

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts

What are we proposing? The Conflicts of Interest Board is proposing to amend its rule governing the acceptance of valuable gifts by public servants.

When and where is the Hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place by video conference at 12:00 noon on March 14, 2022, and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: <https://us02web.zoom.us/j/86888358532?pwd=N1lMNXMrOXp4QTFiWW9haWg1NXpZZz09>
- **Telephone.** To access the hearing by telephone, dial (929) 436-2866. When prompted, use the following access code 868 8835 8532 and password 881936.

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

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rules@COIB.nyc.gov.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0730 or by email at kmiller@coib.nyc.gov.

Is there a deadline to submit comments? Yes, you must submit written comments by March 14, 2022.

This hearing has the following accessibility option(s) available: The Zoom platform accommodates screen reader software. Simultaneous transcription or a sign-language interpreter are available upon request.

Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter or simultaneous transcription. You can advise us by email at kmiller@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by March 11, 2022.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

What authorizes the Conflicts of Interest Board to make this rule? Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was included in the Conflicts of Interest Board's regulatory agenda for this Fiscal Year.

Where can I find the Conflicts of Interest Board's rules? The Conflicts of Interest Board's rules are in Title 53 of the Rules of the City of New York.

What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

STATEMENT OF BASIS AND PURPOSE

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with "interpretative value in construing provisions" of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued concerning public servants' acceptance of gifts. In connection with this comprehensive review, the Board proposes to amend Board Rules §§ 1-01(a) through 1-01(c) to provide additional clarity.

a. What is a Valuable Gift (§ 1-01(a))

Proposed Board Rules § 1-01(a) would reorganize the text of existing Board Rules § 1-01(a) by adding line breaks to improve readability. Proposed Board Rules § 1-01(a)(1) would amend the definition of "valuable gift" by replacing "thing" with the more illustrative, but substantively identical, term "item of value."

Proposed Board Rules § 1-01(a)(2) would codify four exceptions to the definition of “valuable gift”:

First, proposed Board Rules § 1-01(a)(2)(i) would codify the Board’s longstanding advice that public servants may utilize discounts available to the general public, including discounts for government employees. See Advisory Opinion (“A.O.”) 1995-14 (advising that public servants may utilize a special offer extended by a bank to both City employees and many businesses and organizations in a geographic area); A.O. No. 2006-4 (advising that public servants may utilize generally available government employee discounts); but see A.O. 1995-5 (advising that soliciting a discount for a subset of City employees would violate Charter § 2604(b)(3)).

Second, proposed Board Rules § 1-01(a)(2)(ii) would codify the Board’s longstanding advice that public servants may accept prizes from raffles or giveaways that are available without respect to whether the participants are public servants and where participation in the raffle or giveaway does not use City resources or identify the participant as a public servant. See A.O. No. 1991-20 (advising that a public servant may accept a prize from a competition because, in part, he did not identify himself as a public servant in his submission); A.O. No. 2012-3 (advising that a public servant may accept a raffle prize exceeding \$50 where no City resources were used in the raffle entry).

Third, proposed Board Rules § 1-01(a)(2)(iii) would codify the Board’s determination that public servants may accept free attendance at union conferences in order to conduct union business. See A.O. No. 2006-3 (advising that public servants may accept free food and accommodation from a union to attend that union’s conference on their own time).

Finally, proposed Board Rules § 1-01(a)(2)(iv) would permit public servants to accept travel expenses from a prospective employer in order to conduct an interview, provided that the travel expenses are reasonable and the trip is no longer than necessary to complete the interview. Because a public servant seeking employment is already prohibited by Charter § 2604(d)(1) from participating in any particular matter involving the potential employer, the acceptance of reasonable travel expenses poses a diminished risk of any actual or perceived impropriety.

Proposed Board Rules § 1-01(a)(3) is substantively the same as existing Board Rules § 1-01(a), and revisions are proposed for clarification of the text.

b. Definitions (§1-01 (b))

Proposed Board Rules § 1-01(b) would include reorganization of the text and the addition of paragraphs to existing Board Rules § 1-01(b), with two substantive changes:

First, proposed Board Rules § 1-01(b) would replace the term “relative” with “family member” to make consistent the usage of that term with other sections of the Board Rules.

Second, proposed Board Rules § 1-01(b)(2) would expressly include step-relatives, consistent with the Board’s longstanding interpretation of Chapter 68. See, e.g., *COIB v. J. Purvis*, COIB Case No. 2012-898a (2013) (finding that an Associate Job Opportunity Specialist with the New York City Human Resources Administration (“HRA”) misused his position in the HRA Rental Assistance Unit to issue an assistance check from HRA to his stepdaughter); *COIB v. G. Jones*, COIB Case No. 2012-458 (2013) (finding that a New York City Housing Authority (“NYCHA”) Construction Project Manager

misused his position when he recommended his stepson for a job with a vendor that the Construction Project Manager supervised as part of his official NYCHA duties).

c. Gifts from Family Members or Close Personal Friends (§1-01(c))

Proposed Board Rules § 1-01(c) is identical to existing Board Rule § 1-01(c) except for the addition of a header.

New material is underlined.

Section 1. Subdivisions (a) through (c) of Section 1-01 of Chapter 1 of Title 53 of the Rules of the City of New York are REPEALED and new subdivisions (a) through (c) of such section are added to read as follows:

(a) What is a Valuable Gift

(1) For the purposes of Charter § 2604(b)(5), a “valuable gift” is any gift to a public servant that has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, promise, or item of value in any other form.

(2) For the purposes of Charter § 2604(b)(5), a “valuable gift” does not include:

- i. An unsolicited discount available to the general public, all government employees, or all City employees.
- ii. A prize from raffles or giveaways made available irrespective of whether the participants are public servants and where participation in the raffle or giveaway does not use City resources or identify the participant as a public servant.

- iii. Free attendance at labor union conferences and events, and any attendant meals or refreshments, offered by such union for the purposes of conducting union business.
- iv. Travel expenses paid by a prospective employer for a public servant to interview for a position, provided that the travel expenses are reasonable and the trip is no longer than necessary to complete the interview.

(3) For the purposes of Charter § 2604(b)(5), two or more gifts to a public servant shall be considered a single gift if they are given to the public servant within a twelve-month period by the same person or persons who the public servant knows or should know are:

- i. family members of one another; or
- ii. directors, trustees, or employees of the same firm or affiliated firms.

(b) Definitions

As used in this section:

(1) The term “family member” means:

- i. a spouse, domestic partner, child, grandchild, parent, sibling, and grandparent;
- ii. a parent, child, or sibling of a spouse or domestic partner; and
- iii. a spouse or domestic partner of a parent, child, or sibling.

(2) The terms “child,” “grandchild,” “parent,” “grandparent,” and “sibling” include a step-child, step-grandchild, step-parent, step-grandparent, and step-sibling.

(3) Firms are “affiliated” if:

- i. one is a subsidiary of the other; or
- ii. a single person or firm owns at least 25 percent of each firm.

(c) Gifts from Family Members or Close Personal Friends

For the purposes of Charter § 2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

(1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

(2) the public servant's receipt of the gift would not result in or create the appearance of:

- i. using their office for private gain;
- ii. giving preferential treatment to any person or entity;
- iii. losing independence or impartiality; or
- iv. accepting gifts or favors for performing official duties.

**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: Acceptance of Valuable Gifts by Public Servants

REFERENCE NUMBER: COIB-25

RULEMAKING AGENCY: Conflicts of Interest Board

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

February 1, 2022
Date

**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: Acceptance of Valuable Gifts by Public Servants

REFERENCE NUMBER: 22 RG 002

RULEMAKING AGENCY: Conflicts of Interest Board

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: February 1, 2022