

# Discretionary Funding Policies and Procedures

New York City Council

January 2017

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# City Council Discretionary Funding

## *POLICIES AND PROCEDURES*

### **Preface**

Each year, Members of the Council allocate discretionary funds to not-for-profit organizations in order to meet local needs and fill gaps in City agency (Agency) services. Thus, discretionary spending is a critical tool in meeting needs in our communities.

As with all taxpayer funds, the public deserves to know that discretionary funds are going to organizations with the capacity and integrity to provide quality services. The City Council has instituted a comprehensive set of measures to improve transparency and accountability in the use of discretionary funding including:

- publishing a complete list of organizations receiving discretionary funds, including the amount, the sponsoring Member or Members, and a brief description of how the funds were to be used;
- working in conjunction with the Mayor's Office of Contract Services (MOCS) and City agencies, a thorough vetting process is in place to review each organization allocated discretionary funds to assess integrity, compliance, and a track record in providing the services for which they have been selected to provide; and
- ensuring that recipient organizations and Members comply with the specific set of rules and guidelines that govern discretionary funds which the City's Conflicts of Interest Board (COIB) clarified at the Council's request. All organizations receiving funds are subject to these rules, and Council Members provide signed conflicts of interest disclosure forms with each vote approving funding.

This guide outlines the discretionary funding policies and procedures of the New York City Council. It is intended for use by not-for-profit organizations seeking Council discretionary funds, Member offices, and the public.

We value tremendously our community partners and the important work they do for our constituents, and we thank you for working with us and our partners in government to implement measures critical to ensuring the future of the services you provide.

Speaker  
Melissa Mark-Viverito

## 1. What is Discretionary Funding?

Discretionary funding is a duly-appropriated sum of money in the City's expense budget allocated to an eligible not-for-profit organization by the Council or a Member of the Council under section 1-02(e) of the rules of the Procurement Policy Board (PPB).

PPB Rule 1-02(e) allows certain elected officials – including Council Members and Borough Presidents (but not the Mayor or City agencies) – to designate specific not-for-profit organizations to receive funding as an alternative to funding programs through competitive procurement.

Unlike competitively-awarded Agency contracts, discretionary funds contracts may only be awarded for a single fiscal year.

### Types of Discretionary Funding

There are several categories of discretionary funding used by the City Council, each serving different purposes. The following categories have developed through Council practice over the years, and are subject to change in the future.

**Local Initiatives – Member:** Each Member of the Council receives an amount each year to be used at the Member's discretion to meet local needs in the Member's district. These are referred to as "local initiatives". Some funding is also allocated by borough delegations. The amount is determined by various factors, including local needs, the Member's request, and other considerations. Uses of local initiative funding are not limited to any particular purpose or agency, except as otherwise restricted by Council policy, PPB rules, and applicable law.

**Local Initiatives – City Council:** Organizations may apply for funding directly to the Speaker, or Members may request that the Speaker fund an organization whose scope of services exceeds their individual ability to fund, or which serves a larger geographical area. This is often referred to as the "Speaker's list."

**Member Aging Discretionary Funds:** Each Member receives an annual amount to fund senior services in his or her district through the Department for the Aging.

**Member Youth Discretionary Funds:** Each Member also receives an annual amount for the provision of services for youth or community development through the Department of Youth and Community Development.<sup>1</sup>

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<sup>1</sup> For youth programs, services may only be provided outside of school hours. In-school programming must be funded through the Department of Education, with the agreement and consent of the principal(s) of the school(s) where services will be provided.

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***Anti-Poverty Initiative:***

Council Members will receive additional discretionary funding based on the number of people in their district below the Federal Poverty Line. These figures are compiled by the American Community Survey (ACS). ACS is a continuous survey that individuals respond to throughout the year. Poverty statistics presented in ACS reports and tables adhere to the standards specified by the Office of Management and Budget (OMB). Based on these figures, Council Members will receive additional funds ranging from \$25,000 (Lowest Poverty Figures) to \$100,000 (Highest Poverty Figures) in \$25,000 increments.

***Citywide Initiatives:*** The Council may also initiate programs for the purpose of addressing community needs that it feels are not met by existing Agency programming, or to extend the reach of agency programs to underserved communities or populations. In most, but not all, cases, the Council will provide funding to specific not-for-profit providers. Initiatives are almost always citywide in scope, although they may be targeted to meet specific high-need communities or populations. The method of allocating funding varies by initiative. In some cases, for example, a historical provider or providers are renewed annually. In other cases individual members or borough delegations may allocate initiative funds in an amount determined by an analysis of community need.

**Council Reporting on Discretionary Funds**

Allocations of Council discretionary funding are fully disclosed at the time the budget is adopted and updated periodically to reflect changes.

***Schedule C***

When the budget for the coming year is adopted by the City Council in June, the Finance Division prepares a supporting schedule detailing the changes made to the Mayor’s Executive Budget by the Council – known as Schedule C.<sup>2</sup> Schedule C lists all the discretionary designations that have been made at the time of adoption, including, for initiatives, a short description of the initiative’s programmatic goals. In addition, Schedule C lists all restorations of City funds to cuts proposed by the Mayor in the Executive Budget (known as PEG Restorations – for Program to Eliminate the Gap). PEG restorations are not discretionary funding – they are simply actions to restore agency funding to deliver agency services that the Council wishes to protect in the budget.

***Transparency Resolutions***

Some initiatives are funded in the Adopted Budget, but specific designations of not-for-profit providers are made later in the year. The vehicle for making new designations, as well as any changes or corrections to previous designations is via resolution of the Council, known as a

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<sup>2</sup> The document is referred to as “Schedule C” because the Mayor’s Office of Management and Budget prints two supporting schedules – A and B – that provide supporting detail on the amounts appropriated in the budget by agency and unit of appropriation. Note that the Administration usually includes changes in the Adopted Budget in addition to those made by the Council in Schedule C.

Transparency Resolution. Transparency Resolutions are approved by the Finance Committee and then voted on by the whole Council. All new designations and changes to previous designations – including changes to the purpose or amount of funding – must be approved in a Transparency Resolution.

***Budget Modifications:***

A budget modification is required when funding items have been identified in a Transparency Resolution to be transferred between City agencies. Pursuant to section 107(b) of the New York City Charter, the Office of Management and Budget must initiate a budget modification and request approval to modify units of appropriation and transfer funds between various City agencies.

***On-line Database***

An on-line database on the Council’s website makes it convenient to search for information on discretionary allocations. Information in the on-line database is updated periodically to reflect any changes and/or additions made by approved Transparency Resolutions (note that the database may not be updated immediately). The database also indicates whether an organization has been designated funding by the Council. The Council database is available at: <http://council.nyc.gov/html/budget/database.shtml>.

Council clearances **do not** reflect clearances made by the Mayor’s Office of Contract Services.

**What Types of Organizations May Receive Discretionary Funds?**

Discretionary funds may only be allocated to not-for-profit; community-based social services providers. In order to receive discretionary funds, an organization must be incorporated as a not-for-profit and registered with the New York State Attorney General’s Charities Bureau, unless exempt, and have a Federal Employer Identification Number (EIN).

There are numerous types and categories of not-for-profits as defined by the IRS. Most common recipients of discretionary funding are 501 (c)(3) but there are numerous other types of 501 (c) not-for-profits. For example, War Veterans’ Organizations are a 501(c)(19); Civic Leagues and Social Welfare Organizations are a 501(c)(4); and Horticulture Associations are a 501(c)(5).

**Subcontractors and Consultants**

An organization that receives discretionary funding must itself deliver the services of the funded program. Subcontractors or consultants may not be the primary service providers for programs funded by discretionary awards. In limited circumstances, the Council may permit an organization to utilize the services of subcontractors or consultants as an ancillary/supplemental part of the delivery of services. In addition, subcontractors and consultants must be approved by the contracting agency prior to any work commencing. Payments made to subcontractors and consultants prior to receiving the contracting agency’s

approval may be disallowed by the agency and in that case will not be reimbursed. Subcontractors and consultants are not required to submit a Council application, however, they are subject to conflict of interest disclosure requirements (see section 4, Conflicts of Interest).

### **What Types of Organizations May Not Receive Discretionary Funds?**

For-profit entities may not receive discretionary funds, except when the primary not-for-profit contractor subcontracts or consults with a for-profit entity as part of the delivery of services. Such subcontracts and consultants must be only an ancillary part of the program to be funded, not the primary basis for the discretionary award.

## **2. Applying for Discretionary Funding**

This section provides an overview of the steps involved in applying for discretionary funds. Since fiscal year 2013 (calendar year 2012), all applications must be submitted on-line via the Council's website. The application process opens annually in early January and closes in late February. (Fiscal years begin on July 1 and end on June 30.)

### **Who Must Apply?**

All organizations that wish to receive discretionary funding must submit a Council Discretionary Funding Application. The application elicits information about an organization's experience, qualifications, and integrity, and the project or service for which the organization is requesting support. The Council's website will provide information on the schedule for submitting applications.

Organizations requesting funding under an initiative are also required to submit an on-line application to the Council.

### **Application for Pre-Qualification**

In addition to the Council application, all organizations that are allocated more than \$10,000 in total discretionary funding must also be prequalified by HHS Accelerator in a service area that matches the allocated funding.

HHS Accelerator is an online-system operated by the Mayor's Office of Contract Services, which is designed to improve the City's contracting process.

The HHS Accelerator Prequalification Application contains two parts: a Business Application and a Service Application and is available continually at:

<http://www1.nyc.gov/site/hhsaccelerator/funding/business-application.page>

The Application is valid for 3 years, as long as the organization submits proof on an annual basis to HHS Accelerator that they are in good standing with the Charities Bureau and the IRS. After three years, organizations will need to re-apply for prequalification to HHS Accelerator.

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Note that organizations receiving \$10,000 or less are generally only required to submit a Council application.

In either case, all organizations must demonstrate eligibility and integrity in order to receive discretionary funding. The Council and MOCS vetting includes:

- Status as a not-for-profit entity;
- Compliance with State Charity registration requirements or certification that the organization is exempt from the registration requirements;
- Active Federal Employer Identification Number (EIN) from the IRS
- Current IRS tax exempt status;
- Up-to-date New York State Attorney General’s Charities Bureau registration (unless exempt);
- Past evaluations of contract performance by funders; and
- Description of the program to be provided and in the case of awards of over \$10,000, documentation of the organization’s qualification to provide such programs either through past or current funding, staff expertise, or other explanation.

### **Department of Cultural Affairs Funding**

Not-for-Profit cultural organizations that wish to receive funding through the Department of Cultural Affairs (DCLA) must also submit an application to DCLA’s Cultural Development Fund (CDF) (see [www.nyc.gov/dcla](http://www.nyc.gov/dcla) for details, application period, and the application form). Organizations that are found by DCLA to be eligible for a CDF award may receive discretionary funding through DCLA. Note that an organization does not actually receive an award from the CDF, only to be found eligible. Cultural organizations that do not submit a CDF application may receive funding through another agency through the process described in this guide.

## **3. Restrictions on the Use of Discretionary Funds**

The Council has imposed certain restrictions on the awarding and use of discretionary funds, described below.

### ***Public Purpose***

All public funds, however awarded, must be used for a public purpose. In general, a public purpose is defined as an activity or service that is open to all members of the public, regardless of race, creed, gender, sexual orientation, religious affiliation, etc., without restriction, and which does not promote a particular religion.

Programs and services provided by religious or religiously-affiliated organizations (such as a

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parochial school) must be able to demonstrate that the program is open to non-members, is not a religious program, and does not promote the religion.

Closed membership groups – those to which membership is restricted or subject to eligibility based upon prohibited factors – may generally not receive funding.

Groups that serve a particular population – for example, youth aged 12 to 16 in a particular community – are not considered a closed membership group, as long as the program is open and accessible to all youth within that age bracket in the community. Similarly, tenant organizations in public housing may also receive funding, as long as they provide equal access to all residents of the public housing units they serve.

Funds may only be allocated for a public purpose and may not support political activities (including but not limited to lobbying, campaigns or endorsements) and/ or private interests.

The Office of Compliance reviews all applications to ensure funded organizations meet public purpose and other criteria.

#### ***Newly-Created Organizations***

Certain restrictions apply to organizations that have been newly formed or incorporated within the last 2 years. Organizations whose legal existence began within the last 2 fiscal years may not receive funding in excess of \$20,000 total (and no more than \$10,000 from a single member). This restriction may be waived under certain circumstances, such as an organization that has been in existence as a subsidiary to another organization and has been recently “spun off” as an independent entity. All exceptions are considered on a case-by-case basis.

All newly created organizations must submit a Council Supplementary Application form and a Federal Employer Identification Number issuance letter from the IRS.

#### **4. Conflicts of Interest**

To prevent abuse or misuse of the Council’s discretionary funding authority, strict rules govern conflicts of interest between Members, their staffs, family, and associates, and organizations receiving discretionary funds.

The specific rules governing conflicts of interest are spelled out in Conflicts of Interest Board (COIB) Opinion no. 2009-2:

[http://archive.citylaw.org/coib/AO/arch%202009/A02009\\_2\\_Council\\_discretionary\\_funding.pdf](http://archive.citylaw.org/coib/AO/arch%202009/A02009_2_Council_discretionary_funding.pdf)

The following are general guidelines. Questions regarding the application of conflicts rules to specific cases should be directed to the Council’s Office of the General Counsel or to COIB.

- Council Members are prohibited from sponsoring discretionary funding for an organization at which the Member serves as an employee, officer, or board member (except *ex officio*).
  - Council Members may sponsor funding for an organization where an “associated” person (a
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family member or other person with whom the Member has a financial or business relationship) is an officer or employee so long as the associated person will not benefit, or appear to benefit, from the funding.

- At the time of voting, Members are required to disclose on the record any potential conflicts of interest with organizations funded by other members.
- Organizations are required to disclose any potential conflicts of interest at the time of their application, updated annually.

Every discretionary funded organization is required to file a disclosure form, identifying any relationships between its Board or employees and elected officials. All organizations must submit a conflict of interest disclosure form annually, regardless of their pre-qualification status. Applications will not be approved without a completed conflict of interest form.

Any conflicts must be reported immediately to the General Counsel's office of the City Council.

### ***Subcontractors***

Subcontractors and consultants (including independent contractors) of funded organizations are also subject to conflicts of interest rules. Specifically, during the contracting process, organizations will be asked to provide a list of subcontractors and consultants to the contracting agency, accompanied by conflicts of interest disclosure forms completed by subcontractors and independent contractors. Subcontractors and consultants are subject to the same restrictions as primary contractors.

## **5. Contracting**

No organization may receive funding until it has been listed in Schedule C or in a Transparency Resolution approved by the whole Council which includes the organization's legal name, EIN, sponsoring member (if applicable), amount, purpose, and contracting agency. If the funding is to be distributed through a fiscal conduit, the fiscal conduit must also be named, along with its EIN (see Section 6 below for more information on fiscal conduits). Agencies will not begin the contracting process until the funds have been designated either in Schedule C or a Transparency Resolution passed by the City Council.

In addition, before agencies are authorized to process a discretionary funds contract with an organization, it must appear on the list of cleared organizations maintained and distributed to agencies by MOCS.<sup>3</sup> MOCS periodically updates the "cleared list" of organizations that: (i) have met the requirements including either HHS Accelerator prequalification for organizations receiving over \$10,000 or City Council vetting; and (ii) are in compliance

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<sup>3</sup> The Council's Finance Division provides MOCS with a list of approved organizations, which is then incorporated into the list MOCS provides to contracting agencies, which includes both the organizations pre-qualified by MOCS and those cleared by the Council. No approvals made by the Council are communicated directly to Agencies.

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with all applicable requirements and in good standing with the City of New York. Funded organizations may track the clearance status of their award on the MOCS website at: <http://www1.nyc.gov/site/mocs/nonprofits/discretionary-award-tracker.page>.

Recipient organizations need the following steps to be completed before any funds the Council awards can be disbursed:

- 1) City Council's designation;
- 2) City Council vetting and clearance;
- 3) HHS Accelerator prequalification as applicable;
- 4) MOCS clearance;
- 5) Executed contract with a City agency or grant with the Department of Cultural Affairs, or designated resident association status in good standing with NYCHA; and
- 6) Registration by the Comptroller.

All discretionary awards are contracted through City agencies, and are subject to the same procedures and must adhere to the requirements of a standard Agency contract. Agency procedures may differ in specifics, but in general all organizations receiving discretionary awards will be required to submit a detailed scope of services, a budget, and other required documentation to the Agency before a contract is finalized.

All requirements must be met to the Agency's satisfaction, and no Council Member, officer or official of the Council may waive any requirement set by the Agency that is a normal and standard part of the Agency's contracting process.

Once a discretionary award is approved as part of the budget process and posted in Schedule C or a subsequent transparency resolution, Council Members are prohibited from controlling the expenditure of discretionary funds allocated to organizations. Council Members and their staff may not be involved in planning the details of how an organization will implement services or in procuring or paying the organization's vendors. Organizations should contact Charles Davis, the Council's Chief Compliance Officer at (212) 788-6894 or at [cdavis@council.nyc.gov](mailto:cdavis@council.nyc.gov) if a Council Member or his/her staff instructs or makes recommendations on how or where to use discretionary funds.

In almost all instances, no contract funds are released until services have been, or have begun to be delivered. Agencies typically require verifiable documentation of expenses before payment is made.

Please note that the Council reserves the right to increase, decrease or rescind funding at any time before an organization enters into a valid contract with the City.

### ***Changes to Contracts***

Any change in the purpose or scope of services from that described in the organization's application for funding and reported in Schedule C or a prior Transparency Resolution must be made in a later Transparency Resolution. Agencies will not process contracts where the

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scope of services or purpose of funds submitted by the funded organization appears to differ from the published and approved purpose.

## 6. Fiscal Conduits

Smaller organizations that lack administrative capacity to handle the requirements of the City contracting process may receive their discretionary allocation(s) via a fiscal conduit.

The role of a fiscal conduit is to provide administrative and technical assistance to the organization on whose behalf it serves as a conduit. This may include assistance with required paperwork, review and submission of vouchers to the City funding agency, receipt and disbursement of contract payments, oversight of program and program documentation, bookkeeping and auditing, and capacity building consultations and trainings.

Use of fiscal conduits is very limited. Only organizations receiving less than \$10,000 total in discretionary funding may be eligible use a fiscal conduit.

Organizations wishing to act as fiscal conduits are subject to a separate pre-qualification process. Organizations may be pre-qualified as either “Neighborhood” or “Citywide” conduits:

### ***Neighborhood Fiscal Conduits***

- may act as fiscal conduits for a maximum of 10 organizations;
- are limited to providing services to organizations within the same borough;
- are limited to providing services to organizations which deliver similar services or programs.

***Citywide Fiscal Conduits.*** Organizations that qualify as a Citywide Fiscal Conduit:

- may act as fiscal conduit for up to 25 organizations, and
- must have the provision of technical assistance and support to other organizations as part of their mission statement

A Neighborhood Fiscal Conduit may charge a total of up to 5% of the value of the awards it administers or \$5,000 per fiscal year (whichever is less), as an administrative fee. A Citywide Fiscal Conduit may charge up to 10% of each award for which the organization serves as the fiscal conduit, so long as it provides non-administrative technical assistance services. If it does not, the charge is subject to the same limitation as for a Neighborhood Fiscal Conduit.

## 7. Training

Certain organizations receiving discretionary funding are subject to a training requirement. The training is a one-day session run by MOCS. The training covers topics relevant to not-for-profits receiving City funds, including legal compliance, board development, internal controls and contract management. Trainings are conducted throughout the City in different locations.

MOCS will notify any funded organization that is subject to the training requirement. As a general rule, organizations subject to the training requirement are those that receive more than \$10,000 in

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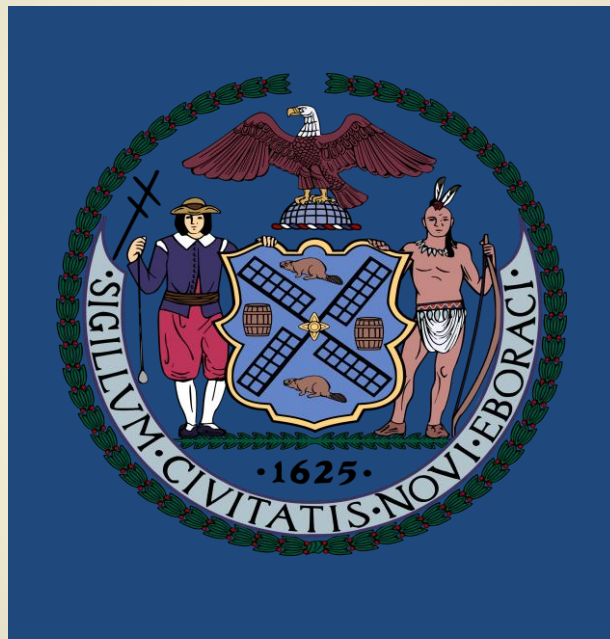
discretionary funds, but have entered into contracts with City agencies with a total value of less than \$1 million.

The training must be completed by an officer or executive of the funded organization. More than one employee of the organization may take the training, subject to space availability.

Upon completion of the training, a certificate is issued to each participant. This certificate is good for three fiscal years, following the year in which the training is completed. The certification is conferred on the person completing the training, not the organization. Thus, if an organization has only one certified employee and that person leaves the organization's employ, the organization must send a new employee to be trained in order to receive designated funds for that fiscal year. (By the same token, if the departing certified employee joins a new organization that is subject to the training requirement, the certification accompanies that person and the organization is deemed to have fulfilled the training requirement for the duration of the certification, as long as the certified employee remains at the organization.)

Upon the expiration of the certification, re-certification will be possible through a web-based training available through MOCS's Capacity Building and Oversight unit. MOCS will contact organizations whose certification is due to expire to conduct re-certification training.

Under certain limited circumstances, an organization may request a waiver from the training requirement. Each such request will be reviewed on a case-by-case basis. Generally, an organization with more than \$10 million in annual revenues that provides regular training to its senior staff and board in the areas of legal compliance, board development and internal controls may apply for an exemption from the training requirement.



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