

New York City Conflicts of Interest Board

Notice of Adoption of Final Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD BY Sections 1043 and 2063 of the City Charter that the Conflicts of Interest Board has promulgated Board Rules Sections 4-01, 4-02, and 4-03 which contain the Board's rules on the retention and filing of annual disclosure reports.

The proposed Rules were published in the City Record on July 29, 2020, and a public hearing was held on August 28, 2020. No testimony or comments were received. The Conflicts of Interest Board now adopts the following Rules.

STATEMENT OF BASIS AND PURPOSE

New York City Administrative Code § 12-110, the City's Annual Disclosure Law, requires public servants who meet the filing criteria to file reports disclosing certain financial information as well as certain information of their spouse or domestic partner and unemancipated children. In 1992, 2001, and 2004, the Board promulgated Board Rules § 4-01 (to address how filers can obtain an extension of time to file the report); Board Rules § 4-02 (how long reports are retained by the Board); and Board Rules § 4-03 (defining the policymaker criteria for filing), respectively. In the intervening years since these rules were promulgated, the Board has, among other things, transitioned from paper filing to electronic filing of reports. Board Rules §§ 4-01, 4-02, and 4-03 reflect current annual disclosure filing procedures and terminology, including those resulting from the adoption of the electronic filing system.

Board Rules § 4-01: Procedure for Requesting Extensions

Filers have a four-week period within which to submit annual disclosure reports. Pursuant to Administrative Code § 12-110(c)(4), filers who are unable to submit their reports during this period can request an extension of time. Board Rules § 4-01 allows filers to submit extension requests in writing up to ten calendar days, rather than fifteen days, prior to the filing deadline. With the advent of electronic filing, communications with filers have been conducted by email, which has reduced the time needed to send, receive, review, and make determinations on extension requests. As a result of these more expedient procedures, Board Rules § 4-01 provides filers an additional five days to make an extension request.

Under Board Rules § 4-01, extensions will only be granted if there is a justifiable cause or undue hardship that would prevent filers from completing the report during the four-week filing period. For example, the Board may grant an extension of time to a filer who has requested an extension of time to file a tax return with the Internal Revenue Service or to a filer who has been on an extended medical leave of absence during the filing period. However, most scheduled absences from work, such as vacation and attendance at conferences, or increases in workloads do

not qualify as justifiable causes or undue hardships warranting an extension of time, unless there are extenuating circumstances. In the event that an extension is granted, the new filing deadline would not be more than four months from the original filing deadline.

Board Rules § 4-02: Retention of Annual Disclosure Reports

Board Rules § 4-02 maintains the current six-year retention period established by former Board Rules § 1-10, in accordance with Administrative Code § 12-110(f), for all annual disclosure reports. The retention period starts on the date the report was filed with the Board and ends on the sixth anniversary of December 31 of the calendar year to which the report relates. For example, a 2013 report is available for public inspection up to and including December 31, 2019. Board Rules § 4-02 requires the Board to retain reports beyond the six-year retention period only upon a timely request by a law enforcement agency. The retention period would only be extended as necessary or until the law enforcement matter is concluded.

Board Rules § 4-03: Definition of Policymaker

Following the amendment to Administrative Code § 12-110(b)(3)(a) by Local Law No. 43 of 2003 that added to the list of required filers those City employees holding a “policymaking position,” Board Rules § 4-03 was promulgated in January 2004 to specify that those holding a “policymaking position” are filers with substantial policy discretion as defined in Board Rules § 1-02. Board Rules § 4-03 includes a revised definition of that term for consistency and clarity.

New material is underlined

Section 1. Board Rules §§ 4-01, 4-02, and 4-03 of Title 53 of the Rules of the City of New York are REPEALED and new Board Rules §§ 4-01, 4-02, and 4-03 are added to read as follows:

§ 4-01 Procedures for Obtaining an Extension of Time to File an Annual Disclosure Report.

(a) For the purposes of Administrative Code § 12-110(c)(4), a request for an extension of time within which to file an annual disclosure report must be made in writing, including by email, and received by the Board no later than 10 calendar days prior to the filing deadline set by the Board.

(b) The request for an extension of time must include:

(1) The name of the filer and the filer’s City agency or public entity; and

(2) An explanation of justifiable cause or undue hardship that would warrant an extension, accompanied by any supporting documentation. A justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other scheduled or voluntary absences from work, unless there are extenuating circumstances detailed in the request.

(c) The Board will review any timely request for an extension and give written notice to the filer of its determination.

(d) If the request for an extension of time is approved, such report must be filed on or prior to the new filing deadline set by the Board in its determination. The new filing deadline will not be greater than four months from the original filing deadline set by the Board.

(e) If the request for an extension of time is denied, such report must be filed by the original filing deadline set by the Board.

§4-02 Retention of Annual Disclosure Reports.

(a) For the purposes of Administrative Code § 12-110(f), the Board will retain each annual disclosure report filed with the Board for six years after the close of the calendar year to which such report relates.

(b) The Board will retain an annual disclosure report beyond the six-year retention period at the request of the Department of Investigation or any governmental unit, or component thereof, that performs as one of its principal functions any activity pertaining to law enforcement. Such request must be made in writing and received by the Board no later than 10 calendar days prior to the expiration of the six-year retention period. The Board will retain the report only for the additional time necessary or for the law enforcement matter identified in the request to be concluded.

§4-03 City Employees Holding Policymaking Positions for Purposes of the Annual Disclosure Law.

For purposes of Administrative Code § 12-110(b)(3)(a)(3), a person holds a “policymaking position” if they have been designated as having substantial policy discretion pursuant to Board Rules § 1-02.