

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rule Regarding Not-for-Profit Organizations Affiliated with Elected Officials

What are we proposing? The Conflicts of Interest Board proposes to amend its rules regarding not-for-profit organizations affiliated with elected officials.

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 3:30 p.m. on Wednesday, April 24, 2019, 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.
- **Mail.** You can mail comments to Christopher M. Hammer, Deputy General Counsel, Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York 10007.
- **Fax.** You can fax comments to the Conflicts of Interest Board at (212) 437-0705.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 437-0730. You can also sign up in the hearing room before the hearing begins on Wednesday, April 24, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes; you must submit written comments by Tuesday, April 23, 2019.

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. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0730. You must tell us by Monday, April 22, 2019.

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/>. A few days after the hearing, 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 at the Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York 10007.

What authorizes the Conflicts of Interest Board to make this rule? Section 1043 of the City Charter and Section 3-907 of the Administrative Code authorize the Conflicts of Interest Board to make this proposed rule. This proposed rule was not included in the Conflicts of Interest Board’s regulatory agenda for this Fiscal Year because it was not contemplated when the Conflicts of Interest Board published the agenda.

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 amending its rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of the Proposed Rule

After the enactment of Local Law 181 of 2016, the Conflicts of Interest Board adopted Board Rules to implement the new Chapter 9 of Title 3 of the Administrative Code (“Chapter 9”), which regulates not-for-profit organizations affiliated with elected officials by, among other things, requiring an affiliated organization to report certain of its donations. The Board has since received substantial feedback about these Rules. First, some not-for-profit organizations have expressed uncertainty about how the Board determines whether an organization is “affiliated with an elected official” and therefore subject to Chapter 9. Second, some affiliated organizations have suggested that the donation reporting process is needlessly complicated. This feedback, as well as the Board’s experience in implementing Chapter 9, has led to the decision to clarify and simplify these two aspects of the Board Rules.

The Board therefore proposes to amend Board Rules § 3-03 to clarify the factors by which the Board determines whether an organization is affiliated with an elected official. Because the determination is made based on the totality of the circumstances, this amendment would make clear that the Board must consider each of the individual factors listed in that

section. The amendment would also clarify the meaning of two of the existing seven factors and add an eighth factor, as follows:

- Amended factor (a) would clarify that the Board will look to whether the organization was founded by the person *currently* holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or that elected official's agent. An organization founded by a former elected official, or by the agent of a former elected official, does not, without more, suggest control by a *current* elected official or agent of a current elected official.
- Amended factor (g) would clarify that the organization's purpose is relevant to the Board's review insofar as an organization whose purpose advances either the mission of a City agency under the control of the elected official or the elected official's political or policy interests makes it more likely that the elected official or his or her agent controls the organization.
- The addition of factor (h) would permit the Board to consider whether multiple elected officials serve on the board of the organization. Where multiple elected officials serve on the board of an organization, it would be less likely that any one elected official exercises control over that organization.

The Board proposes to amend Board Rules § 3-04(b) to simplify the reporting process for unrestricted organizations. At present, an unrestricted organization (as defined in Board Rules § 3-01(k)) must both review its records and consult with its controlling elected official or agent, board members, and principal officers to determine whether any of its donors is the household member—defined as the spouse, domestic partner, or unemancipated child of the donor—of a person listed in the City's doing business database. In listening to the unrestricted organizations, the Board has learned that this requirement, as a day-to-day matter, will be unduly burdensome. In order to create a regulatory regime that balances the need for transparency with the need for practical administration, the Board now views the unrestricted organization's records as containing information sufficient to make this determination without consulting these organizational leaders.

Text of the Proposed Rule

New material is underlined.

[Deleted material is in brackets.]

Sections 3-03 and 3-04 of Title 53 of the Rules of the City of New York are amended to read as follows:

§ 3-03. Factors by which the Board Will Determine Whether an Entity is Affiliated with an Elected Official.

For purposes of Administrative Code § 3-901, in determining whether a person holding office as Mayor, Comptroller, Public Advocate, Borough President or member of the Council, or an agent or appointee of such a person, exercises control over a non-profit entity, the Board will consider the totality of the circumstances[, including] by weighing each of the following individual factors:

- (a) whether the organization was created by [such an elected official] a person currently holding office as Mayor, Comptroller, Public Advocate, Borough President, or member of the Council, or [the official's] an agent of such official, or by an individual who was previously employed by, or was a paid political consultant of, the elected official, and, if so, how recently such organization was created;
- (b) whether the board of the organization is chaired by such an elected official or the official's agent;
- (c) whether board members are appointed by such an elected official or the official's agent or only upon nomination of other individuals or entities that are not agents of such elected official;
- (d) whether board members serve for fixed terms or can be removed without cause by an elected official or the official's agent;
- (e) the degree of involvement or direction by such an elected official or the official's agent in such organization's policies, operations, and activities;
- (f) the degree to which public servants, acting under the authority or direction of the elected official or an agent of the elected official, perform duties on behalf of the organization as part of their official City employment; [and]
- (g) whether the purpose of the organization advances either the mission of a City agency under the control of the elected official or the political or policy interests of the elected official; and
- (h) whether more than one elected official serves on the board of the organization.

§ 3-04. Annual Reporting by Organizations Affiliated with an Elected Official.

Pursuant to Administrative Code § 3-902, all organizations affiliated with an elected official must submit the reporting required pursuant to Administrative Code § 3-902(a) on the Board's website, no later than August 1 for the previous calendar year, as follows.

(a) Reporting Requirements for Restricted Organizations

* * *

- (5) To determine whether a donation may be accepted pursuant to Administrative Code §§ 3-903(a) and (b), and to comply with the reporting requirement of Administrative Code § 3-902(a)(6), a restricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or as of 180 days after the date of the donation:
- (i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;
 - (ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), if any, to determine whether the donor was a household member of a person listed in the City's Doing Business Database;
 - (iii) consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is the household member of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and
 - (iv) if an organization [concludes]believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation may be accepted pursuant to

Administrative Code §§ 3-903(a) or 3-903(b) and if it must be reported pursuant to Administrative Code § 3-902(a)(6).

* * *

(b) Reporting Requirements for Unrestricted Organizations

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- (2) To comply with the reporting requirement of Administrative Code § 3-902(a)(6), an unrestricted organization must take the following steps to determine whether a donor was listed in the City's Doing Business Database or was a household member of a person listed in the City's Doing Business Database, either on the date of the donation or within 180 days after the date of the donation:
- (i) check the name of the donor against the City's Doing Business Database both at the time of the donation and as of 180 days after the date of the donation;
 - (ii) consult the organization's records, including but not limited to donors' written submissions collected pursuant to Administrative Code § 3-903(d), to determine whether the donor was a household member of a person listed in the City's Doing Business Database; and
 - (iii) [consult each of the following people: (a) the organization's affiliated elected official or the agent of the organization's affiliated elected official who exercises control over the organization; (b) each board member of the organization; and (c) each principal officer of the organization. The organization must request that each person consulted pursuant to this subparagraph review a list of the organization's most recent donors and inform the organization if such person believes that a donor is listed in the Doing Business Database, or is the domestic partner, spouse, or unemancipated child of a person listed in the Doing Business Database. The organization must obtain the names of the spouse or domestic partner of any such donor (or, if the donor is an unemancipated child, his or her parent) and check those names against the Doing Business Database; and
 - (iv)]if an organization [concludes] believes that a donor, a donor's spouse or domestic partner (or, if a donor is an unemancipated child, his or her parent), is not a person with business dealings with the City, despite such person's name matching the name of an individual in the Doing Business Database, the organization must submit information supporting that conclusion to the Board. The Board will review the submission and determine whether the donation must be reported pursuant to Administrative Code § 3-902(a)(6).

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**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 Not-for-Profit Organizations Affiliated with Elected Officials

REFERENCE NUMBER: 2019 RG 006

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: March 4, 2019

**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 Not-for-Profit Organizations Affiliated with Elected Officials

REFERENCE NUMBER: COIB-6

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/ James Archer
Mayor's Office of Operations

March 6, 2019
Date