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CHAPTER VI  
MISCELLANEOUS  
SUBCHAPTER A, GENERAL RULES  
PART 335  
CHARITABLE CONTRIBUTIONS THROUGH STATE EMPLOYEES FEDERATED APPEALS

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PART 335  
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**Section 335.1 Policy, purpose, and scope.**

These rules, promulgated pursuant to Section 201 of the State Finance Law, provide a uniform, effective and efficient policy for solicitation of charitable contributions via payroll deduction among employees of the State of New York to encourage and facilitate the conduct of such a fundraising campaign and unless authorized by statute to preclude other solicitations of State employees with its adverse effect on the orderly conduct of State business. The Commissioner of General Services will approve one charitable campaign for each county or group of counties, to be known collectively as the State Employees Federated Appeal (SEFA). The commissioner will designate one qualified charitable organization in each such county or group of counties to carry out the campaign and distribute charitable contributions under the direction and guidance of a local SEFA committee of State employees. A Statewide SEFA Council, composed of representatives of local SEFA committees, will be responsible for deciding appeals from denials by local SEFA committees of eligibility to participate in the campaigns and will assist, in conjunction with the Statewide SEFA cabinet, with campaign planning, promotion, recruitment, and training of volunteers.

**Section 335.2 Definitions.**

(a) *Affiliated organization.* A charitable organization that receives or has received funds from a federation of charitable organizations.

(b) *Assessment.* A mandatory payment from campaign areas used for statewide operations. The assessment is invoiced quarterly by the Statewide SEFA Council, based on its budget, and its remittance is due within thirty (30) days of the invoice. The assessment is calculated according to regulation, a proportionate percentage of each campaign area's total of the statewide campaign.

(c) *Bargaining unit representatives.* Public employees of the State and members of collective negotiating units as defined by the Taylor Law (Civil Service Law, article 14).

(d) *Campaign.* The annual solicitation campaign conducted within a campaign area. To promote efficiency and public accountability, cash contributions are not to be accepted. In the discretion of the Commissioner, and subject to the instructions of the Commissioner, contributions by check, credit card, and/or debit card may be accepted.

(e) *Campaign area.* The area composed of the county or group of counties containing the State governmental premises where the federated community campaign manager, under the general direction of the local SEFA committee, conducts an annual solicitation campaign.

(f) *Charitable organization.* An organization that provides health, welfare or recreational services and is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and is registered with the Attorney General pursuant to article 7-A of the Executive Law or section 8-1.4 of the Estates, Powers and Trusts Law or is exempt from such registration. *A federation of charitable organizations* is a charitable organization within the meaning of this subdivision if each of its constituent organizations is a charitable organization.

(g) *Commissioner.* The Commissioner of General Services.

(h) *Comptroller.* The Comptroller of the State of New York.

(i) *Continuous giving.* Pursuant to State Finance Law § 201, the payroll authorization will remain effective until withdrawn by the employee as described in section 335.11(e) of this Part.

(j) *Employee participant.* An employee of the State who is a member of a local SEFA committee or Statewide SEFA Council described in these regulations or participates in an annual solicitation campaign in any capacity described in these regulations, other than as a contributor within the meaning of article 7-A of the Executive Law. The term *employee* includes all employees of the State and may include retired members of the State within the meaning of Retirement and Social Security Law, section 110-d. Employee participants shall be considered to be participating in a State-sponsored volunteer program.

(k) *Exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code* means that the income of the charitable organization is exempt from taxation and that contributions to the charitable organization are tax deductible by the donors.

(l) *Federated community campaign manager ("FCCM").* The charitable organization approved by the Commissioner, pursuant to State Finance Law, section 201, to administer the annual solicitation campaign in a campaign area under the direction of the local SEFA committee for that campaign area.

(m) *Federation of charitable organizations.* A charitable organization that solicits and distributes contributions to 15 or more charitable organizations in connection with SEFA.

(n) *Health, welfare and recreation* are to be given their common meanings, including environmental advocacy and other purposes that are beneficial to the public interests, and reasonably interpreted in favor of eligibility and not exclusion.

(o) *Local organization.* An organization that provides its program spending of at least \$1,000 in a campaign area.

(p) *Local SEFA committee.* A group of State employee participants and representatives of charitable organizations, selected pursuant to section 335.3 of this Part and responsible for making decisions with respect to the SEFA campaign in a campaign area. There shall be one local SEFA committee for each campaign area, and the chair of each local SEFA committee shall be an employee participant.

(q) *Management representatives.* Representatives of the State who are designated as management or management/confidential as defined by the Taylor Law (Civil Service Law, article 14).

(r) *Participant.* A charitable organization that meets the eligibility and qualification criteria of this Part to participate in a campaign.

(s) *Program service expenses, management and general expenses, fundraising expenses, and total revenue* are terms set out in the IRS Forms 990 and instructions.

(t) *Solicitation campaign.* The exclusive solicitation of charitable contributions from State employees and distribution of those contributions, authorized pursuant to section 201 of the State Finance Law and this Part, to be conducted on or within the premises of their employment within each campaign area. The solicitation campaign may be conducted continuously in order to obtain voluntary donations for distribution. The term *solicitation campaign* includes all campaigns.

(u) *Statewide Campaign Manager.* A charitable organization chosen by the Statewide SEFA Council to support the annual solicitation campaign, the Statewide SEFA Council, and the Statewide SEFA cabinet.

(v) *Statewide organization.* An organization that provides its program spending of at least \$62,000 in more than one campaign area.

(w) *Statewide SEFA cabinet.* The statewide SEFA cabinet shall consist of management and labor co-chairs, management and labor first and second co-vice chairs, other management and labor representatives as selected by the co-chairs, and the State employee participants serving on the Statewide SEFA Council. The statewide SEFA cabinet is responsible for carrying out the activities described at section 335.5 of this Part.

(x) *Statewide SEFA Council.* A group of State employee participants composed of local SEFA committee chairs selected pursuant to section 335.3(a)(4) of this Part, or their designees, two from each of the geographic regions of the State established by the Commissioner. The Statewide SEFA Council is responsible to carry out the activities described at section 335.4 of this Part.

(y) *Statute*. Section 201 of the State Finance Law.

(z) *Time measures*:

(1) *campaign term* means the months of September, October, November, and December, used for the actual solicitation of employee donations;

(2) *calendar year for a campaign* is the calendar year following the prior campaign term;

(3) *year of contribution* is the year donations are distributed to the federated community campaign;

(4) *fiscal year for a campaign* is the fiscal year beginning the July 1st after a campaign term and ending June 30th;

(aa) *Unaffiliated participant*. A participant that does not belong to a federation of charitable organizations.

(ab) *Year Round Giving*. Contributing to charities anytime throughout the year.

### **Section 335.3 Local SEFA committees.**

(a) Local SEFA committees shall:

(1) be comprised of representatives of:

(i) State employee participants;

(ii) the federated community campaign; and

(iii) other federations of charitable organizations and unaffiliated participant organizations;

(2) be made up of a minimum of three employee participants that represent employee bargaining units and/or management in that SEFA region. In order to maximize the representation on SEFA committees, each bargaining unit should be given the opportunity for representation on its local SEFA committee on an annual basis, provided that such representatives are selected under by-laws adopted pursuant to this section. Only State

employee participants may cast a vote with respect to decisions of the local SEFA committee;

(3) adopt a written conflict of interest policy for conducting business and meetings;

(4) adopt by-laws that shall include, at a minimum, the term of office for Local SEFA Committee members; provisions for the removal of Committee members for cause; and provisions for the election of a chairperson, public notice of its meetings, meetings being open to the public, ~~and~~ a procedure for public access to records, and compliance with the Public Officers Law;

(5) approve the federated community campaign's plan for performing or supporting SEFA campaign services within the campaign area over the next campaign term;

(6) conduct eligibility screenings and make decisions regarding the eligibility of all charitable organizations that have timely applied for participation solely in its campaign area pursuant to section 335.6 of this Part. Approval of any application requires a majority vote of the local SEFA committee or Statewide SEFA Council, in absence of a local committee. Action by the committee on applications will be made within the time required by the Statewide SEFA Council. The failure of a local SEFA committee to act within the time required shall be deemed to be an approval of the application by the local SEFA committee;

(7) approve local SEFA campaign materials including publicity for use within the campaign area but excepting the campaign directory and pledge form. Local SEFA campaign materials shall be free of excessive or disproportionate publicity in favor of any one participant or federation of charitable organizations or category of service and shall include the disclosures required by article 7-A of the Executive Law. To promote efficiency, SEFA campaign materials are to be digitally published, whenever practicable, and printed SEFA campaign material shall be minimized;

(8) oversee the federated community campaign's distribution of charitable contributions pursuant to section 335.10 of this Part; and

(9) review the financial reports of the campaign and compare the financial reports to the budget.

(b) The local SEFA committee may approve or reject the annual budget submitted by the FCCM as required by section 335.7(c)(4) of this Part. A budget approved by a local SEFA committee shall provide for reimbursement of the FCCM for budgeted administrative costs and for assessment to the Statewide SEFA Council. A SEFA campaign's administrative costs not approved in the budget, but related to the exercise of the federated community campaign's responsibilities or Statewide SEFA Council's, may be approved by the local SEFA committee and reimbursed to the federated community campaign, provided that such reimbursement does not exceed the limit set forth at section 335.10(d) of this Part.

#### **Section 335.4 Statewide SEFA Council.**

The Commissioner shall establish up to six geographic regions of the State. The Statewide SEFA Council shall consist of two representatives from each region who shall be selected by a majority vote of the chairpersons of the local SEFA committees within each region. Selection of the representatives shall be made biennially and recorded with the Statewide SEFA Council by December 31st of each corresponding year.

(a) The Statewide SEFA Council shall:

(1) be composed of two local SEFA committee chairperson, or their designee from each region. Each region shall also designate one alternate member to serve in the absence of a designated Statewide SEFA Council member. All members of the Statewide SEFA Council shall be employee participants, as defined in section 335.2 (i) of this Part;

(2) adopt a written conflict of interest policy and by-laws for conducting business and meetings. The by-laws shall include, at a minimum, the term of office for Statewide SEFA Council members; required member training; provisions for the election of a chairperson, public notice of its meetings, meetings open to the public, a procedure for the public access to records; and compliance with the Public Officers Law;

(3) conduct eligibility screenings and make decisions regarding the eligibility of all statewide organizations



that have timely applied or recertified, for participation in SEFA pursuant to section 335.6 of this Part. Additionally, the Statewide SEFA Council shall review and make final determinations after a Local SEFA Committee rejects or removes a local organization. An appeal from an eligibility decision made by the Statewide SEFA Council may be made in accordance with article 78 of the Civil Practice Law and Rules. The Commissioner is a necessary party to an appeal made in accordance with article 78 of the Civil Practice Law and Rules;

(4) oversee and provide centralized services to the annual solicitation campaign, the local SEFA committees and the federated community campaigns including, but not limited to, the campaign directory, statewide marketing materials, training and training materials, campaign reporting systems, database systems, internet services, website development and website maintenance;

(5) maintain a uniform naming and numbering system in consultation with the Office of the State Comptroller to identify participants that shall be used by all local SEFA committees in campaign materials, distributions, and accounting; and maintain a list of each participant by name, number, campaign, the percentage of total support and revenue spent on administration and fundraising, as described in section 335.6(b)(2)(ii) of this Part, and the statement described in section 335.6(b)(2)(v) of this Part. The list is to be used in the preparation of the campaign directory. The campaign directory for all campaign areas is to be prepared, approved, and published by the Statewide SEFA Council. Title to campaign materials and intellectual property rights remain with the State of New York.

(b) The Statewide SEFA Council shall annually adopt a budget and may select, subject to the approval of the Commissioner, one of the FCCM, or other charitable organization, to serve as the Statewide Campaign Manager (SCM), in support of the annual solicitation campaign, the Statewide SEFA Council, and the statewide SEFA cabinet. The Statewide SEFA Council may select such charitable organization to serve in that role for up to three calendar years, subject to annual renewal following a review of performance. A request for application

(RFA) shall be used by the Statewide SEFA Council to solicit the services it needs, in a form approved by the Commissioner. The Statewide SEFA Council's selection shall be subject to the approval of the Commissioner. Once selected, the chosen organization shall enter into a memorandum of understanding with the Statewide SEFA Council.

(c) The budget of the Statewide SEFA Council may include funds to reimburse a federated community campaign, or charitable organization, that it retains. The amount budgeted by the Statewide SEFA Council is to be included on a pro rata basis in the budgets of each of the Federated Community Campaigns named under this Part. The pro rata amount shall be included as an expenditure in each federated community campaign's acting under the authority of this Part. The pro rata amount to be included in the budget of each of the federated community campaigns is to be computed on a basis that is proportionate to the contributions received during the prior campaign in each campaign area, divided by the total contributions of the prior year's annual solicitation campaign. Payment must be made at least quarterly. If after demand by the Statewide SEFA Council for payment, the federated community campaign fails for more than 90 days to make payment of its allocated share, the unsatisfied claim by the Statewide SEFA Council must be reported when the information is so requested on any vendor responsibility questionnaire completed by the FCCM, as required by agreement.

Example: Contributions in the campaign area = \$100,000; Total Contributions raised by in all Campaign Areas under Part 335 = \$8,000,000; The pro rata share percentage =  $\frac{\$100,000}{\$8,000,000}$

The use of SEFA by donors implies that donors reasonably believe the federated community campaign is in compliance with these regulations. Contributions designated to the federated community campaign shall be first used to make any past due payment to the Statewide SEFA Council and must remain restricted and held in trust until the Statewide SEFA Council is fully paid. Failure to make timely payment is sufficient cause for revocation of the eligibility of the federated community campaign by the Statewide SEFA Council in

accordance with section 335.9 of this Part.

(d) The federated community campaign, or charitable organization, retained by the Statewide SEFA Council shall:

(1) prepare a plan for performing or supporting the statewide SEFA cabinet and Statewide SEFA Council over the next annual solicitation campaign term;

(2) respond in a timely and appropriate manner to reasonable inquiries from participating organizations;

(3) maintain Statewide SEFA Council records and bank accounts separate from the federated community campaign's internal organizational records and bank accounts;

(4) prepare and file the financial reports of the Statewide SEFA Council in the same manner as the financial reports described in section 335.7(c)(5) of this Part.

(e) The decisions of the Statewide SEFA Council, with respect to admission, shall be final and binding and appealable only as provided by paragraph (a)(3) of this section in recognition of the belief and conviction that the distribution of voluntary contributions of State employees should be solely the decisions of such employees or their authorized representatives.

(f) The Statewide SEFA Council shall maintain a statewide campaign directory that must be exclusively used in all campaign areas by all federated community campaigns under this Part 335. To promote efficiency, the statewide campaign directory shall, to the extent possible, be digitally published and printing of SEFA campaign directory shall be minimized. All campaign materials, including the statewide campaign directory, shall be free of excessive or disproportionate publicity in favor of any one participant or federation of charitable organizations or category of service and shall include the disclosures required by article 7-A of the Executive Law. The statewide campaign directory shall notify employees of their right to make a choice to contribute or not to contribute; and to give a confidential contribution in a sealed envelope. Title to the statewide campaign directory, including all intellectual property rights, remains with the State of New York.

(g) The SEFA campaign directory shall: (1) state that funds designated to a particular participant charitable organization are provided directly to that charitable organization, minus a specified percentage to cover the administrative fees of the campaign; (2) provide the names and addresses of the federated community campaigns for each campaign area; (3) describe how individuals may obtain a copy of the financial reports of each federated community campaign; (4) utilize the participant numbering system established by the Statewide SEFA Council; (5) include the statement and description required by Executive Law section 174-b, subdivisions 1 and 2, respectively, and (6) include the percentage of total support and revenue spent on administration and fundraising as described at 335.6(b)(2)(ii) of this Part, or, if more current, the percentage included with the participant's most recent recertification under section 335.9 of this Part.

**Section 335.5 Statewide SEFA cabinet.**

(a) The statewide SEF cabinet shall consist of management and labor co-chairs, the chairperson of the Statewide SEFA Council or their designee, and other management and labor representatives.

(b) The Governor may appoint a State agency commissioner or their designee as management co-chair of the statewide SEFA cabinet. It is desirable that by December 1st of each year, the Governor appoint a State agency commissioner or their designee to fill any vacancies in the statewide SEFA cabinet, that had previously been held by management, for the following year's campaign. Likewise, it is desirable that organized labor appoint a union president or their designee as co-chair of the statewide SEFA cabinet. By December 1st of each year, organized labor may appoint union presidents or their designees to fill any vacancies in the statewide SEFA cabinet, that had previously been held by labor representatives, for the following year's campaign.

(c) The statewide SEFA cabinet shall be responsible for providing continuity and volunteer support to the campaign (including promotion on a statewide basis), the recruitment of State employee participants, making recommendations to the Statewide SEFA Council for strengthening the campaign and for improving statewide

campaign materials, and at the request of the Statewide SEFA Council to address specific problems. The cabinet shall facilitate communications about SEFA to local SEFA committees as well as to State agency, union and charitable federation leaders. The cabinet shall adopt a written conflict of interest policy and by-laws for conducting its business and meetings; provisions for public notice of its meetings, meetings open to the public, and procedures for the public access of public records.

### **Section 335.6 Qualifications and applications for participation in a SEFA campaign.**

(a) *Qualifications.* Participants that applied and became eligible to participate in campaigns conducted prior to the effective date of these regulations are eligible to participate in subsequent campaigns, subject to the provisions of section 335.9 of this Part. To be eligible as a participant of a federated community campaign or a federation of charitable organizations, an organization must be a charitable organization as defined in section 335.2(e) of this Part, meet and maintain the following qualifying conditions and requirements, and furnish documents evidencing its eligibility under these regulations in the format required by the Statewide SEFA Council:

(1) It shall be and remain duly registered and current in its annual financial filings with the Department of Law, unless it has received, and provided, written confirmation from the Attorney General that it is exempt from such registration and filing.

(2) It shall comply with all requirements of State and Federal laws and regulations related to nondiscrimination as well as equal employment opportunities with respect to its officers, staff, employees, volunteers and all persons it seeks to serve. Nothing herein shall deny eligibility to any voluntary agency that is otherwise eligible under this Part, because it is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, sexual orientation, national origin, age, or with a particular disease or handicap.

(3) It shall provide or support a bona fide program or programs that serve health, welfare or recreational

purposes.

(i) If the organization indicates on its form 990 that it spent \$1,000 or more on program services within the campaign area, its program shall be presumed to be bona fide.

(ii) If the organization indicates on its form 990 that it spent \$62,000 or more on program services, its program shall be presumed to be bona fide.

(iii) If the presumptions of this section are not met, the presence or absence of bona fide programs and services may also be evaluated and determined by a review of the amount and nature of the program services, management and general expenses, fundraising expenses, and total revenue.

(4) It must have available for inspection:

(i) the most current annual report, or web site, or brochure, describing its announced programs, goals and data demonstrating the extent of its achievements;

(ii) the most current annual financial report and annual financial statement filed with the New York State Department of Law or copies thereof. Organizations claiming to be exempt from the registration or reporting requirements of article 7-A of the Executive Law are to provide documented confirmation from the Attorney General of such exemption and are to maintain an annual financial statement that meets the requirements of Executive Law, section 172-b.

(5) It shall agree to abide by all SEFA policies and procedures for the annual solicitation campaign.

(6) It shall make available IRS form 990 to any requestor pursuant to section 6104(d)(4) of the Internal Revenue Code and applicable Internal Revenue Service regulations.

(7) It shall establish in the manner described at paragraph (b)(2), of this section that its actual expenses for administration and fundraising are reasonable.

(b) *Applications.* (1) An application for participation in an annual solicitation campaign shall be submitted between December 1st of the preceding year and January 15th of the first year in which participation in the

SEFA annual solicitation campaign is sought (application period). All applications are to be sent to the Statewide SEFA Council. Applications from local charities will be assigned by the Statewide SEFA Council, with a required date for committee action, to a local SEFA committee to determine approval or denial. On or before the required date for action, the local SEFA committee shall notify the Statewide SEFA Council of its decisions and, if applicable, the reason for the denial. Decisions to deny local participation shall be reviewed by the Statewide SEFA Council. Between January 15th and the last day of March, the Statewide SEFA Council shall decide whether or not to admit an applicant. Each applicant must be notified by the Statewide SEFA Council of the denial or approval of its application by May 7th following the application period. If the application is denied, such notification shall include a justification by referring to the eligibility requirements contained in this section. The notices provided for in this section may be made in writing, or by any electronic means authorized by the Statewide SEFA Council and State Technology Law. Any electronic notice or record may be communicated without a signature, electronic or otherwise.

(2) The Statewide SEFA Council shall develop an application form for use by charitable organizations not currently participating in a SEFA campaign. The Statewide SEFA Council shall provide the option of an electronic application and may accept electronic applications authenticated in any manner it finds reasonable. As part of the application process, the Statewide SEFA Council may require an applicant to:

(i) provide a completed signed copy of the organization's IRS form 990 with the application, regardless of whether or not the Internal Revenue Service (IRS) requires the organization to file this form. IRS forms 990-EZ, 990-PF, 990-N and comparable forms are not acceptable substitutes. However, smaller organizations that file any form other than the 990 shall submit a proforma 990 provided by the Statewide SEFA Council. The IRS form 990 may not be an initial return;

(ii) provide a computation of the percentage of total support and revenue spent on administration and fundraising. This percentage shall be computed from information on the IRS form 990 by adding the amount

spent on “management and general expense” to “fundraising expense” and then dividing the sum by “total revenue”;

(iii) provide a certification that its actual expenses for administration and fundraising are reasonable under all the circumstances presented, if an applicant’s administrative and fundraising-expenses exceed 25 percent of its total support and revenue, it must also explain why those expenses exceed 25 percent and provide a formal plan to reduce them to below 25 percent. The Statewide SEFA Council may, in its discretion determine that a charitable organization with administrative and fundraising expenses exceeding 25 percent of its total support and revenue meets the qualifications for SEFA participation;

(iv) provide a vendor responsibility questionnaire for not-for-profits;

(v) provide a statement in 25 words or less describing the program activities of the charitable organization;

(vi) provide a certification, by a named authorized officer, that the charitable organization is registered and current in its annual financial filings with the Attorney General’s Charities Bureau pursuant to article 7A of the Executive Law and section 8-1.4 of the Estates, Powers and Trusts Law (or is exempt from such registration, if applicable);

(vii) the Statewide SEFA Council may require any additional information to be included in, or with, the application and may require any additional information to be included in, or with, the certification described at section 335.9 of this Part that it determines to be reasonably necessary to determine compliance with these regulations.

**Section 335.7 Federated community campaign manager, eligibility provisions, functions and duties.**

(a) To be eligible as a federated community campaign, a charitable organization shall comply with all qualifications for SEFA participants specified in section 335.6 this Part.

(b) The proposal or application by a charitable organization to act as a federated community campaign may



be submitted in response to a Request For Application (RFA) issued by the Commissioner and must include:

- (1) the legal name and official office address of the organization and any other name it uses to solicit contributions;
- (2) the names, titles and addresses of all of its directors or principals and executive officers in the campaign area;
- (3) a concise description of the organization's structure, origin and history of charitable activities in the campaign area and a vendor responsibility questionnaire for not-for-profits;
- (4) a summary of its experience in conducting fundraising campaigns, including detailed information regarding the fundraising methods used, the amounts raised, the administrative and other costs incurred and remaining amounts actually used for program services or provided to other charitable organizations;
- (5) a statement of its plan for performing or supporting SEFA campaign services within the campaign area over the next three-year period, with a particular description of projected benefits to the People of New York State;
- (6) a statement of costs in the form described in the RFA;
- (7) a copy of its charter, certificate of incorporation or other organizational document, and a copy of its bylaws;
- (8) a description of its plan for advising charitable organizations in the campaign area of the SEFA eligibility criteria and application process;
- (9) financial statements for its two immediately preceding years of operation. Financial statements must be prepared in accordance with generally accepted accounting principles, including compliance with all pronouncements of the Financial Accounting Standards Board and the American Institute of Certified Public Accountants that establish principles relevant to charitable organizations, with certification by an independent certified public accountant that the report was prepared in conformity with such standards;

(10) confirmation that it is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code and registered with the Department of Law or exempt from such registration; and

(11) such additional information and documentation as may be requested by the Commissioner.

(c) A federated community campaign shall:

(1) manage the campaign fairly and equitably, conduct its own organization's operations separately from the operations conducted on behalf of SEFA participants, consult with other participants, and be subject to the decisions and supervision of the local SEFA committee;

(2) call the first local SEFA committee meeting of each year for the campaign area it is responsible for;

(3) assist the local SEFA committee in fulfilling its responsibilities as described in these regulations, including, at a minimum, conducting the review of applications for participation in SEFA, drafting campaign materials, training State employee campaign volunteers, and maintaining the records of the committee's decisions on distributions of designated as well as undesignated funds.

(4) prepare annual budgets based on a calendar year and the fund accounting period for a campaign, for approval by the local SEFA committee. The budgets will provide for estimated opening cash balances, receipts, shrinkage, expenses, distributions, and approximate timing of distributions;

(5) prepare the financial report of the campaign. The financial report must include a calendar year reconciliation of opening balances, receipts, income, expenses, distributions to participants, and ending balances is to be filed with the federated community campaign's annual filing required under article 7-A of the Executive Law;

(6) determine the proper designation of contributions. In the event it receives a pledge card that is not legible, the employee's intent must, in some reasonable manner, be confirmed. If the employee's intent cannot reasonably be confirmed, the pledge card is to be returned to the employee with a notice that it is not legible or otherwise in error. A request shall be made that the pledge card be clarified and notice shall be given that the

statute allows the employee to withdraw the pledge. If the designations are more or less than the total, each designation is to be proportionately adjusted by the FCCM;

(7) act as the recipient in the first instance of all contributions within a campaign area, including contributions made directly by check and those made by payroll deductions. The federated community campaign shall act as a fiduciary with respect to its receipt and timely distribution of contributions;

(8) prepare a plan for performing or supporting charitable services within the campaign over the next campaign term;

(9) respond in a timely and appropriate manner to reasonable inquiries from participating organizations;

(10) maintain SEFA records and interest bearing bank accounts separate from the federated community campaign's internal organizational records and bank accounts. Interest earned on all SEFA accounts must be distributed in the same manner as undesignated funds pursuant to Section 335.10 of this Part;

(d) A FCCM may not make any use of an employee's name, address, contribution amount, or any other employee data it acquires except as specifically authorized on the employee's pledge card. The federated community campaign is to comply with the personal privacy protection provisions of the Public Officers Law, article 6-A.

(e) The FCCM may only recover campaign expenses from receipts collected from that campaign area. Expenses incurred preparing for and conducting a campaign cannot be recovered from receipts collected from the previous year's campaign. The federated community campaign may absorb the costs associated with conducting the campaign from its own funds and be reimbursed, or obtain a commercial loan, to pay for costs associated with conducting the campaign. If the commercial loan option is used, the amount of a reasonable rate of interest is an allowable campaign expense. Capital expenditures that relate to more than one campaign, such as startup costs, may be amortized or depreciated and expensed over their useful life, or, if shorter, over the number of remaining campaigns that the federated community campaign has been approved to conduct by

the Commissioner.

(f) The federated community campaign shall recover its campaign expenses from the receipts of its campaign, subject to the approval of the local SEFA committee, reflecting the actual costs of administering the local campaign. The local SEFA committee shall not, absent good cause documented in a written record, approve expenses that in total exceed the total budget approved in accordance with section 335.3(b) of this Part.

### **Section 335.8 Substitutions and mergers of existing federated community campaigns.**

(a) The Commissioner encourages mergers and expansions of campaigns to promote efficiency and economy. Commissioner approvals for federated community campaigns issued prior to the effective date of these regulations shall continue in force and effect.

(b) In the absence of an RFA issued by the Statewide SEFA Council, a charitable organization may apply in accordance with subdivision (c) of this section to replace a federated community campaign in a campaign area and may apply in accordance with section 335.7 of this Part to solicit contributions from State employees in a county or group of counties having no federated community campaign.

(c) Notwithstanding the prior approval and continued operation of a federated community campaign manager, the Statewide SEFA Council may, at any time, issue an RFA for charitable organizations to apply in accordance with subdivision (d) of this section to act as the federated community campaign manager in any county, or groups of counties. The Commissioner will not approve a federated community campaign manager in any county or groups of counties, where, in the Commissioner's reasonable opinion and judgment, the number of state employees to be solicited by such campaign is too small to make deductions or contributions practicable or feasible.

(d) Notwithstanding the prior approval and continued operation of a federated community campaign, in the event a different charitable organization meets the general eligibility provisions, demonstrates the capability to

fulfill the functions and duties set forth in section 335.7 of this Part, and is able to supply the information specified herein, it may submit an application to the Commissioner pursuant to this section for its substitution in place of the existing federated community campaign. The application shall include notice to any qualified federated community campaign currently serving that campaign area and an opportunity to be heard. The Commissioner shall evaluate such application for substitution or merger and make a determination in accordance with the provisions of these regulations relative to primary approvals of federated community campaigns. The Commissioner may solicit comments from the local SEFA committees, the Statewide SEFA Council and individual participant organizations concerning the application. The Commissioner's decision regarding acceptance or rejection of such proposed substitution shall be conclusive and binding. Written notice of the decision on an application for the substitution of a federated community campaign hereunder shall be given to the applicant, the previously existing federated community campaign, the local SEFA committees, and the Statewide SEFA Council. In the event the substitution is approved, the applicant will provide written notice to the affected participants. Such notice may be electronic.

(e) Upon the substitution, merger, or removal of a federated community campaign, the prior federated community campaign will continue to act as the fiduciary for the distribution of contributions and payment of approved expenses that relate to the campaign it conducted. The prior federated community campaign has the duty to account in the manner directed by the local SEFA committee or Commissioner. Any campaign funds remaining with the prior federated community campaign that were budgeted for administrative expenses but not approved for expenditure by the local SEFA committee are to be transferred to the new federated community campaign with the accounting.

In the event that there is no qualified federated community campaign in a given county or group of counties, the local SEFA committee and Statewide SEFA Council will promptly inform the Commissioner in writing. The Commissioner may, in accordance with this section, accept applications from a substitute charitable

organization to function as the campaign's federated community campaign or the Commissioner may attempt to merge the campaign with another campaign that has a qualified federated community campaign. The Commissioner may also cancel the local campaign, and in that event, no workplace solicitation of any employee in the campaign area is authorized and the Commissioner will provide notification to employee participants and cease all related deductions and further, no payroll authorizations may be accepted and honored during the duration of the cancellation.

**Section 335.9 Recertification and revocation of eligibility of a participant and appeal process.**

(a) Every three year period following the effective date of this regulation, the Statewide SEFA Council shall require any or all unaffiliated participants, federations of charitable organizations, or constituent organizations, to certify their continued compliance with these regulations, and with applicable state and federal laws and regulations. The form of the certification, the information to be provided by individual participants, and the delegation of the receipt or review of certification information to a local committee, is at the discretion of the Statewide SEFA Council. The Statewide SEFA Council may use random sampling to review the certification information it receives to improve the efficiency of the recertification process. The Statewide SEFA Council may audit any participant at any time. If upon application by a local SEFA committee, or upon its own motion, the Statewide SEFA Council determines that a SEFA participant, including any federated community campaign, has not maintained the eligibility qualifications of this part or requirement of the laws of the State of New York or the United States, such participant shall be removed from the annual solicitation campaign by majority vote of the Statewide SEFA Council. If such participant is removed, distribution of all funds to such participant shall be stopped, and all reasonable efforts will be made to inform affected donors of such removal and to give them an opportunity to withdraw payroll deduction authorization for contributions to such participant. The funds designated for the removed participant that have been collected, or that are received after the participant is

removed, shall either be equally divided among the remaining charities that the donor has designated, or, if the removed charity is the sole designee, the donor shall be contacted, and either 1) select a new participant for the funds to be redirected to, or 2) withdraw the payroll deduction authorization for contributing to such participant..

(b) If a participant fails to receive any contributions in any campaign area in the three previous general solicitation campaigns, then such participant may be removed from the annual solicitation campaign by a majority vote of the Statewide SEFA Council. Participants must promptly respond to a request by the Statewide SEFA Council to report the amount of contributions received by a campaign area.

(c) Removal shall be subject to the following terms and conditions:

(1) The Statewide SEFA Council may require the submission of any additional statements or materials from any committee or the participant to aid in its determination of whether or not to remove the participant. Failure to timely provide requested submissions or materials may be considered in the decision to remove a participant.

(2) The decision of the Statewide SEFA Council, to remove a participant shall contain a written justification. This justification shall be supported by specific references to the eligibility requirements set forth in section 335.6 of this Part or the minimum contribution requirements set forth in this section as well as timely submission of materials to the Statewide SEFA Council.

(3) A copy of the removal determination shall be provided to the participant, any federation of charitable organizations to which the participant is a constituent organization, the federated community campaign for the campaign area where participation is removed, and the Statewide SEFA Council.

(4) Any participating charitable organization or federation of charitable organizations receiving notice of a determination of removal from the Statewide SEFA Council may appeal such determination in accordance with article 78 of the Civil Practice Law and Rules. The Commissioner is a necessary party to an appeal made in accordance with article 78 of the Civil Practice Law and Rules.

(5) A participant removed from participation in the SEFA annual solicitation campaign shall be deemed to have been removed from participation in all campaign areas.

(d) The Commissioner may, upon reasonable notice and opportunity to be heard, remove any participant, including any federated community campaign, found not to be in compliance with these regulations.

(e) *Re-application.* A participant that has been removed from participation in a campaign may reapply for admission upon a showing of changed circumstances relevant to the determination of removal and after the expiration of a one-year period from the end of the annual solicitation campaign following the determination of removal.

**Section 335.10 Distribution of contributions and pledges among participating organizations.**

(a) Contributions and pledges that have been designated to specific participant charitable organizations and received by a federated community campaign must first be distributed to those organizations, minus only the deduction for the SEFA campaign's administrative costs.

(b) *Administrative costs.*

(1) No later than May 1st of every year, each local SEFA committee shall review the financial report of the campaign for the previous year and proposed annual budget. Based upon such review, the local SEFA committee shall determine a fixed administration cost percentage, equally applicable to all participants, for the calculation of their respective contributions and pledges to the administrative costs for the next campaign.

(2) The administration cost percentage shall not exceed 15 percent of the sum of SEFA contributions received in the prior calendar year. A higher percentage may be permitted pursuant to paragraph (3) of this subdivision. The Statewide SEFA Council shall have the right to review the administrative expenses of each federated community campaign, and to lower the percentage determined by the local SEFA committee if such percentage is deemed to be excessive. Such determination shall be made no later than July 15th of each year.



(3) If a local SEFA committee believes that a federated community campaign should receive more than 15 percent of the contributions received in the next SEFA campaign, such committee shall submit an application to the Statewide SEFA Council no later than May 15th, setting forth the percentage recommended and the reasons for such determination, as well as such data and documentation as the Statewide SEFA Council may require. The Statewide SEFA Council may permit a higher percentage amount only if it finds compelling reasons to believe that the reasonable and necessary costs of the next succeeding campaign must exceed 15 percent. Such determination, with the percentage approved, should be made by July 15th of each year and is subject to the approval of the Commissioner.

(4) No later than May 15th, each federated community campaign will report its campaign's administration cost percentage and the planned time, or times, of distribution set out in its approved budget to the federated community campaign retained by the Statewide SEFA Council.

(5) The federated community campaign or other charitable organization retained by the Statewide SEFA Council will provide notice of the administration cost percentage and planned distribution dates of each campaign, to each of the participants on the list provided under section 335.4(a)(5) of this Part. The method of notice will be determined by the Statewide SEFA Council. The method of notice may be limited to an electronic means such as web posting or e-mail, or limited to U.S. mail, or any other method reasonably determined to provide adequate notice. If the method of notice is limited to electronic means, the requirements of the State Technology Law will apply to such notice.

(6) The administrative fees of the campaign shall be paid by the participants at the time of distribution of funds by the FCCM. The amount shall be calculated by multiplying the sum of the designated funds, by the percentage for administrative costs, determined pursuant to this section.

**Section 335.11 Written authorization for payroll deduction, continuous giving, and year-round pledging.**

(a) The pledge form is the written authorization for payroll deduction for contributions as described by State Finance Law section 201. The pledge form is subject to rules and regulations of the Commissioner. The pledge form is to be filed with Statewide SEFA Council in the manner determined by the Commissioner. The pledge form's design and the information provided and collected are the property of SEFA. All intellectual property rights to the pledge form are retained by the State of New York.

(b) The SEFA campaign and the state, shall make the statewide campaign directory described in section 335.4 of this Part available for voluntary employee contributions during the annual solicitation campaign defined in section 335.2 of this Part and throughout the year. Outside the annual solicitation campaign period of September through the end of December, participating charitable organizations, including federated community campaigns, should refrain from solicitation of employees on, or within, the premises of their employment.

(c) The payroll authorization will remain effective until withdrawn by the employee as set forth in subdivision (e) of section 335.11.

(d) Unless earlier withdrawn by the employee, payroll deduction authorizations expire on the employee's last day on the payroll.

(e) Any written authorization for payroll deduction may be withdrawn by an employee at any time upon filing written notice of withdrawal in a manner determined by the Statewide SEFA Council. A form for withdrawal will be available to employees throughout the year.

(f) The Statewide SEFA Council shall certify on input files submitted to the Comptroller as follows: "By submission of this file, we certify that all transactions on this file are true and accurate and submitted with the authorization of the employee. Our office agrees to provide documentation of employee authorization to OSC upon request."

(g) The pledge form, form for withdrawal, and statewide campaign brochure may be made available electronically by the SEFA campaign and the state. The SEFA campaign and the state will, in the manner determined, make hard copy, non-electronic paper pledge form and form for withdrawal available to employees for filing. Participating charitable organizations, including federated community campaigns, shall not distribute unapproved pledge forms, or forms for withdrawal, to employees for filing.

(h) The pledge form and other forms approved in accordance with this section must be exclusively used in all campaign areas by all federated community campaigns.

### **Section 335.12 Preventing coercive activity.**

Actions that do not allow free choice or create the appearance that employees do not have free choice to give or not to give are not permitted in campaigns. These include, but are not limited to:

- (a) supervisory inquiries about whether an employee chose to participate or not to participate or the amount of an employee's donation;
- (b) setting of 100 percent participation goals;
- (c) establishing personal dollar goals and quotas;
- (d) developing and using lists of non-contributors;
- (e) providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and allotments, and as allowed under section 335.7(d) of this Part;
- (f) using as a factor in a supervisor's performance appraisal, the results of the solicitation in the supervisor's unit or organization;
- (g) interfering with an employee's right to make a choice to contribute or not to contribute, or to give a confidential gift in a sealed envelope.

### **Section 335.13 Sanctions and penalties.**

(a)(1) The Commissioner may impose sanctions or penalties on a federation, charitable organization or federated community campaign manager for violating these regulations, or other applicable provisions of law. The Commissioner will determine the appropriate sanction and/or penalty up to and including removal from the current and future annual solicitation campaigns. In determining the appropriate sanction and/or penalty, the Commissioner will consider previous violations, harm to employee confidence in SEFA, and any other relevant factors. The Commissioner may bar a federation or charitable organization from serving as a federated community campaign for a period not to exceed three campaign periods, if it is determined that the federation or charitable organization has violated any provision of these regulations. A federation, charitable organization or federated community campaign will be notified in writing of the Commissioner's intent to sanction and/or penalize, and will have 10 business days from the date of receipt of the notice to submit a written response. The Commissioner's final decision will be communicated in writing to the federation, charitable organization, or federated community campaign, with a copy to the appropriate local SEFA committee and the Statewide SEFA Council.

(2) Prior to being allowed to serve as a federated community campaign, a federation, charitable organization or federated community campaign sanctioned or penalized under any provision of these regulations must demonstrate to the satisfaction of the Commissioner that it has taken corrective action to resolve the underlying basis for the sanction and/or penalty and has implemented reasonable and appropriate controls to ensure that the situation will not occur again.

(b) At the Commissioner's discretion, federated community campaigns may be directed to suspend distribution of current and future SEFA donations from state employees to participants. FCCMs shall immediately place suspended contributions in an interest-bearing account until directed by the Commissioner to do otherwise and shall provide an interim accounting, prepared in the manner directed by the Commissioner, to the Commissioner.

**Section 335.14 Records retention.**

Federations, FCCMs, local committees, and the Statewide SEFA Council shall retain documents pertinent to the campaign for at least three completed campaign years; however, any pledge forms, cards or files relating to employee contributions shall be retained by the Statewide SEFA Council for as long as the employee participant continues participation in the campaign or terminates from state service, and withdrawal forms shall be retained by the Statewide SEFA Council for three years from the date of withdrawal. Documents requested by the Commissioner or the Comptroller must be made available within 10 business days of the request. The Commissioner, Comptroller, and the Attorney General, shall have access to the records.