



August 5, 2022

Submitted electronically to [comments@elections.ny.gov](mailto:comments@elections.ny.gov)

Ekow Yankah, Chair  
Public Campaign Finance Board  
40 North Pearl Street  
Albany, New York

Dear Chair Yankah,

Campaign Legal Center (“CLC”) respectfully submits these written comments to the Public Campaign Finance Board (“PCFB”) regarding its revised proposed regulations implementing New York’s public financing program for statewide and legislative office candidates.<sup>1</sup>

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy through law at all levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court and in numerous other federal and state court proceedings. Our work promotes every citizen’s right to participate in an accountable, transparent democratic process.

CLC is a longtime proponent of public financing in state and local elections, and we commend the PCFB’s commitment to developing thorough, functional regulations necessary to implement this program in advance of the 2024 election cycle. CLC appreciates the PCFB’s incorporation of our prior comments concerning the previous version of these regulations.<sup>2</sup> We submit these brief additional comments to current revised proposed regulations.

### **Recommendations for the PCFB’s Final Regulations**

In the following sections, CLC suggests clarification in two sections of the PCFB’s revised draft regulations. Both § 6221.15 and § 6221.33 include affirmative requirements with which campaigns participating in the public campaign finance program must comply and further clarification of those requirements, as explained below, will aid the implementation of this program. In addition, we have included a brief section suggesting some small corrections.

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<sup>1</sup> See Vol. XLIV, Issue 25 N.Y. Reg. 8-10 (June 22, 2022); PART 6221 PUBLIC CAMPAIGN FINANCE PROGRAM, [https://www.elections.ny.gov/NYSBOE/download/law/PropReg\\_Part6221reNYSPublicCampaignFinancePgm.pdf](https://www.elections.ny.gov/NYSBOE/download/law/PropReg_Part6221reNYSPublicCampaignFinancePgm.pdf).

<sup>2</sup> *CLC Comments on New York’s PCFB Public Financing Rulemaking*, Campaign Legal Ctr. (Oct. 17, 2021), <https://campaignlegal.org/document/clc-comments-new-yorks-pcfb-public-financing-rulemaking>.

**I. Clarify the format of and information collected in “contribution cards” in § 6221.16(c)(ii).**

CLC recommends that the PCFB’s final regulations clarify the format of and information required to be collected in campaign contribution cards under § 6221.16(c)(ii). This proposed provision requires campaign committees to provide “background documentation with each matching fund claim in the form of a fully completed contribution card.”<sup>3</sup>

In public financing programs, the accurate collection of required documentation for each contribution is essential, both for candidates, who must comply with recordkeeping and filing duties to receive public funds, and for election administrators, who must verify that each contribution submitted for matching payments is eligible for public funds. Contribution cards can be an efficient format to collect this documentation. In particular, contribution cards are an important safeguard for documentation of cash contributions, which lack the identifying characteristics intrinsic to other forms of payment, such as credit cards or checks. However, neither the 2022 Election Law nor the revised draft regulations define or describe the “contribution card” required or the specific information and format it must follow.

Without further description or guidance as to the format and required information for contribution cards, the affirmative requirement for campaigns to provide “a fully completed contribution card with each contribution reported” in § 6221.16(c)(ii) may result in confusion for campaign treasurers seeking to comply with the law. While the revised proposed regulations identify the records and documentation that participating candidates must maintain for each contribution in § 6221.19(b), including specific guidelines based on the mode and amount of contribution<sup>4</sup>—and further require that such documentation must be submitted with matchable contribution claims in § 6221.20(c)—those requirements are not explicitly connected to the contribution card requirement in § 6221.16(c)(ii).

Other jurisdictions implementing similar programs provide models for the PCFB to consider. For example, both New York City and the District of Columbia require contribution cards as a part of their public financing programs and provide clear requirements for each card in their regulations.<sup>5</sup> Moreover, both New York City and the District of Columbia require an affirmation from the contributor, along with a physical or electronic signature, as part of their respective contribution cards, with specific details for what must be included in each affirmation.<sup>6</sup> Importantly, both programs generally require contributors to affirm that the contribution is being made with the contributor’s own funds and that the contributor is not being reimbursed or receiving anything of value in exchange for their contribution.<sup>7</sup>

Accordingly, CLC recommends the PCFB’s final regulations align the required content of contribution cards with the information participating

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<sup>3</sup> Draft Regulations § 6221.16(c)(ii).

<sup>4</sup> Participating campaigns must maintain records for cash contributions (not to exceed \$100 in the aggregate) including the contributor’s full name, residential address, phone number, and e-mail address. Draft Regulations § 6221.19(b)(1). For contributions received in cashier’s checks, money orders, checks, or credit cards, the campaign must have a record of the contributor’s full name and residential address, and for contributions of \$100 or more in the aggregate, the committee must also have a record of the contributor’s occupation and business address. *Id.* § 6221.19(b)(2)-(4).

<sup>5</sup> See New York City, N.Y., Rules, Tit. 52, § 4-01(b)(ii)(B); D.C. Mun. Regs. tit. 3 §§ 4302.1, 4303.1.

<sup>6</sup> See New York City, N.Y., Rules, Tit. 52, § 4-01(b)(ii)(B)-(C); D.C. Mun. Regs. tit. 3, §§ 4205.2(b), 4303.1(e)-(f).

<sup>7</sup> See New York City, N.Y., Rules, Tit. 52, § 4-01(b)(ii)(C)(1); D.C. Mun. Regs. tit. 3, § 4205.2(b)(1)-(2).

candidates already are required to collect for contributions and further that the contribution cards include a signed affirmation from the contributor that the contribution is from the contributor's personal funds and is being made voluntarily without any reimbursement or receipt of anything of value in exchange for the contribution.

## II. Clarify the attribution requirements in § 6221.33.

CLC recommends clarifying § 6221.33 in the PCFB's revised proposed regulations. The section constitutes a single line, which reads "Political communications shall comply with the attributing requirements," without further context or elaboration.<sup>8</sup>

Given the provision's reference to "political communications," we understand that it may be seeking to require participating candidates to comply with 2022 Election Law § 14-106, which provides requirements for record-keeping and reporting relating to paid political communications and the "paid for by" disclosures that must accompany such communications made by political committees.<sup>9</sup> This section specifically governs political committees making such communications but does not use the word "attribution" or "attributing" at any point.<sup>10</sup> However, the terms "attribution" or "attributing" are used in other sections of New York Election Law and current regulations relating to independent expenditures and campaign contributions.<sup>11</sup> Without clarification, there may be confusion for participating candidates as to what is required by this provision.

## III. Minor corrections

- *§ 6221.9 Eligibility Criteria* – § 6221.9(a)(8)(i) ends in "program.6221," which appears to be a typo.
- *§ 6221.19 Records to be Maintained* – § 6221.19(c)(3) appears to have a deleted clause or incomplete sentence, which says only ". , and additionally".
- *§ 6221.20 Payments of Matching Funds* – The revised proposed regulations do not include (d) in this section, skipping from (c) to (e).

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<sup>8</sup> *Id.* § 6221.33.

<sup>9</sup> See N.Y. Elec. Law § 14-106 (eff. Nov. 9, 2022).

<sup>10</sup> See N.Y. Elec. Law § 14-106(2), § 14-106(1)-(4) (eff. Nov. 9, 2022).

<sup>11</sup> See N.Y. Elec. Law § 14-107 (eff. Nov. 9, 2022) (regulating independent expenditures) and 9 NYCRR § 6200(f)(1) (eff. Nov. 9, 2022) (regulating "Attributions and identification of independent expenditures" under N.Y. Elec. Law § 14-107, including the requirement that an independent expenditure communication include a "paid for by" disclaimer); *see also* N.Y. Election Law § 14-120(2) (eff. Nov. 9, 2022) (the term "attributing" used in requiring campaign contributions to be made under the true name of the contributor).

## Conclusion

CLC thanks the PCFB for its consideration of our additional comments and recommendations regarding this important rulemaking. As the PCFB prepares to administer New York's public financing program, CLC would be glad to provide further assistance or resources.

Respectfully submitted,

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\* Not admitted to the D.C. Bar. Practicing under the supervision of Patrick Llewellyn, member of the D.C. Bar.