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TITLE 9

EXECUTIVE DEPARTMENT  
SUBTITLE G  
OFFICE OF GENERAL SERVICES  
CHAPTER VI  
MISCELLANEOUS  
SUBCHAPTER A, GENERAL RULES  
PART 335  
CHARITABLE CONTRIBUTIONS THRU STATE EMPLOYEES FEDERATED APPEALS

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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 manage the campaign and distribute charitable contributions under the direction and guidance of a Local SEFA Committee of state employees. A Statewide SEFA Council, comprised 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.

335.2 Definitions.

(a) Annual 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 annual solicitation campaign shall be conducted in the four-month period of September through December in order to obtain voluntary donations for the ensuing year of distribution. The term annual solicitation campaign includes all campaigns.

(b) 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).

(c) Campaign. The annual solicitation campaign conducted within a campaign area.

(d) Campaign area. The area comprised of the county or group of counties containing the state governmental premises where the federated community campaign, under the general direction of the Local SEFA Committee, conducts an annual solicitation campaign.

(e) 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 paragraph if each of its constituent organizations is a charitable organization.

(f) Commissioner. The Commissioner of General Services.

(g) Comptroller. The Comptroller of the State of New York.

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

(i) direct public support, indirect public support, management and general, fundraising, total revenue, and program services are terms set out in the IRS Forms 990, 990EZ and 990PF definitions and instructions described at 13 NYCRR 94.2 Guidelines for annual financial reports of charitable entities.

(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. The charitable organization approved by the Commissioner, pursuant to State Finance Law § 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 purposes that are beneficial to the public interests, and reasonably interpreted in favor of eligibility and not exclusion.

(o) IRS Forms 990, 990EZ and 990PF mean the federal income tax forms described at 13 NYCRR Part 94, Contents of Financial Reports Filed By Charitable Organizations.

(p) Local SEFA Committee. A group of state employee participants and representatives of charitable organizations, selected pursuant to section 335.3 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 a state employee.

(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) Pass-through contribution. A contribution made by an employee participant in one campaign area to a participant in another campaign area.

(t) 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.

(u) Statewide SEFA Council. A group of state employee participants comprised of Local SEFA Committee chairs selected pursuant to Section 335.3(a)(3), or their designees, two from each of the geographic regions of the state established by the Commissioner. The Council is responsible to carry out the activities described in section 335.4 of this part.

(v) Statute. Section 201 of the State Finance Law.

(w) Time measures:

1. Campaign term means the months of September, October, November, and December;

2. Accounting 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.

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

### 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 or unaffiliated participant organizations.

(2) be made up of a minimum of four and a maximum of twelve employee participants that represent the various employee bargaining units and management in that SEFA region. Two-thirds of the committee must be comprised of bargaining unit members. Management shall have at least one representative on each committee. In order to maximize the representation on SEFA Committees, each bargaining unit must be given the opportunity for representation on its Local SEFA Committee on an annual basis, provided that such representatives are selected pursuant to 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 and by-laws for conducting business and meetings. The by-laws shall include, at a minimum, the term of office for Local SEFA Committee members; 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 allow for proxy voting.

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

(5) 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. 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.

(6) approve all SEFA campaign materials (including campaign brochures) and publicity for use within the campaign area. Such materials and publicity 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.

(7) oversee the federated community campaign's distribution of charitable contributions pursuant to section 335.10 of this Part.

(b) The Local SEFA Committee may approve or reject the budget submitted by the federated community campaign 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 federated community campaign for the budgeted administrative costs. A SEFA campaign's administrative costs not approved in the budget, but related to the exercise of the federated community campaign's responsibilities, may be approved by the Local SEFA Committee and reimbursed to the federated community campaign, provided that such reimbursement does not exceed the fifteen percent limit set forth in section 335.10(d) of this Part.

#### 335.4 Statewide SEFA council.

The Commissioner shall establish five or more geographic regions of the state. Beginning in 2006, 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 annually and recorded with the Statewide SEFA Council by December first of each year.

(a) The Statewide SEFA Council shall:

(1) be comprised of at least ten Local SEFA Committee chairpersons, or their designees. All members of the Statewide SEFA Council shall be employee participants, as defined in section 335.2(j) of these regulations.

(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 being open to the public, and a procedure for the public access to records; and allow for proxy voting.

(3) conduct eligibility screenings and make decisions regarding the eligibility of all organizations that have timely applied for participation in SEFA pursuant to Section 335.6 of this part. 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, statewide marketing materials, pledge cards, training and training materials, campaign reporting systems, database systems, Internet services, website development and web site maintenance.

(5) Beginning in 2008 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), and the statement described in Section 335.6(b)(2)(iv). Beginning in 2008 and every year thereafter, the list is to be used in the preparation of the Local SEFA Committees' campaign brochures.

(b) The Statewide SEFA Council shall annually adopt a budget and may annually retain one of the federated community campaigns or other charitable organization, to support the annual solicitation campaign, the Statewide SEFA Council and the Statewide SEFA Cabinet.

(1) The budget of the Statewide SEFA Council may include funds to reimburse a federated community campaign, or charitable organization, that it retains, and funds to reimburse Statewide Council and Statewide Cabinet members for reasonable travel expenses. The amount budgeted by the Statewide SEFA Council shall be included as an expense in each federated community campaign budget prescribed by Section 335.7(c)(4) of this Part. The expense 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 designations received during the prior accounting year in the campaign area, divided by the total designations of the prior year's annual solicitation campaign. Payment is to be made at least quarterly.

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

(ii) prepare a plan for performing or supporting the Statewide SEFA Cabinet and Statewide SEFA Council over the next annual solicitation campaign term.

(ii) respond in a timely and appropriate manner to reasonable inquiries from participating organizations.

(iii) maintain Statewide Council records and bank accounts separate from the federated community campaign's internal organizational records and bank accounts.

(iv) prepare and file a financial report of the Statewide SEFA Council in the same manner as the financial report described in section 335.7(c)(5) of this part.

(c) The decisions of the Statewide SEFA Council, with respect to admission, shall be final and binding and appealable only as provided by section 335.4(a)(3) 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.

335.5 Statewide SEFA cabinet.

(a) 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 chairperson of the Statewide SEFA Council or their designee.

(b) The Governor shall appoint state agency commissioners or their designees as management chair and first and second vice chairs of the Statewide SEFA Cabinet. It is desirable that by December first of each year, the Governor appoint state agency commissioners or their designees 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 union presidents or their designees as chair and vice chair of the Statewide SEFA Cabinet. By December first 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; and may allow proxy voting.

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

(a) Qualifications. Participants in the 2005 campaigns and participants that applied and became eligible to participate in the 2006 campaigns are eligible to participate in the 2006 campaigns unless eligibility is revoked in accordance with 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), 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 \$1,000.00 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 \$62,000.00 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 describing its announced programs, goals and data demonstrating the extent of its achievements, including, where applicable, the extent of participation of its volunteers in the preceding year;

(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 written 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 subdivision (b), paragraph (2), of this section that its actual expenses for administration and fundraising are reasonable.

(b) Applications. (1) Applications for participation in an annual solicitation between December first of the preceding year and January fifteenth 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 to a single campaign area will be forwarded by the Statewide SEFA Council, with a required date for committee action, to the Local SEFA Committee for that campaign 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 participation shall be reviewed by the Statewide SEFA Council. Decisions to approve participation shall not be denied by the Statewide SEFA Council. Between January fifteenth and the last day of February, 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 March 7 following the application period. If 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 may 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, an applicant shall at a minimum:

(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 990EZ, 990PF, and comparable forms are not acceptable substitutes. However, smaller organizations that file Form 990EZ may submit the 990EZ with pages 1 and 2 of the Form 990 attached. The IRS Form 990 and any annual financial statement filed with the Department of Law must cover the same fiscal period, and if revenue and expenses on the two documents differ, these amounts must be reconciled in an accompanying statement signed by the certified public accountant who completed the annual financial statement. 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 to fundraising 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 statement in 25 words or less describing the program activities of the charitable organization.

(v) 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).

(vi) 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.

### 335.7 Federated community campaign, eligibility provisions, functions and duties.

(a) To be eligible as a federated community campaign, a charitable organization shall:

(1) comply with all qualifications for SEFA participants specified in section 335.6 of this Part,

(2) have successfully conducted fundraising campaigns of a similar scope or nature for at least two years preceding its approval.

(b) The application for a federated community campaign shall be submitted to the Commissioner and 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;

(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 copy of its charter, certificate of incorporation or other organizational document, and a copy of its bylaws;

(7) a description of its plan for advising charitable organizations in the campaign area of the SEFA eligibility criteria and application process;

(8) 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;

(9) specification of the extent to which its operations have been performed by volunteer services;

(10) written 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 pertaining to its evaluation for approval as a federated community campaign.

(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 and producing the annual SEFA campaign brochure and other 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.

(i) SEFA campaign brochures shall: (a) provide the names of the members of the Local SEFA Committee and the organization that each member represents; (b) 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; (c) state that undesignated contributions are allocated in the manner described in section 335.10 of this Part; (d) provide the name and address of the federated community campaign publishing the campaign brochure; (e) describe how individuals may obtain a copy of the financial report of the annual solicitation campaign for the prior year; (f) utilize the participant numbering system established by the Statewide SEFA Council; and (g) notify employees that they can make contributions to participants in other campaign areas. (h) include the statement and description required by Executive Law section 174-b, subdivisions 1 and 2, respectively.

(ii) If the Statewide SEFA Council requires participants to provide

the computation described in section 335.6(b)(2)(ii) of this part, the Statewide SEFA Council may require that the computation be included in the brochure.

(4) prepare an annual budget, based on a calendar year, for approval by the Local SEFA Committee. The budget 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 cash reconciliation of opening cash balances, receipts, income, expenses, distributions to participants, and ending cash balances. The financial report 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 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. A statement shall be provided that, without clarification, the received funds and/or contributions will be treated as undesignated funds. If the pledge card designations add up to less than the total amount pledged the remainder is to be treated as undesignated funds. If the designations are more than the total, each designation is to be proportionately reduced.

(7) act as the recipient in the first instance of all contributions within a campaign area, including contributions made directly by check or cash 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 federated community campaign 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.

#### 335.8 Substitutions of existing federated community campaigns.

(a) Commissioner approvals for federated community campaigns issued prior to the effective date of these regulations shall continue in force and effect, provided that upon request of the Commissioner such campaigns furnish documentation assuring their continued compliance with the statute and these regulations.

(b) 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, 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, is able to supply the information specified herein, and determines that it has the capacity to conduct a more successful charitable solicitation of employees than the previously approved federated community campaign, 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, with notice to the existing federated community campaign, shall be made on or before February fifteenth of the year preceding the campaign. The Commissioner shall evaluate such application for substitution and make a determination in accordance with the provisions of these regulations relative to primary approvals of federated community campaigns and shall afford the existing federated community campaign an opportunity to be heard. The Commissioner shall also 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.

335.9 Revocation of eligibility of a participant and appeal process.

(a) Beginning in 2008, and at least annually thereafter, the Statewide SEFA Council shall require any or all unaffiliated participants, federations of charitable organizations, or constituent organizations, to certify and provide information required under section 335.6(b) of this Part in order to assure their continued compliance with state and federal laws and regulations. If upon application a Local SEFA Committee, or upon its own motion, the Statewide SEFA Council, determines that a SEFA participant 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 be identified and distributed in accordance with section 335.10(b) of this part.

(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 that campaign by a majority vote of the Statewide SEFA Council.

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

(1) The determination to remove a participant shall occur during the first quarter of the calendar year.

(2) 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.

(3) The decision 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 SEFA Council. In addition, the justification shall indicate the actual vote of the Statewide SEFA Council on the question of continued eligibility and shall include the rationale or statement of any dissenting member.

(4) 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.

(5) Any participating charitable organization, federation of charitable organizations or federated community campaign receiving notice of a determination of removal 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.

(6) A participant removed from participation in the SEFA annual solicitation campaign shall be deemed to have been removed from participation in all campaign areas in which it was previously eligible to participate.

(b) 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.

#### 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) In all campaign areas, undesignated contributions and pledges to the campaign shall be distributed in accordance with the following steps:

(1) The percentage of the total amount of contributions and pledges to the campaign that were designated to each specific participating organization shall be computed.

(2) Each participating charity shall be allotted the same percentage of total undesignated funds as it received as designated funds, minus only the deduction for the SEFA campaign's administrative costs.

(3) The calculation of the distribution of funds by the Local SEFA Committee shall be conclusive and binding on all participants.

(c) For the purposes of the calculations under the preceding paragraph, each constituent of a federation of charitable organizations shall be counted as a separate participant, but the federation of charitable organizations to which the constituent belongs shall receive that constituent's share, to be distributed in accordance with the federation's arrangement with its members, if any.

(d) Administrative costs.

(1) No later than May first 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 so determined shall not exceed fifteen percent of the sum of SEFA contributions received in the prior calendar year, less pass through contributions received in such year. A higher percentage may be permitted pursuant to subparagraph (3) of this paragraph. 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 June fifteenth of each year.

(3) If a Local SEFA Committee believes that a federated community campaign should receive more than fifteen 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 fifteenth, 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 fifteen percent. Such determination, with the amount approved, shall be made by June fifteenth of each year.

(4) No later than May 15, 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) Beginning in 2008, the federated community campaign retained by the 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 US 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) Each participant shall remit the participant's share of the campaign costs from its distribution of funds. This amount shall be calculated by multiplying the sum of designated funds plus undesignated funds to be received by the participant by the percentage for administrative costs determined pursuant to this paragraph.

#### DISCLAIMER

**This information is not the official version of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR). No representation is made as to its accuracy, nor may it be read into evidence in New York State courts. To ensure accuracy and for evidentiary purposes, reference should be made to Title 9, Subtitle G of the official NYCRR. The official NYCRR is published by West Group, 610 Opperman Drive, Eagan, MN 55123, 1-800-344-5009.**