

NOTICE OF RULE MAKING

Pursuant to the power vested in me as Commissioner of Finance by New York State General Municipal Law section 99-m and sections 1043 and 1504 of the New York City Charter, I hereby promulgate rules to waive the deposit fees for cash bail or a partially secured bail bond. This rule was published in the proposed form on November 17, 2017. A hearing for public comment was held on December 21, 2017.

S/S

Jacques Jiha, Commissioner of Finance

Statement of Basis and Purpose of 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.

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.