a copy of the check made out to the authorized committee and signed by the contributor. To accept a check, the committee must have a record of the full name of the contributor and residential address. For contributors who make contributions of \$100 or more in the aggregate, the committee must also have a record of the contributor's occupation and business address.

(4) For each contribution received via credit card, the participating committee shall maintain a copy of the unique merchant account agreement as well as copies of all merchant account statements, transaction reports. Additionally, the committee must have a record of the full name of the contributor and residential address. For contributors who make contributions of \$100 or more in the aggregate, the committee must also have a record of the contributor's occupation and business address.

(c) Bills. Participating committees shall retain a copy of each bill for goods or services provided. Participating committees shall maintain written documentation showing that a bill has been forgiven. The amount of such bill shall be treated as otherwise required for in-kind contributions. Documentation for goods or services must be contemporaneous with receipt of such goods and services and must provide the date the vendor was retained and the date the goods or services were provided, the vendor's name and address, the amount of the expenditures, and a detailed description of the goods and services provided. If the invoice supplied by the vendor does not meet these requirements, the participating committee must create an additional contemporaneous record containing the necessary information, and such record must be signed by the vendor and the campaign treasurer or other representative of the campaign. For wages, salaries and consulting fees, participating committees must maintain a contemporaneous record, signed and dated by the employee or consultant and the campaign, providing the name and address of the employee or consultant, and additionally for each vendor, a detailed description of the services, the amount of the wages, salary or consulting fees, the date(s) on which the work was performed, the period for which the individual was retained, and a breakdown of the numbers of hours worked.

(d) Disbursements. A participating committee shall record all disbursements made by check. The date, payee name, purpose and number of each check, as well as interaccount transfers, and/or other debits, shall be recorded in the checkbook register or other accounting functionality.

(e) Credit card/Debit Card purchases. Participating committees shall maintain a monthly billing statement for each credit card or debit card purchase used by the campaign showing the underlying charge.

(f) Bank records. Participating committees shall maintain the following records received from banks and depositories relating to accounts (1) all periodic bank or other statements in chronological order, maintained with related correspondence received with those statements, such as credit and debit memos and contribution checks returned because of insufficient funds and (2) all returned and cancelled disbursement checks., or an electronic version of the same.

(g) Loans. The participating committee shall obtain, maintain and make available to the PCFB upon its request, written documents: (1) for each loan received, (2) for each loan repayment or partial repayment, and (3) that shows that a loan has been forgiven or partially forgiven. The loan agreement shall be contemporaneous and in writing, shall be signed and dated by both parties, and shall provide for all terms and conditions of the loan, including the amount and term of the loan. The participating committee shall retain copies of loan checks and/or records of electronic transfers. In the event that the loan is from a prohibited source, this may be considered a fundamental breach of the program and participation in the program may be frozen until the prohibited lender is paid back in full and the PCFB is notified and signs off on the same.

(h) Subcontracted goods and services. Participating committees required to itemize the cost of subcontracted goods and services shall obtain and maintain documentation from the consultant or other person who or which subcontracts, containing all information required to be disclosed pursuant to that rule.

(i) Fundraisers. The participating committee shall maintain records for all fund-raising events, including all house parties, which shall contain: the date and location of the event; the person(s) and/or organization(s), other than the participating candidate's authorized committee, hosting the event; an itemized listing of all expenses incurred in connection with the event, including all expenses whether or not paid or incurred by the authorized committee; and the contributor name and amount of each contribution received at or in connection with the event. This subdivision does not apply to activities on an individual's residential premises, including house parties, to the extent that the cost of those fundraisers do not exceed \$500.

(j) Political Communication. Pursuant to New York Election Law §14-106, participating committees shall maintain copies of all political communications initiated and/or paid for by their campaigns.

(k) Vendors. In addition to obtaining and keeping contemporaneous documentation (such as bills) for all goods and services provided by vendors, including campaign consultants, attorneys, and employees, when a participating committee retains or otherwise authorizes a person or entity (including an employee) to provide goods and/or services to the participating committee, and the participating committee knows or has reason to believe that the goods and/or services to be provided directly or indirectly by this vendor will exceed \$1,000 in value during the campaign, the participating committee shall:

(1) keep a copy of the contemporaneously written contract with the vendor, which shall, at a minimum, provide the name and address of the vendor, be signed and dated by both parties, state the terms of the contract including the terms of payment and a detailed description of the goods and/or services to be provided, and shall include, if the contract was at any time amended, a contemporaneously written contract amendment, signed and dated by both parties and describing in detail the changes to the terms and conditions of the contract, or

(2) if no contemporaneously written contract has been entered into, keep a contemporaneously written record that includes the date the vendor is retained or otherwise authorized by the participating committee, the name and address of the vendor, and the terms of the agreement or understanding between the participating committee and the vendor including the terms of payment and a detailed description of the goods and/or services the vendor is expected to provide. If the agreement or understanding was at any time amended, the committee shall create and maintain a contemporaneously written record describing in detail the changes to the terms and conditions of the agreement or understanding.

(3) In addition to the records to be kept pursuant to subparagraphs (1) or (2) above, the participating committee shall keep evidence sufficient to demonstrate that the work described in the contract was in fact performed and completed. Such evidence may include samples or copies of work product, emails, time records, phone records, and photographs or other documentary evidence. Where such evidence is nonexistent or unavailable, the participating committee shall maintain affidavits signed by the vendor and either the participating candidate, treasurer, or other campaign representative having first-hand knowledge, describing the goods or services provided and the reason(s) why documentary evidence is nonexistent or unavailable.

(l) Travel. Participating committees shall obtain and maintain originals and copies of all checks, bills, or other documentation to verify campaign-related travel transactions reported in disclosure statements or electronic copies of the same. In addition to the above, for all travel, participating committees shall create and maintain a contemporaneous record describing the campaign-related purpose of the travel, the complete travel itinerary, the dates of the travel, and the names of all individuals who participated in the travel. For travel by private car, participating committees must create and maintain a contemporaneous travel log providing, for each trip and each vehicle, the names of the driver and passengers, the date(s) and purpose of each trip, the itinerary, including all the locations of any campaign events and other stops, the beginning and ending mileage, and the total mileage.

(m) Intermediary contribution statements. For each instance in which a participating committee accepts 3 or more contributions from an intermediary, including any contributions delivered to a fundraising agent, or receives contributions solicited by an intermediary where such solicitation is known to the participating committee, the committee shall maintain a separate written record of the intermediary's name, residential address, employer and business address as well as the names of the contributors and the amounts contributed.

#### 6221.20 Payments of Matching Funds.

(a) No matching funds shall be paid to an authorized committee unless the PCFB, or its duly designated representatives, determines that the participating candidate has been certified as having met the eligibility requirements as provided for in Title 2 of Article 14 of the Election Law and these regulations.

(b) Payments may be made only to a participating candidate's authorized committee.

(c) A candidate in any covered primary, general, or special election, having demonstrated eligibility to receive public funds, including by meeting the threshold for eligibility for public funding, may receive public matching funds based on valid matchable contribution claims and the matching rate set forth in this section.

(d) Payments shall be used as reimbursement or payment for qualified campaign expenditures actually and lawfully incurred or to repay loans used to pay qualified campaign expenses.

(e) Payments shall be made in accordance with Title II of Article 14 of the Election Law, and shall not exceed the following amounts:

(1) Calculation of Payment for statewide offices.

(i) If the threshold for eligibility is met for candidates for statewide office, the participating candidate's authorized committee shall receive payment for qualified campaign contributions that are reported and obtained by the PCFB of \$6 of matching funds for each \$1 of matchable contributions.

(2) Calculation of Payment for senate and assembly offices.

(i) If the threshold for eligibility is met for candidates for the offices state senate or assembly, the participating candidate's authorized committee shall receive payment for qualified campaign contributions that are reported and obtained by the PCFB of \$12 of public matching funds for each of the first \$50 of matchable contributions; \$9 of public matching funds for each of the next \$100 of public matchable contributions; and \$8 dollars for the each of the next \$100 of public matchable contributions.

6221.21 Limits on Public Financing.

(a) The following limitations apply to the total amounts of matching funds that may be provided to a participating candidate's authorized committee for this program:

(1) In any primary election, receipt of public funds by participating candidates and by their participating committees shall not exceed:

- (i) for Governor \$3,500,000
- (ii) for Lieutenant Governor, Attorney General or Comptroller \$3,500,000
- (iii) for State Senator \$375,000
- (iv) for Member of the Assembly \$175,000

(2) In any general or special election, receipt of public funds by a participating candidate's authorized committees shall not exceed:

- (i) for Governor and Lieutenant Governor (combined) \$3,500,000
- (ii) for Attorney General \$3,500,000
- (iii) for Comptroller \$3,500,000
- (iv) for State Senator \$375,000
- (v) for Member of the Assembly \$175,000

(b) No participating candidate in the program who is not opposed by a candidate on the ballot shall be entitled to a payment of matching funds.

(c) A candidate only on the ballot in one or more primary elections in which the number of persons eligible to vote for party nominees in each such election totals fewer than 1,000 shall not receive public matching funds in excess of \$5,000 for qualified campaign expenditures in such election or elections.

(1) The number of persons eligible to vote for party nominees in a primary election shall be as determined by the State Board of Elections for the calendar year of the primary election.

(2) On or about April 15, or as soon thereafter as practicable, of the calendar year in which primary elections shall take place, the PCFB shall publish a list of primary elections in which the number of persons eligible to vote for party nominees in each such election totals fewer than 1,000, based on the most recent determination of party enrollment by the State Board of Elections .

(d) A candidate for office on the ballot in more than one primary for such office, shall be deemed, for purposes of these regulations, to be a single candidate.

(e) The amount of public funds payable to a participating candidate on the ballot in any covered election shall not exceed 25% of the maximum public funds payment otherwise applicable unless the participating candidate is opposed by a competitive candidate.

(f) A candidate seeking to participate in the public campaign finance program has the burden of showing that they are opposed by a competitive candidate. Candidates seeking to show that they are being opposed by a competitive candidate shall submit a signed statement certifying that one or more of the conditions in paragraph (g) applies, along with documentation demonstrating the existence of such condition or conditions. The PCFB shall be authorized to verify the truthfulness of any certified statement submitted pursuant to this paragraph and of any supporting documentation. In the event that the first certification attempt is denied by the Board, the candidate seeking funds shall be allowed to make one additional attempt for certification of their opponent as competitive no later than 10 days before the covered election.

(g) A participating candidate is opposed by a competitive candidate if any of the following conditions applies:

(1) the participating candidate is opposed by a non-participating candidate or candidate that has not qualified for matching funds and provides a factual basis with supporting documentation of such candidate's ability to self-finance; or

(2) for senate or assembly districts, the participating candidate is opposed by a candidate who has received (i) the endorsement of a statewide elected official, or in the case of a district that encompasses a portion of New York City, a citywide elected official, or a federal elected official representing all or a portion of the area covered by the election; or (ii) three or more endorsements from other county, city, town, or village elected officials who represent all or a part of the area covered by the election; or (iii) endorsements of one or more membership organizations with a membership of over 150 members; or

(3) the participating candidate is opposed by a candidate who has had significant media exposure in the twelve months preceding the election. For purposes of this paragraph, significant media exposure shall mean appearance of the opponent or his or her name on television or radio (excluding paid advertisements) in the area of the covered election at least three times or in print media in circulation in the area of the covered election at least 6 times in the year preceding the covered election; provided,

however, that the listing of names of candidates or potential candidates for a covered election without additional information concerning the opponent shall not constitute an appearance for purposes of this paragraph; or

(4) the participating candidate is opposed by a candidate who is an incumbent in the office being sought, or has received twenty percent or more of the vote in an election for public office in an area encompassing all or part of the area that is the subject of the current election in the last eight years preceding the election; or

(5) the participating candidate is opposed in a primary or special election for an office for which no incumbent is seeking re-election; or

(6) the participating candidate is opposed by any candidate who has been deemed eligible to receive public funds payments for the covered election; or

(7) the participating candidate is opposed by a candidate whose name is substantially similar to the candidate's so as to result in confusion among voters, as determined by the board; or

(8) the participating candidate is opposed by a candidate whose spouse, domestic partner, sibling, parent or child holds or has held elective office in an area encompassing all or part of the area of the covered election in the past ten years; or

(9) the participating candidate is opposed by a candidate that meets part of the qualifications set out in (1) through (8) above and the PCFB determines that the opposing candidate is competitive based upon the totality of the information provided. In such instance, the competitive determination shall be made by the Commissioners of the PCFB .

(h) The PCFB, or any designated staff, shall review any certification and, upon determination, shall authorize and pay any and all additional public funds due to the participating candidate up to the maximum total payment applicable in such election.

(i) The PCFB will not make payment to any candidate disqualified from the ballot by a board of elections or by a court, or to any candidate for an election in which all other candidates have been disqualified from the ballot by a Board of Elections or by a court, until such candidate or other candidate is restored to the ballot by a court of competent jurisdiction. A candidate who appears as the only candidate on the ballot in an election shall not be eligible to receive public funds, notwithstanding any write-in candidates in that election.

(j) A candidate who is seeking election exclusively as a write-in candidate, or who is only opposed by a candidate who is seeking election exclusively as a write-in candidate, is not eligible to receive public funds.

6221.22 Timing of Payment.

(a) The PCFB, or its duly designated representative, shall authorize a payment of matching fund to participating candidates as soon as practicable. The PCFB must verify eligibility for matching funds within four days of receiving a matchable fund claim filed in compliance with section 14-104 of Title II of Article 14 of the Election Law.

(1) The authorized committee must indicate which contributions they claim matchable funds for and the amount of matching funds they are requesting by submitting a complete matchable fund claim by 1 pm eastern standard time on the matchable fund claim on dates to be which will be prescribed by the PCFB.

(2) The authorized committee must provide background documentation in the form of a fully complete contribution card with each contribution reported no later than 1 pm, eastern standard time, at the same time the matchable fund claim is submitted.

(3) The amount paid to a participant by the Comptroller shall be based upon the PCFB's review and audit of matchable fund claims and qualified campaign expenditures.

(b) Pursuant to section 14-205 of the Election Law, no later than two business days of determining eligibility, the PCFB shall authorize the payment of matching funds owed to the participating candidate.

(c) The PCFB, in conjunction with the Office of the State Comptroller's office, shall schedule at least three payment dates in the thirty days prior to a covered primary, general, or special election. Such payment days shall be published on the PCFB website.

(d) If payments are required on a weekend or federal holiday, payment shall be made on the next business day.

(e) No matching funds shall be paid to any participating candidates in a primary election any earlier than thirty (30) days after designating petitions or certificates of nomination shall have been filed and not less than forty-five days before such election. The PCFB shall prescribe, and post it on its website, a notice detailing when matching fund claims are to be submitted to the PCFB for the primary election.

(f) No matching funds shall be paid to any participating candidates in a general election any earlier than the day after primary day. The PCFB will prescribe, and post it on its website, a notice detailing when matching fund claims are to be submitted to the PCFB for the general election.

#### 6221.23 Electronic Fund Transfer

(a) Each authorized committee must ensure their bank account can accept electronic fund transfers and must provide the applicable information to the PCFB in a manner prescribed by the PCFB for such transfers.

#### 6221.24 Limitations on the Use of Matching Funds

(a) Public matching funds may be used only by an authorized committee for expenditures to further the participating candidate's nomination for election or election, including paying for debts incurred within one year prior to an election to further the participating candidate's nomination for election or election.

(b) public matching funds may not be used for:

(1) an expenditure in violation of any law;

(2) an expenditure in excess of the fair market value of services, materials, facilities, or other things of value received in exchange;

(3) an expenditure made after the candidate has been finally disqualified from the ballot;

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- (4) an expenditure made after the only remaining opponent of the candidate has been finally disqualified from the general or special election ballot;
- (5) an expenditure made by cash payment;
- (6) a contribution or loan or transfer made to or expenditure to support another candidate or political committee or party committee or constituted committee;
- (7) an expenditure to support or oppose a candidate for an office other than that which the participating candidate seeks;
- (8) gifts, except brochures, buttons, signs, tee shirts and other printed campaign material;
- (9) legal fees to defend against a criminal charge;
- (10) any expenditure made to challenge the validity of any petition of designation or nomination or any certificate of nomination, acceptance, authorization, declination, or substitution;
- (11) payments made to the candidate or a spouse, domestic partner, child, grandchild, parent, grandparent, brother or sister of the candidate or spouse or domestic partner of such child, grandchild, parent, grandparent, brother or sister, or to a business entity in which the candidate or any such person has a ten percent or greater ownership interest;
- (12) an expenditure made primarily for the purpose of expressly advocating a vote for or against a ballot proposal, other than expenditures made also to further the participating candidate's nomination for election or election;
- (13) payment of any settlement, penalty or fine imposed pursuant to federal, state or local law;
- (14) payments made through advances, except in the case of individual purchases less than two hundred fifty dollars;
- (15) expenditures to facilitate, support, or otherwise assist in the execution or performance of the duties of public office.

6221.25 Public Information and Candidate Education

- (a) The PCFB, or its duly designated representatives, shall develop a program to inform candidates and the public of the purpose and effect of the provisions of Title II of Article 14 of the Election Law.
- (b) Information will be posted on the PCFB's webpage, in plain language. Information will include, at a minimum, a copy of Title II of Article 14 of the Election Law, a summary of the provisions of Title II, certification forms, recordkeeping requirements and other educational information developed for the program.

6221.26 TBD

(intentionally left blank for future use.)

6221.27 Audits

- (a) The PCFB, or its duly designated representatives, shall conduct audits in the following manner:

- (1) Every participating candidate for statewide office who receives public matching funds, and every candidate for any other office who receives \$500,000 or greater in public funds as provided herein, shall be audited by the PCFB along with all other candidates in each such race.
- (2) Except as provided in paragraph (a) in this section, the PCFB shall select not more than one third of all participating candidates in covered elections for audit through a lottery, which shall be conducted as outlined in section 6221.28 of this part.
- (3) The cost of the post-election audit shall be paid by the participating candidate's authorized committee using matching funds, private funds or a combination of funds.
- (4) Participating candidates in both a primary and general election must maintain a 3% reserve of matching funds for post-election audit purposes.
- (5) All audits must be completed within one and a half years after the relevant election, with the exception of cases involving potential campaign-related fraud, knowing and willful violations of Article 14 of the Election law, or criminal activity.
- (6) The PCFB shall issue to each campaign audited a final audit report that details its findings.

6221.28 Lottery

- (a) The lottery, as provided for in section 6221.27 of this part, shall be conducted as follows:
  - (1) The lottery shall be conducted by drawing numbered balls from ball tumbler cages or other lottery machines;
  - (2) Each senate district or assembly district shall be assigned a number which shall be printed on balls placed in the lottery machines as provided by this section;
  - (3) There shall be separate drawings from separate lottery machines for senate districts and assembly districts;
  - (4) Senate Districts, where a participating candidate has received \$500,000 or more in matching funds shall be removed from the lottery as they are already subject to an audit;
  - (5) For each lottery, a bipartisan team shall pick random numbers using the lottery system until one third of all participating candidates for the relevant office is reached, or fifty percent of all participating candidates for the relevant office is reached, whichever comes first.
    - (6) each lottery shall be completed no later than December 15<sup>th</sup> of the applicable election year.
- (b) For the first election cycle audit performed by the PCFB, each senate district and assembly district shall be assigned one lottery number.
- (c) For the second audit election cycle audit performed by the PCFB, each senate district and assembly district that was audited in the first election cycle shall be assigned one lottery number; while each senate district and assembly district that was not audited in the first election cycle shall be assigned two lottery numbers.
- (d) For the third audit election cycle audit performed by the PCFB, each senate district and assembly district that was audited in the second election cycle shall be assigned one lottery number; each senate district and assembly district that was not audited in the second election cycle, but was audited in the

first election cycle, shall be assigned two lottery numbers; and each senate district and assembly district that was not audited in the first or second election cycle audit shall be assigned three lottery numbers.

(e) For each subsequent election cycle, any senate district or assembly district that had been audited in the previous cycle shall be assigned one lottery number; while and senate district or assembly district that was not audited in the previous cycle shall be assigned an additional lottery number to the total of lottery numbers that district was assigned at the previous election cycle lottery.

#### 6221.29 Repayments of Excess Funds

(a) If the PCFB, or its duly designated representatives, determines that any portion of the payment made to a candidate's authorized committee from the fund was in excess of the aggregate amount of payments that such candidate was eligible to receive, the PCFB shall notify such committee and such committee shall pay to the PCFB an amount equal to the amount of excess payments. In making such repayments, the committee shall first utilize and public funds surplus for repayment of such sums and then such other funds as it may have.

(b) If an error by the PCFB, or its duly designated representatives, resulted in the excess payment, the PCFB, or its duly designated representatives, will notify the committee and deduct the amount of excess payment from the next future payment. In the event there is no future payment, then neither the candidate nor the committee shall be required to repay the excess payment to the PCFB.

(c) The candidate, treasurer and the candidate's authorized committee are jointly and severally liable for any repayments to the PCFB.

#### 6221.30 Repayments of Funds used for an Impermissible Purpose

(a) If the PCFB, or its duly designated representatives, determines that any portion of the payment made to a candidate's authorized committee from the fund was used for purposes other than qualified campaign expenditures and such expenditures were not approved by the PCFB, it shall notify such committee of the amount so disqualified and such committee shall pay to the PCFB an amount equal to such disqualified amount.

(b) The candidate, treasurer and the candidate's authorized committee are jointly and severally liable for any repayments to the PCFB.

#### 6221.31 Repayments of Surplus Funds

(a) If the total payments of matching funds paid to a participating candidate exceed the total campaign expenditures of the committee, such candidate and committee must repay the PCFB any excess funds no later than 27 days after all liabilities have been paid but not later than the day the PCFB issues its final audit report for the participating committee or candidate.

(1) If a participating candidate has been found to intentionally delay the post-election audit, they must immediately repay unspent matching funds.

(2) A participating candidate may make post-election expenditures with matching funds for routine activities involving nominal cost associates with closing a campaign and responding to the post-election audit. Such post-election expenditures shall be made as soon as practicable but no later than 60 days after election day unless specifically authorized by the PCFB.

6221.32 Repayment of Funds; Notice

(a) Any notice related to the repayment of funds shall also a notification of hearing rights, where a participating committee or candidate has the right to request a hearing with the PCFB, or any authorized person, if they disagree with a determination.

(b) A candidate or committee shall have three days to request a hearing upon receipt of receiving a determination.

6221.33 Hearing Officers

A hearing officer shall be a request for a hearing made under this Part through a random selection process. All hearing officers appointed by the State Board of Elections pursuant to section 6218.2(b) of this Title shall comprise those eligible for assignment.

6221.34 Audits, generally

(a) All determinations by the PCFB, or its duly designated representatives, of eligibility and payment are subject to post-payment audit and final readjustment.

(b) Participating Candidates and their respective authorized committee are not prevented from using private campaign contributions for otherwise lawful expenditures.