

CITY OF NEW YORK  
CONFLICTS OF INTEREST BOARD

Commentary to Proposed Amendments to Ad. Code § 12-110

Note: Citations are to the proposed amended statute.

**§ 12-110(a)(1)**

*Since “business dealings” applies to more than just state and local agencies (see, e.g., § 12-110(d)(1)(h)(4)), it is separately defined (§ 12-110(a)(3)), as is “state agency” and “local agency” (§ 12-110(a)(18)).*

*“Affiliated” requires definition (see, e.g., § 12-110(d)(2)(e)).*

**§ 12-110(a)(2)**

*“Agency” and “city agency” are not currently defined in § 12-110, only “city employee” (current § 12-110(2)); but the financial disclosure law applies to officials and officers as well as employees, and including the definition of “city agency” within “city employee” in current § 12-110(a)(2) is awkward. The addition of the definitions for “agency” and “city agency” renders redundant the definition of “city employee,” which is therefore deleted. The definition of “agency” is based on the definition of “agency” in Charter § 2601(2), with the following changes: the deletion of community school boards, which no longer exist; the substitution of the Economic Development Corporation for the Financial Services Corporation and Public Development Corporation; the addition of the New York City Industrial Development Agency, the offices of the District Attorneys and Special Narcotics Prosecutor, and the Housing Development Corporation, all of whose officers and employees must file pursuant to New York State law (see Gen. Mun. Law §§ 810(3), 811(1)(a-1); Priv. Hous. Fin. Law § 653(2)(b)). The Board of Education still exists as a matter of state law and thus must still be included. Advisory committees are excluded because members of advisory committees, as defined in Charter § 2601(1), are not*

*public servants and thus should not be required to file a financial disclosure report.*

**§ 12-110(a)(3)**

*See Commentary to § 12-110(a)(1).*

**§ 12-110(a)(4)**

*The definition of “city” is based on the definition in Charter § 2601(9). See Commentary to § 12-110(a)(2).*

**§ 12-110(a)(7)**

*“Gift” requires definition. The proposed definition is based on the definition in Gen. Mun. Law § 805-a(1) and Pub. Off. Law § 73(5)(a).*

**§ 12-110(a)(8)**

*The definition of income is transferred from current § 12-110(d)(7) to the definitions section of the law.*

**§ 12-110(a)(10)**

*As mandated by state law (Pub. Auth. Law § 2825(3)), board members, officers, and employees of local public authorities must file a financial disclosure report with the Conflicts of Interest Board. The term “local public authority” (a/k/a “local authority”) must therefore be defined.*

**§ 12-110(a)(12)**

*Public servants holding “policymaking positions” must file a financial disclosure report (see, e.g., §§ 12-110(b)(3)(a)(2) and (b)(3)(a)(3)). This definition of “policymaking” currently appears in the Board’s Rules, 53 RCNY § 1-14; but the definition should be set forth in the statute.*

## **§ 12-110(a)(15)**

*The definition of “reimbursements” is transferred from current § 12-110(d)(8)(b) to the definitions section.*

## **§ 12-110(a)(16)**

*State law (Gen. Mun. Law § 811(1)(a-1)(ii)(C)) requires that the City’s financial disclosure law mandate disclosure of “the names and positions of any spouse or registered domestic partner, child, stepchild, brother, sister, parent, or stepparent holding a position” with the City. See § 12-110(d)(1)(p). The proposed definition of relative goes somewhat beyond the state mandate, adding dependents and spouses of relatives, who can generate significant conflicts of interest for a public servant. The current definition of “relative” (current § 12-110(a)(9)) applies only to provisions excluding disclosure of certain information relating to relatives, such as gifts from relatives, estates and trusts of relatives, assignments of income to relatives, primary and secondary residences co-owned with relatives, and debts owed by and to relatives (current § 12-110(d)(8)(d), (9)(a), (9)(b), (13)-(15)). The current definition results in too broad of an exclusion from those reporting requirements and too broad of an inclusion in regard to relatives working for the City. Inclusion of aunts, uncles, and cousins, as under current law, reaches too far. Although spouses of the listed relatives are included, the relatives of the filer’s spouse are not included because, while benefitting the former may well result in a prohibited conflict of interest under Chapter 68, benefitting the latter likely will not. For example, benefitting one’s brother’s wife will likely benefit one’s brother (an associated person) but benefitting one’s wife’s brother (not an associated person) will not likely benefit one’s wife. See Charter § 2604(b)(3) and the definition of “associated” in Charter § 2601(5).*

**§ 12-110(a)(17)**

*The definition of “securities” is transferred from current § 12-110(d)(12) to the definitions section. In addition, certificates of deposit have been deleted, as they are not considered securities by the securities industry.*

**§ 12-110(a)(19)**

*The definition of “unemancipated” is transferred from current § 12-110(d)(1). Reflecting Board interpretation, the provision specifies that the child must be unemancipated as of the date of filing.*

**§ 12-110(b)**

*Consistent with the title and purpose of the section (“Annual Disclosure”), “financial disclosure” is changed to “annual disclosure” throughout the section. The now outdated transition provisions in current law relating to the implementation of electronic filing have been deleted.*

**§ 12-110(b)(1)(a), (b)(3)(a)**

*Electronic filing dictates that the filing deadline vary somewhat each year, depending on technical and support matters related to e-filing. The deadline is thus best set by the Board, as it has been of necessity since the implementation of electronic filing.*

**§ 12-110(b)(3)(a)(1)**

*Current law excludes from the filing requirement uncompensated members of City boards and commissions, some of whom exercise substantial policymaking authority, such as the members of the Taxi and Limousine Commission. Yet state law mandates that all policymaking public servants file a report, without regard to compensation. See Gen. Mun. Law §§ 810(3) and 811(1)(a-1); NYS Senate Memorandum in Support, 2008 N.Y. Laws ch. 41. The proposed amendments would thus require all*

*policymaking board members to file. Compensated board members, all of whom are policymakers, would continue to file the current form, pursuant to §§ 12-110(b)(3)(a)(2), (b)(3)(a)(3), and 12-110(d)(1). Uncompensated board members who are policymakers would file a shorter form, pursuant to §§ 12-110(b)(3)(a)(2), (b)(3)(a)(3), and (d)(2). Such uncompensated board member filers would include, for example, TLC members but would not include community board members, who exercise no policymaking authority, as determined by the Conflicts of Interest Board. See Board Rules, 53 RCNY §§ 1-02 and 1-14; Ad. Opinion No. 91-12. Tax assessors currently file the state mandated form with the Board. See Real Prop. Tax Law § 336. They would continue to file the same form pursuant to §§ 12-110(b)(3)(a)(5), (d)(4).*

**§ 12-110(b)(3)(a)(2)-(a)(4)**

*The additions merely make explicit that policymaking and contracting officers, as well as policymaking and contracting employees, must file a report.*

**§ 12-110(b)(3)(a)(5)**

*The deleted language is rendered superfluous by the addition of § 12-110(d)(4).*

**§ 12-110(b)(3)(b)**

*See Commentary to § 12-110(b)(1)(a).*

**§ 12-110(c)(5)**

*With the advent of electronic filing, the deleted language has become obsolete.*

**§ 12-110(d)**

*All public servants of the City who currently file a financial disclosure report would continue to file the same report, with certain additions included in the proposed amendments to § 12-110(d)(1). In addition, uncompensated policymaking members of City boards and commissions, who currently do not file at all, would file the shorter form specified in § 12-110(d)(2), and members of City local public authorities would file the same shorter form, as specified in § 12-110(d)(3). Tax assessors who are not required to file the long form pursuant to § 12-110(d)(1) would file the form required by state law (Real Prop. Tax Law § 336), as specified in § 12-110(d)(4). Any other person required to file by state law, and thus by § 12-110(b)(3)(a)(6), would file the longer form specified in § 12-110(d)(1).*

**§ 12-110(d)(1)(a)**

*The definition of “unemancipated child” is transferred to § 12-110(a)(19).*

**§ 12-110(d)(1)(f)(1), (f)(2), (h)(4), (k), (l), (m), (p)**

*State law (Gen. Mun. Law § 811(1)(a-1)) mandates these changes to the current form, which in all cases broaden disclosure.*

**§ 12-110(d)(1)(g)**

*The definition of “income” is transferred to § 12-110(a)(8).*

**§ 12-110(d)(1)(h)(2)**

*The definition of “reimbursements” is transferred to § 12-110(a)(15).*

**§ 12-110(d)(1)(h)(4)**

*The exclusion of reimbursements from the definition of “gifts” is transferred to the definition of gifts in § 12-110(a)(7).*

**§ 12-110(d)(1)(l)**

*The definition of “securities” is transferred to § 12-110(a)(17).*

**§ 12-110(d)(2), (d)(3), (d)(4)**

*See Commentary to §§ 12-110(b)(3)(a)(1) and 12-110(d).*

**§ 12-110(d)(5)**

*A public servant who falls within more than one category for filing should file the most extensive form required by any of the filing categories within which he or she falls.*

**§ 12-110(e)(1)**

*The information concerning relatives of the filer in City service should be disclosed, as they raise the potential for significant conflicts of interest.*

**§ 12-110(g)(1)**

*Notification to the filer’s agency of the filer’s failure to file must await a number of checks and cross-checks to determine that the filer was in fact required to file, was properly notified of that obligation, and has failed to file. Two months reflects the time required by the Board to make those determinations.*

**§ 12-110(g)(3)**

*The proposed change merely makes explicit that only unlawful disclosure is prohibited.*