

New York City Department of Finance

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Department of Finance is proposing to amend its rules to waive the deposit fees for cash bail or a partially secured bail bond.

When and where is the hearing? The Department of Finance will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on December 21, 2017. The hearing will be in the Department of Finance hearing room at 345 Adams Street, 3rd Floor, Brooklyn, N.Y. 11201.

This location has the following accessibility option available: Wheelchair Accessible

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department of Finance through the NYC rules website: <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to laroset@finance.nyc.gov.
- **Mail.** You can mail comments to NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3rd Floor, Brooklyn, N.Y. 11201, Attn: Timothy LaRose.
- **Fax.** You can fax comments to NYC Department of Finance, Attn: Timothy LaRose, at (718) 488-2491.
- **Hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Joan Best at (718) 488-2007, or you can sign up in the hearing room before the hearing begins on December 21, 2017. You can speak for up to three minutes.

Is there a deadline to submit written comments? The deadline to submit written comments is December 21, 2017.

What if I need assistance to participate in the hearing? The meeting will be held at 345 Adams Street, 3rd Floor, Brooklyn, N.Y. 11201. The back entrance is accessible to persons using wheelchairs and others with disabilities. Accessible restrooms are available. Materials in alternative formats, ASL interpreters, real-time captioning and other accommodations will be made available upon request. Please contact Joan Best; by telephone, by calling (718) 488-2007; TTY (212) 639-9675 or by e-mail at bestj@finance.nyc.gov to make your accommodation requests. Please provide at least 72 hours' notice prior to the hearing to ensure availability. In order to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are requested to refrain from using perfume, cologne, and other fragrances.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules website: <http://rules.cityofnewyork.us/>. A

few days after the hearing, copies of all comments concerning the proposed rule will be available to the public at NYC Department of Finance, Legal Affairs Division, 345 Adams Street, 3rd Floor, Brooklyn, N.Y. 11201.

What authorizes the Department of Finance to adopt this rule? New York State General Municipal Law section 99-m, sections 1043 and 1504 of the New York City Charter authorize the Department of Finance to adopt this proposed rule.

Where can I find the Department of Finance's rules? The Department of Finance's rules can be found in Title 19 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department of Finance must meet the requirements of section 1043 of the New York City Charter when creating or amending rules. This notice is made according to the requirements of section 1043 of the Charter. The proposed rule was not included in the Department's regulatory agenda for this fiscal year because it was not anticipated when the agenda was developed.

Statement of Basis and Purpose of Proposed Rule

Currently, when a criminal defendant pleads guilty or is convicted, the Department of Finance (DOF) returns to the person who originally deposited the bail only 97% of the money deposited for the defendant's cash bail or a partially secured bail bond. Two per cent of the bail payment is transferred to New York City's general fund, and one per cent is deposited as an additional credit to the New York City alternatives to incarceration service plan. Section 99-m of the General Municipal Law provides that the City is "entitled" to this three percent fee but does not require that the City collect it. Recent amendments to section 1504 of the New York City Charter authorize DOF to waive this fee after considering: 1) the budgetary impact; 2) the purpose of orders of bail; and 3) the equitable administration of justice.

The Department considered the above factors and found:

1. **Budgetary impact.** The bail fee applies in about 60% of instances in which cash bail or a partially secured bail bond is deposited and the fee waiver proposed in this rule would result in a loss of about \$650,000 in revenue intended for the City's general fund and the alternatives to incarceration plan, according to the Mayor's Office of Management and Budget.
2. **The purpose of orders of bail.** The primary purpose of orders of bail is to secure the defendant's attendance in court. The three percent fee is charged when a defendant appears in court, and either pleads guilty or is convicted. The total deposit, which would include the fee, is forfeited if the defendant does not appear. No fee is charged, as the full deposit is returned, if the criminal charges are resolved in favor of the defendant. The fee should thus not affect whether or not defendants appear in court.
3. **The equitable administration of justice.** This fee has a disproportionate impact on people with fewer assets, who are least able to afford it.

Based on the above findings, DOF has determined that the small loss in revenue is far outweighed by the benefits of reducing the cost burden on those who can least afford it. It has

therefore been determined that the 3% fee to which the City is entitled under section 99-M of the General Municipal Law should be waived.

Matter underlined is new. Matter in [brackets] is to be deleted.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendment

Section 1. Subdivision (a) of section 8-06 of chapter 8 of title 19 of the Rules of the City of New York is amended to read as follows:

(a) The Commissioner of Finance is entitled, for services, to the following fees:

For each certificate of deposit-\$1

Upon moneys paid out of court-2% except as set forth in subdivision (c)

Upon moneys invested-1/2 of 1%

Upon securities deposited in court and received by the Commissioner-2 percent of the par value of the securities

Upon investments transferred or assigned out of court by the Commissioner, when the investments have been made by the Commissioner-2 percent of the par value of the investments.

§ 2. Section 8-06 of chapter 8 of title 19 of the Rules of the City of New York is amended by adding a new subdivision (c) to read as follows:

(c) The Department waives the fees to which the Commissioner is entitled pursuant to subdivisions 1, 3 and 4 of section 99-m of the general municipal law.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Payment of Bail Fees by Credit Card and Waiver of Bail Fees

REFERENCE NUMBER: 2017 RG 061

RULEMAKING AGENCY: Department of Finance

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: November 1, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Payment of Bail Fees by Credit Card and Waiver of Bail Fees

REFERENCE NUMBER: DOF-32

RULEMAKING AGENCY: Department of Finance

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

November 1, 2017
Date