

New York City Campaign Finance Law: 2017 Updates & Changes

What is the CFB?

- **The Campaign Finance Board is an independent, nonpartisan city agency that enhances the role of New York City residents in elections.**
 - Independent – We don't report to the Mayor, we report to a Board of five members appointed by the Mayor and City Council Speaker.
 - Nonpartisan – Board members must be of different political parties and agree not to engage in outside political activity.
- **The CFB administers New York City's Public Matching Funds Program**
 - We provide matching funds to participating candidates for contributions received from city residents.
 - The current match is 6:1, meaning participating candidates can receive \$60 in public funds for a \$10 contribution.
 - Participating candidates are subject to the City's Campaign Finance Act and Board Rules.

What is the CFB's mission?

- **Our Mission:**
 - Enhance the role of small contributors;
 - Diminish the corrupting influence of money in city elections;
 - Increase voter engagement and participation;
 - Inform the public about candidates and upcoming elections; and
 - Reduce the barriers to running for city office.

What does the CFB do?

- Administers the Public Matching Funds Program.
- Publicly discloses campaign contributions and expenditures.
- Regulates disclosure of independent expenditures.
- Distributes the New York City Voter Guide.
- Organizes the New York City Candidate Debates.
- Runs NYC Votes, which promotes voter registration, participation, and civic engagement.

A brief history of the CFB

- Founded in 1988 in response to a series of corruption scandals.
- Codified in the New York City Charter and Administrative Code.
- The oldest non-federal public funding program in the U.S.
- Considered the national model for public financing systems.
- Provided \$38.2 million in public matching funds to 149 participating candidates in 2013.

The Matching Funds Program

- **Goals:**
 - Reduce the potential for actual or perceived corruption.
 - Enable regular citizens to run for office.
 - Strengthen the role of small contributors.
- **How it works:**
 - Participating candidates agree to abide by certain restrictions under the Campaign Finance Act and Board Rules.
 - Candidates must report contributions and expenditures to the CFB.
 - The CFB reviews all candidate disclosures and conducts a post-election audit.
 - Violations of the Act or Rules may result in civil penalties or public funds repayment.

The Matching Funds Program

- **Public Matching Funds:**
 - Contributions from NYC residents up to \$175 are matched 6:1.
 - A \$100 contribution is worth \$700 (\$100 + \$600 in matching funds).
- **Requirements:**
 - Comply with the Act & Rules.
 - Meet a two-part threshold:
 - Mayor → raise \$250,000 from 1,000 city residents.
 - Public Advocate/Comptroller → raise \$125,000 from 500 city residents.
 - Borough President → raise \$10,000* from 100 borough residents.
 - City Council → raise \$5,000 from 75 district residents.
 - Submit a Certification form.
 - Be on the ballot & have an opponent.
 - Repay all outstanding public funds or civil penalties to the CFB.
 - File a personal financial disclosure report with the COIB.

*Increases based on Borough population.

The Matching Funds Program

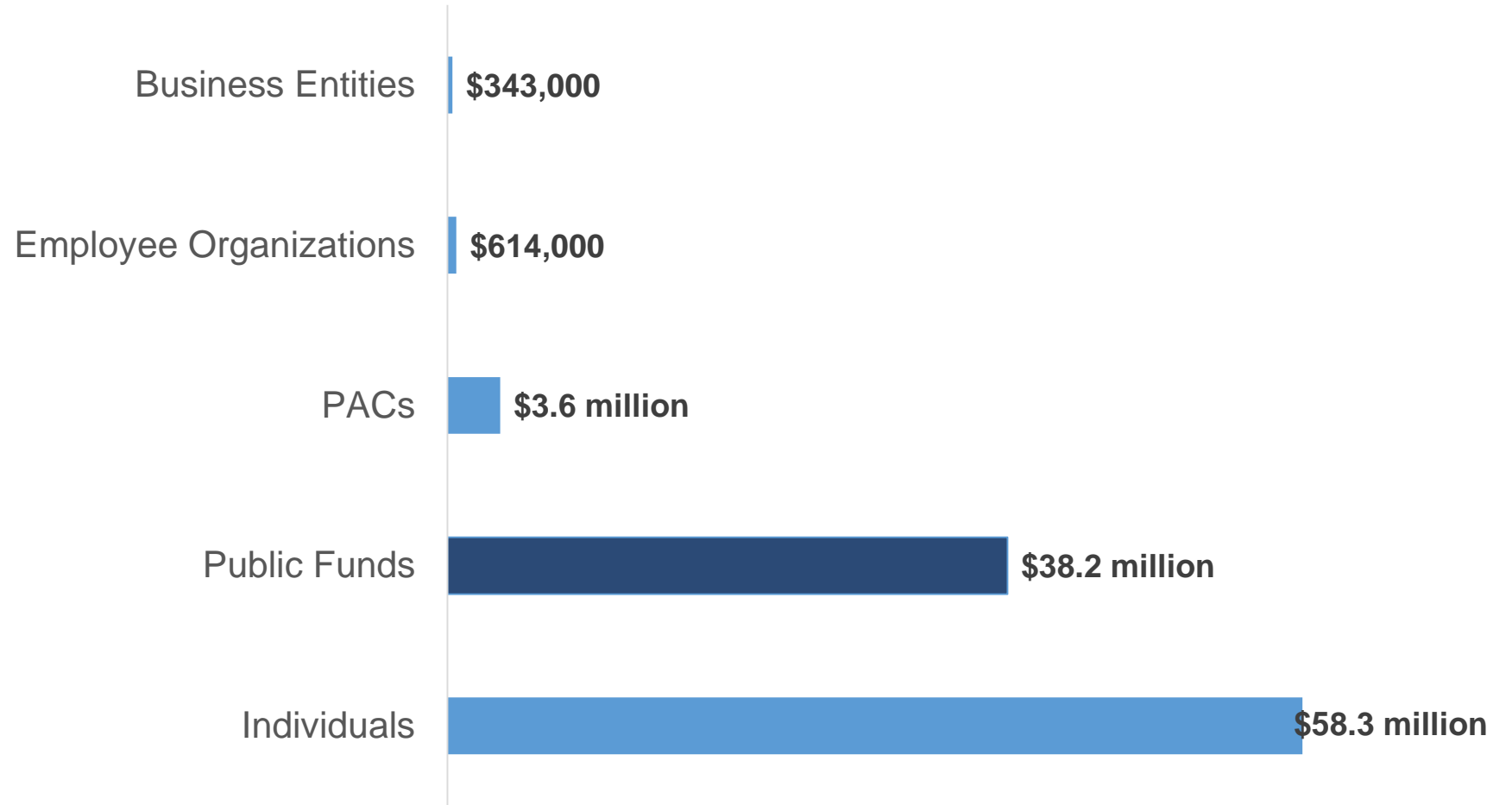
- **Contribution Limits:**
 - Candidates are subject to different contribution limits based on the office sought.
 - Mayor/Public Advocate/Comptroller → \$4,950
 - Borough President → \$3,850
 - City Council → \$2,750
- **Doing Business Limits:**
 - Individuals “doing business” with the city cannot have their contributions matched and are subject to stricter contribution limits.
 - Mayor/Public Advocate/Comptroller → \$400
 - Borough President → \$320
 - City Council → \$250

The Matching Funds Program

- **Expenditure Limits:**
 - Participating candidates are subject to overall spending limitations (per election).
 - Mayor → \$7 Million
 - Public Advocate/Comptroller → \$4.357 Million
 - Borough President → \$1.56 Million
 - City Council → \$182,000
 - Candidates may also spend an additional amount in “out years” (the 2 years prior to an election year).
 - Mayor → \$328,000
 - Public Advocate/Comptroller → \$328,000
 - Borough President → \$146,000
 - City Council → \$49,000

Impact of Matching Funds

Sources of Funds for Participating Candidates, 2013 Elections



Enforcement

- **Goals:**
 - Protect taxpayer funds from misuse.
 - Verify compliance with the Act and Rules.
 - Ensure that all candidates are held to the same standards.
- **Process:**
 - Post-Election Audits – Detailed audits of campaigns’ disclosure statements and documentation to verify compliance with the Act and Rules.
 - Draft Audit Report – Lists potential violations of the Act and Rules and provides campaigns with an opportunity to respond.
 - Penalty Notice – Alleges violations of the Act and Rules, recommends penalties, and provides campaigns with another opportunity to respond.
 - Board Determination – the Board votes on alleged violations and recommended penalties at a public meeting and issues a Final Board Determination and Final Audit Report.

Independent Expenditures (IEs)

- IEs can greatly exceed candidate spending.
 - IEs exceeded the combined spending of all candidates in four 2013 City Council primary races.
- IEs tend to be negative rather than positive.
- IEs do not equate to electoral success.
- The vast majority of IEs come from unions and interest groups
 - The vast majority of contributors funding IEs are unions, LLCs, or corporations.
- *Citizens United v. FEC* and *SpeechNow v. FEC* have removed limitations on IEs, leaving disclosure requirements as the only form of regulation.

Independent Expenditure (IE) Disclosure

- In 2012, the Board adopted rules requiring certain disclosures from independent spenders:
 - Disclosure of expenditures;
 - Disclosure of contributions to groups making expenditures; and
 - Inclusion of “paid for by” information on political advertisements.
- In 2014, Local Law 41 strengthened these disclosure requirements:
 - IEs must disclose the identities of contributors and their contributors’ owners or controlling entities.
 - “Paid for by” statements must include the spender’s identity and the chief controlling entities and top three major donors.

Updates to the Campaign Finance Act & Board Rules

2017

Recent Changes to the Act

- The City Council recently passed several pieces of legislation affecting the CFB and the Matching Funds Program.
- The new changes to the Act principally affect:
 - Independent and coordinated expenditures;
 - Permissible uses of campaign funds; and
 - Doing business and lobbying restrictions.

Recent Changes to CFB Rules

- In 2016, prior to the passage of City Council legislation, the Board had proposed and adopted rules changes affecting, among other areas:
 - Independent expenditures;
 - Volunteer services;
 - Permissible campaign expenditures; and
 - Transition and inauguration entities.
- In 2017, in response to City Council legislation, the Board has proposed additional rules changes affecting, among other areas:
 - Doing business contribution limits and lobbying restrictions;
 - Contribution documentation;
 - Contribution refunds; and
 - Permissible expenditures.

Coordinated Expenditures & Affiliated Organizations

NYC Charter § 1052(a)(15); Admin. Code § 3-716; Board Rule 1-08(f);
Advisory Opinion 2016-1

Local Law 181

Coordinated Expenditures & Candidate- Affiliated Organizations

Hypothetical

- Mayor Dave creates a non-profit organization, the Non-Profit Organization for Policy Education (NOPE), to advocate for his policy priorities. He solicits funds for NOPE from individuals with business before the city. NOPE uses those funds to pay for ads touting the benefits of Mayor Dave's policies.
 - Has Mayor Dave violated any ethics rules?
 - Has NOPE violated any campaign finance rules?

Coordinated Expenditures

CFB Rules & Guidance

- **CFB Guidance:** Advisory Opinion 2016-1 (July 2016)
- **Rule:** Coordinated expenditures made in connection with a covered election are subject to the Act and Rules.
 - *Translation:* If a campaign cooperates with another organization making expenditures to facilitate a candidate's election, those expenditures are subject to the Act and Rules.
- **Result:** Coordinated expenditures made in connection with a covered election must be reported as campaign expenditures or in-kind contributions.
 - *Consequence:* Campaigns take a huge hit on their expenditure limits, receive a prohibited contribution (barring them from public funds payments), or receive an over-the-limit contribution (necessitating a refund).

Coordinated Expenditures

- **What's a coordinated expenditure?**
 - Rule 1-08(f) provides factors to determine the independence of expenditures.
 - CFB looks to factors including: Agency; Communication; Organizational Control; Physical Proximity; Fundraising;* Employment;* and Shared Consultants.
- **What's a covered election?**
 - An election for the office of mayor, comptroller, public advocate, borough president, or city council.
- **When is an expenditure made "in connection with" an election?**
 - AO 2016-1 provides factors for this determination.
 - CFB looks to factors including: Content; Distribution; Topicality; Staffing Overlaps; Bona Fides; and Timing.

*Added in 2016 Rulemaking

Coordinated Expenditures

Enforcement

- **Election Year Expenditures:** Coordinated expenditures made after January 1 of an election year are presumed to be made in connection with a covered election.
- **Out-Year Expenditures:** Coordinated expenditures made before January 1st of an election year may be considered in connection with a covered election where “numerous or substantial” factors are present.

Candidate-Affiliated Organizations

COIB Rules & Guidance

- **COIB Applicable Law:** Admin. Code §3-901 *et seq.* (Local Law 181)
- **Rule:** Organizations affiliated with elected officials that produce or disseminate elected official communications are subject to contribution limits and disclosure requirements.
 - *Translation:* Non-profit entities over which an elected official exercises control can't accept corporate contributions, are subject to doing business contribution limits, and must disclose their contributors if they distribute communications featuring the elected official.
- **Result:** If non-profits controlled by an elected official distribute communications featuring the official, they can't accept certain contributions and must disclose their donors.
 - *Consequence:* Elected officials can't create outside organizations to gain exposure, promote their policies, or circumvent the Campaign Finance Act.

Candidate-Affiliated Organizations

- **What is an affiliated organization?**
 - Defined in §3-901 as a non-profit organization that has received at least one donation in the past year and is controlled by an elected official or an agent of an elected official.
 - COIB assesses control using factors including: Organizational founders; Current Leadership; Board Composition; and the Degree of elected official involvement.
- **What is an elected official communication?**
 - Defined in §3-901 as any communication (other than news coverage or member communications) featuring the name, voice, or likeness of the affiliated elected official.

Candidate-Affiliated Organizations

Restrictions on Affiliated Organizations

- **Disclosure Requirements (§ 3-902):**
 - Applies to: all affiliated organizations
 - Annual disclosure of:
 - Organizational details and affiliated officials;
 - Contributors with business before the city;
 - Donors contributing over \$1,000; and
 - Expenditures on elected official communications.
- **Contribution Restrictions (§ 3-903):**
 - Applies to: affiliated organizations spending more than 10% of their budgets on elected official communications.
 - Corporate contributions are prohibited.
 - Doing business contribution limit (\$400) applies.

Candidate-Affiliated Organizations

Enforcement

- **Penalties** – COIB may assess penalties up to \$10,000 for violations of § 3-901 *et seq.* Repeated violations are a Class A misdemeanor.
- **Joint Liability** – COIB may hold elected officials jointly liable for their affiliated organization’s knowing or willful violation of § 3-901 *et seq.*

Campaign Funds & Use of Government Resources

NYC Charter § 1136.1(2)(b); Admin. Code § 3-702(21), 3-704(2)(l)

Local Law 166, 190

Campaign Funds & Use of Government Resources

- The New York City Council recently passed several laws impacting the ways that incumbent candidates and newly-elected officials may utilize campaign funds.
 - Local Law 166 – Raises contribution limits for Transition and Inauguration Entities (“TIEs”).
 - Local Law 173 – Requires COIB to provide the CFB with a certificate acknowledging each candidate’s annual financial disclosure filing.
 - Local Law 190 – Permits incumbent candidates to use campaign funds for government activities.

Campaign Funds & Use of Government Resources

Transition and Inauguration Entities

- **What are they?**
 - TIEs are non-campaign entities that newly-elected candidates may form to raise money for an inauguration party and expenses related to their transition into office.
 - Applicable Law: Admin. Code § 3-801 *et seq.*; Board Rules 11-01 *et seq.*
- **Why do TIEs exist?**
 - Candidates in covered elections are prohibited from using campaign funds for most post-election expenditures.
 - As a result, newly-elected candidates may need to fundraise to pay for their inauguration and new offices.
 - The Act regulates TIEs to prevent actual or perceived corruption in the post-election fundraising process.
- **Who is paying for all of that?**
 - Candidates may personally donate to their TIEs and raise contributions from individuals, subject to certain limitations.

Campaign Funds & Use of Government Resources

Local Law 166

- **What does it do?**
 - Campaign contribution limits are tied to the Consumer Price Index and increase slightly over time. TIE contributions were not.
 - This links TIE contribution limits to the applicable campaign contribution limits.
 - e.g. a newly-elected mayor can now raise \$4,950 from an individual donor for his TIE, rather than the \$4,500 he could previously raise.
- **What's the impact?**
 - TIE contribution limits are now the same as campaign contribution limits, allowing TIEs to raise more from individual donors and reducing donor confusion.

Campaign Funds & Use of Government Resources

Local Law 173

- **What does it do?**
 - It requires the COIB to create a database containing a record of a candidate's compliance with the annual financial disclosure requirement for elected officials.
- **How does this affect city elections?**
 - Previously, candidates had to obtain a certificate of compliance from the COIB and provide it to the CFB.
 - This cuts out the middle-man.

Campaign Funds & Use of Government Resources

Campaign-Related Expenditures

- **Permissible Expenditures**

- Campaigns may only make expenditures “in furtherance of” the campaign.
 - The Act lists expenditures which are presumptively “in furtherance” of a campaign (e.g. food for volunteers) and expenditures which are NOT (e.g. haircuts).
 - See Admin. Code § 3-702(21)(a).

- **Qualified Expenditures**

- Campaigns may only use public matching funds to pay for expenditures that are “qualified.”
 - The Act provides a list of expenditures for which campaigns MAY NOT use public matching funds (e.g. illegal payments).
 - See Admin. Code § 3-704(2).

Campaign Funds & Use of Government Resources

Local Law 190

- **What does it do?**
 - It adds “*expenditures to facilitate, support, or otherwise assist in the execution or performance of the duties of public office*” to the list of permissible expenditures (presumptively campaign-related expenditures).
 - It makes them unqualified expenditures (prohibiting the use of public matching funds for those expenditures).
- **How does this affect city elections?**
 - Incumbent candidates may now use campaign contributions for expenditures related to their duties as an officeholder.
 - Campaigns cannot use public matching funds to pay for the those expenditures.
 - i.e. if Councilmember X spends \$2,000 on a couch for his office, that expenditure is permissible but cannot be made with public funds.

Restrictions on Pay-to-Play & Bundling

Admin. Code § § 3-702 (3)(h-i), (18), 3-703(1-b); Rule 1-04(c)(1).

Local Laws 167, 172, 185



Restrictions on Pay-to-Play & Bundling

Do people who want do business with the city have
to pay to play?

- NO!
- The Act and Rules place restrictions on campaign contributions from individuals with “business dealing with the city.”
 - Applicable Law: Admin. Code §§ 3-702 (3)(h-i), (18), 3-703(1-b); Rule 1-04(c)(1).

Restrictions on Pay-to-Play & Bundling

What Restrictions Apply to Those Doing Business With the City?

- Contributions from individuals listed in the Doing Business Database are subject to the following lower limits:

Office	Standard Limits	Doing Business Limits
Mayor/ Comptroller/ Public Advocate	\$4,950	\$400
Borough President	\$3,850	\$320
City Council	\$2,750	\$250

- Doing Business contributions are NOT matchable.
- New: Contributions bundled by individuals doing business with the city are also NOT matchable.

Restrictions on Pay-to-Play & Bundling

Who Do These Restrictions Apply to?

- Individuals or entities with “business dealings with the city,” meaning those seeking or engaged in:
 - Contracts; Franchises; Concessions; Grants; Pension Fund Investment Contracts; Economic Development Agreements; Real Property Agreements; Land Use Agreements.
 - Including: **Officers** (CEOs, COOs, CFOs); **Part Owners** (anyone with > 10% interest); and **Senior Managers** (those with substantial discretion or oversight).
- Lobbyists
 - Note: Spouses, domestic partners, unemancipated children, and employees of lobbyists are not listed in the Doing Business Database but their contributions are **not matchable**. See Admin. Code § 3-702(3)(g).

Restrictions on Pay-to-Play & Bundling

How Do We Know Who Is Doing Business with the City?

- Doing Business Database: Lists all individuals or entities with “business dealings with the city.”
 - Maintained by the Mayor’s Office for Contract Services.
 - Searchable online at: <https://www1.nyc.gov/dbnyc/>
 - Additional lobbyist information is available at: http://www.nyc.gov/html/doingbiz/home.html?sm=candidates_dbd

Restrictions on Pay-to-Play & Bundling

What Has Changed Recently?

- **City Council Legislation:** In 2016, the City Council passed:
 - Local Law 185 – Removes requirement that campaigns inquire whether a contributor is doing business with the city.
 - Local Law 172 – Lists entities with at least a 10% stake in entities doing business with the city in the Doing Business Database.
 - Local Law 167 – Eliminates public matching funds for contributions intermediated by people in the Doing Business Database.

Restrictions on Pay-to-Play & Bundling

Local Law 185

- **What does it do?**
 - It relieves campaigns of the inefficient procedure of asking contributors whether they have business dealings with the city.
- **How does this impact city elections?**
 - Before: Campaigns were required to ask individual contributors if they had business dealings with the City, which often resulted in inaccurate responses.
 - After: Campaigns need only inform contributors of the Doing Business limits and may rely on the Doing Business Database to determine whether the limits apply.

Restrictions on Pay-to-Play & Bundling

Local Law 172

- **What does it do?**
 - Entities that own at least a 10% stake in entities doing business with the city are now listed in the Doing Business Database.
- **How does this impact city elections?**
 - Before: Only *individuals* with a 10% or greater stake in entities doing business with the city were included in the Doing Business Database.
 - After: The public is better able to identify entities with ownership interests in entities doing business with the city.

Restrictions on Pay-to-Play & Bundling

Local Law 167

- **What does it do?**
 - Contributions intermediated by individuals in the Doing Business Database are no longer matchable.
 - Who is an intermediary?
 - Anyone who solicits or delivers a contribution from another individual.
 - Solicitors must be known to the campaign.
 - Who is *not* an intermediary?
 - A candidate's close relatives, a fundraising agent, or someone who is paid to deliver contributions (e.g. a mail carrier).
- **How does this impact city elections?**
 - Before: Individuals doing business with the city could circumvent the intent of the Doing Business contribution limits by bundling matchable contributions.
 - After: Contributions intermediated by those individuals are worth less to campaigns, reducing the influence of those individuals.

Questions?