



Campaign
Finance
Examination
Policy

Adopted by the State
Board of Elections on
November 23, 2021

Statutory Authority / Introduction

Each disclosure report filed with the State Board of Elections (“State Board”) by a candidate committee, political party, political action committee, referendum committee, or other entity must be examined to determine whether the statement conforms to North Carolina law and to the truth. G.S. § 163-278.23 and G.S. § 163-278.24. These examinations, often referred to as audits, are performed by State Board auditors. Like all State Board employees, auditors are subject to G.S. § 163-39 (limiting certain political activities).

Auditors examine reports for compliance with Chapter 163 of the North Carolina General Statutes as well as all rules adopted by the State Board. Findings are shared with the entity, and with the public, to provide guidance and transparency regarding political spending in North Carolina.

This document outlines the policies and procedures used by staff in conducting examinations.

Please note, this policy applies only to examinations by the State Board. It does not apply to any examination conducted by a county board of elections.

Disclaimer

This policy is intended as an informational guide for treasurers, committees, members of the public and the press. The State Board maintains the authority to amend its policy at any time.

What Records May be Requested During an Examination

All reports, records and accounts required by Article 22A to be made, kept, filed, or maintained by any treasurer shall be preserved and retained by the treasurer for at least two years counting from the date of the election to which such reports, records and accounts refer. G.S. § 163-278.35.

Examinations focus on the disclosure reports filed by an entity. However, accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. § 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. § 163-278.22. G.S. § 163-278.8(b).

Below are some examples of the records that may be requested during a tier 2, tier 3, or tier 4 examination:

- Bank deposit records;
- Bank statements;
- Copies of contribution checks;
- Copies of canceled checks;
- Credit card merchant account statements and transaction processing records;
- Documentation for loans;

- Documentation to establish “Best Efforts” as described in 08 NCAC 21 .0101;
- Invoices, receipts and other supporting documentation for expenditures; and
- Documentation for any debts owned by or to the committee.

When a treasurer resigns or is replaced by a candidate or committee, the outgoing treasurer must provide the detailed accounts kept by the treasurer, bank account information,] and relevant databases and files for electronic reporting to the new treasurer. Without this information, the new treasurer may be unable to file true and correct disclosure reports or respond to inquiries made during an examination. Failure to file timely reports may result in the committee receiving civil penalties. G.S.163-278.34(a).

How Committees are Selected for Examination

G.S. § 163-278.24 requires that all reports be examined to determine whether the statement conforms to North Carolina law and to the truth. To determine whether the statement conforms to the truth, auditors must look at more than the face of the report and review detailed accounts kept by the treasurer and/or records at any bank or other depository. By instituting different tiers of examination, the Campaign Finance Division can maximize its impact by ensuring that limited resources are focused on examinations that promote compliance with Article 22A and confidence in the accuracy of disclosures.

Auditors apply a strategic analysis based on quantitative and qualitative factors to determine the examination level. Factors considered in assessing a committee’s position may include the committee’s cash balance and assets, volume of contributions and expenditures, and spending patterns.

The State Board of Elections also has the duty and power to investigate potential violations to the extent the State Board deems necessary. G.S. § 163-278.22(7). When an examination is initiated based on evidence of a potential violation, including evidence presented in a valid campaign finance complaint, the committee will be subject to heightened scrutiny.

There are four tiers of examinations. A brief overview of each is below:

Tier 1 Examination:

After import of an electronic report or manual entry of data from a paper report, a committee’s disclosures are subject to a tier 1 examination using the State Board’s campaign finance software. This basic examination completed within the system flags potential violations, miscalculated report totals and missing data points. All entities will be subject to a tier 1 examination. If there are qualifying flags on a report or series of reports, the committee will be subject to a tier 2 or tier 3 examination.

Tier 2 Examination:

In a tier 2 examination, auditors manually review report details to identify potential prohibited transactions and significant reporting errors.

Tier 3 Examination:

In a tier 3 examination, auditors manually review report details to identify all potential prohibited transactions, reporting errors or other informational items that may be pertinent for enforcement or training purposes.

During a tier 3 examination, auditors review the accuracy of disclosures by selecting a sample of transactions for further investigation. In conducting this investigation, the auditor will request to inspect accounts kept by the committee as well as bank records for the selected transactions.

Tier 4 Examination:

A tier 4 examination is conducted when there is evidence of a potential campaign finance violation. Tier 4 examinations most often occur after receipt of a campaign finance complaint. If serious issues are identified during a tier 1, 2, or 3 examination, the committee may be subjected to a tier 4 examination.

The State Board of Elections may re-open any examination or conduct an additional examination of any committee in response to any complaint or other information made available to the State Board. G.S. § 163-278.22.

Time Period for Examination

For most entities, an examination will review reports filed in the most recent election cycle. An “election cycle” is the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year. G.S. § 163-278.6(32).

A tier 4 examination that occurs in response to a campaign finance complaint or other investigation may cover more than one election cycle.

The Committee’s Opportunity to Respond: 08 NCAC 21 .0401

After completing an initial examination of reports, the auditor will submit in writing to the treasurer any requests to inspect accounts, bank records, or other committee records, as well as any questions regarding the reports. When examining a candidate committee, if the candidate is not the treasurer, then the auditor will also copy the candidate on the correspondence. Pursuant to 08 NCAC 21 .0401, the treasurer or assistant treasurer must respond with copies of the records and written answers within 15 business days. If additional time is needed, the treasurer or assistant treasurer must request additional time in writing. The auditor will grant additional time

if good cause exists as described in 08 NCAC 21 .0401. Any subsequent requests for records or questions will follow the same process.

After the expiration of time for all requests and questions, the auditor will prepare an examination memorandum. An examination memorandum sets forth any potential prohibited transactions, reporting errors, or informational items identified by the auditor during the examination. The document also includes recommendations for corrective action and requests for the committee to amend any reports. A draft of the memorandum will be provided to the treasurer. When examining a candidate committee, if the candidate is not the treasurer, then the auditor will also provide a copy to the candidate. The treasurer or assistant treasurer that chooses to respond must do so in writing within 20 business days. At the end of 20 business days, the auditor will finalize and publish the examination memorandum on the State Board of Elections' website. A copy of any written response from the treasurer or assistant treasurer will be published along with the examination memorandum.

Issues Identified During an Examination

As noted in a previous section, examinations may identify potential prohibited transactions, reporting errors or other informational items. When a potential prohibited transaction or reporting error is identified, additional efforts will be made after publication of the examination memoranda to address any potential violations of North Carolina law. Matters may be brought before the State Board of Elections for consideration of criminal penalties under G.S. § 163-278.27, or civil penalties or other civil remedies under G.S. § 163-278.34. However, when appropriate, an auditor may also seek to resolve any potential violation through informal procedures consistent with G.S. § 150B-22.

Prohibited Transactions:

If an individual, person, political committee, referendum committee, candidate, or other entity intentionally makes or accepts a contribution or makes an unlawful expenditure in violation of Article 22A, the State Board may order civil penalties or forfeitures to be deposited in the North Carolina Civil Penalty and Forfeiture Fund. G.S. § 163-278.34.

For unlawful contributions or unlawful expenditures disclosed on campaign finance reports or clearly identified from bank or depository records during an examination, the auditor will recommend corrective action in the examination memorandum. If the corrective action is not taken before publication of the examination memorandum, after publication the auditor may request a voluntary forfeiture or voluntary remittance from the committee. If the committee does not voluntarily forfeit or voluntarily remit the prohibited transaction, the State Board may consider a civil penalty, forfeiture and/or other civil remedy under G.S. § 163-278.34.

After the examination, potential violations involving a substantial amount of activity, high level of complexity, or requiring additional legal review may be subject to additional investigation pursuant to the State Board's Campaign Finance Complaint Policy adopted December 20, 2019.

Reporting Errors:

If a report fails to disclose information required by Article 22A or Article 22M, an auditor will request that the treasurer voluntarily amend the report. If the committee does not voluntarily amend the report, the State Board may consider an order under G.S. § 163-278.34(c) requiring the violator to file any report, statement, or other information required by Article 22A or Article 22M. G.S. § 163-278.34(c).