

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Public Servants Charged with Substantial Policy Discretion

What are we proposing? The Conflicts of Interest Board is proposing to amend its rule concerning the definition of “substantial policy discretion” as used in City Charter §§ 2604(b)(12) and 2604(b)(15) and City Administrative Code § 12-110. The Board is further proposing to repeal Section 4-03 of Chapter 4 of Title 53 of the Rules of the City of New York.

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 at 4:00 p.m. on Wednesday, April 17, 2024. The hearing will be at Spector Hall, 22 Reade Street, New York, New York 10007.

This location has the following accessibility option(s) available: Wheelchair Accessible.

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. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by telephone at (212) 437-0730 or by email at kmler@coib.nyc.gov. You can also sign up in the hearing room before the hearing begins on April 17, 2024.

Is there a deadline to submit comments? Yes, you must submit written comments by April 17, 2024.

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. You can advise us by telephone at (212) 437-0730 or by email at kmler@coib.nyc.gov. You must tell us by Monday, April 15, 2024.

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(d), 2604(b)(12), and 2604(b)(15) of the Charter authorize the Conflicts of Interest Board to make this proposed rule. These rules were 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 Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the Charter.

STATEMENT OF BASIS AND PURPOSE

Board Rules § 1-02 defines which public servants are charged with “substantial policy discretion” (also known as “policymakers”) for the purposes of City Charter § 2604(b)(12), which prohibits policymakers from fundraising for the campaigns of City elected officials or candidates for City elected offices; Charter § 2604(b)(15), which prohibits policymakers from holding certain political party positions; Administrative Code § 3-1102(e)(6), which prohibits policymakers from fundraising for legal defense trusts except their own; and Administrative Code § 12-110(b)(3)(a), which requires policymakers to file an annual disclosure report with the Conflicts of Interest Board (the “Board”). Board Rules § 1-02 requires each City agency to make its list of policymakers available to the public, to report that list annually to the Board, and to notify policymakers of the additional restrictions on their political activities found in Charter §§ 2604(b)(12) and 2604(b)(15).

The Board proposes to amend Board Rules § 1-02 for four purposes: first, to make non-substantive improvements to the readability of the definition of policymakers; second, to change the date by which City agencies must report their lists of policymakers to the

Board and to add a second reporting date; third, to establish a mechanism by which an agency head can dispute a Board determination to add or remove a policymaker from that agency's list; and, fourth, to codify the current practice that the Board, and not City agencies, notifies policymakers of the additional restrictions on their political activities.

Proposed Board Rules § 1-02(a) would make formatting and other non-substantive changes to the text of the existing definition of who is a policymaker to improve its readability, including by separating into individual subcategories the general definition and the specific positions identified in the Rule.

In proposed Board Rules § 1-02(b), the Board would move the deadline for City agencies to provide their policymakers lists to the Board each year from February 28 to February 7 to coordinate with the administrative need for agencies to identify their required filers in advance of the annual filing period under the Annual Disclosure Law. Additionally, the Board would add a second date (August 7) for City agencies to provide their lists of policymakers. In 1997, the Board amended a prior version of this Rule to change the then real-time reporting requirement to an annual requirement, after finding that the real-time requirement was overly burdensome. The Board has found annual reporting to be too infrequent, resulting in delays in the identification and notification of public servants who are policymakers. Thus, the Board proposes a middle ground by requiring reporting and notification semiannually. Additionally, the Board would add to proposed Board Rules § 1-02(b) a mechanism by which an agency head can dispute a Board determination to add or remove a policymaker from that agency's list, which is missing from existing Board Rules § 1-02.

In proposed Board Rules § 1-02(c), the Board would codify its existing practice of itself, and not City agencies, notifying policymakers of their status under the Rule; the Board has assumed this obligation from City agencies to ensure that the educational purpose of this requirement is fulfilled. Proposed Board Rules § 1-02(b)(2) would codify the Board's current practice of making agencies' policymakers lists public by posting them on the Board's website; the Board has created a centralized place for the public to obtain this information.

Finally, the Board proposes repealing Board Rules § 4-03 because it is redundant to City Administrative Code § 12-110(a)(12), and proposed Board Rules § 1-02 makes clear that its definition applies for the purposes of the Annual Disclosure Law.

Text of Proposed Board Rules

New material is underlined.

[Deleted material is in brackets.]

Section 4-03 of Chapter 4 of Title 53 of the Rules of the City of New York is REPEALED and reserved.

Section 1-02 of Chapter 1 of Title 53 of the Rules of the City of New York is amended to read as follows:

§ 1-02 Public Servants Charged with Substantial Policy Discretion.

- (a) Definition. For purposes of Charter §§ 2604(b)(12) and [§] 2604(b)(15), and Administrative Code §§ 3-1102(e)(6) and 12-110, a public servant [is deemed to have] charged with substantial policy discretion [if] includes:

(1) [he or she has] public servants with major responsibilities and who exercise[s] independent judgment in connection with determining important agency matters[.];

(2) [Public servants with substantial policy discretion include, but are not limited to:] agency heads, deputy agency heads, assistant agency heads, and public servants in charge of any major office, division, bureau, or unit of an agency[, and];

(3) members of boards and commissions other than community boards.

[Agency heads shall:

(1) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;

(2) file annually with the Conflicts of Interest Board, no later than February 28 of each year, a list of such titles or positions and the names of the public servants holding them; and

(3) notify these public servants in writing of the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15) to which they are subject. If the Conflicts of Interest Board determines that the title, position, or name of any public servant should be added to or deleted from the list supplied by an agency, the Board shall notify the head of the agency involved of that addition or deletion; the agency shall in turn promptly notify the affected public servant of the change.]

(b) [Each agency may make available for public inspection a copy of the most recent list filed by the agency, with any additions or deletions made by the Board pursuant to subdivision (a) of this section.] Reporting. By February 7 and August 7 each

year, agency heads must provide to the Board a list of the public servants at their agencies charged with substantial policy discretion. The list must include a current agency organizational chart and the name; office title; agency office, division, or unit; and email address of each public servant charged with substantial policy discretion.

(1) If the Board determines that a public servant should be added to or removed from this list, the Board shall notify the agency head of that determination. Within 30 days of receipt of the Board determination, an agency head may submit to the Board a written request for reconsideration of the Board's determination.

(2) Within 30 days of receipt of an agency's list, the Board will post on its website the name; office title; agency; and office, division, or unit of those public servants charged with substantial policy discretion.

(c) Notification. Within 30 days of receipt of an agency's list, the Board will notify in writing those public servants charged with substantial policy discretion that they are subject to the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15).

**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: Amendment of Rules Relating to Substantial Policy Discretion

REFERENCE NUMBER: 2024 RG 004

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
Senior Counsel

Date: March 1, 2024

**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: Amendment of Rules Relating to Substantial Policy Discretion

REFERENCE NUMBER: COIB-28

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

March 4, 2024
Date