

K14

**NOTICE**

**Notice of Adoption of Rule Defining "Policymaking Position" within the Meaning of Section 12-110(b)(3)(a)(3) of the Administrative Code**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Conflicts of Interest Board by Section 2603(a) of the New York City Charter and Section 12-110(b)(3)(a)(3) of the New York City Administrative Code that the Conflicts of Interest Board has adopted a new rule, Section 1-14 of Title 53 of the Rules of the City of New York, defining "policymaking position" within the meaning of Section 12-110(b)(3)(a)(3) of the Administrative Code. Pursuant to a notice published on October 15, 2003, in the City Record, a public hearing was held on November 20, 2003, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments and adopted the proposed rule as final. The text of the new rule is set forth below.

*[new matter is underscored]*

**§ 1-14. CITY EMPLOYEES HOLDING POLICYMAKING POSITIONS FOR PURPOSES OF THE FINANCIAL DISCLOSURE LAW.**

For purposes of Administrative Code § 12-110(b)(3)(a)(3), a City employee shall be deemed to hold a policymaking position, and therefore be required to file a financial disclosure report, if such employee is charged with substantial policy discretion within the meaning of Section 1-02 of Title 53 of the Rules of the City of New York.

**STATUTORY AUTHORITY:** Sections 2603(a) of the New York City Charter and Section 12-110(b)(3)(a)(3) of the New York City Administrative Code.  
**STATEMENT OF BASIS OF PURPOSE OF THE RULE:** Local Law 43 of 2003 amended the City's Financial Disclosure Law, Section 12-110 of the Administrative Code, to, among other things, add to the list of required filers those City employees holding a "policymaking position..., as defined by rule of the conflicts of interest board...." Ad. Code § 12-110(b)(3)(a)(3). In analogous provisions, the City's Conflicts of Interest Law (City Charter Chapter 68, § 2600 et seq.) imposes restrictions on the political activity of certain public servants "charged with substantial policy discretion as defined by rule of the [conflicts of interest] board...." Charter

§ 2604(b)(12) (prohibiting certain political fundraising by appointed public servants with substantial policy discretion) and § 2604(b)(15) (prohibiting public servants with substantial policy discretion from holding certain political party offices). "Substantial policy discretion" is defined in Board Rules § 1-02. Both the Financial Disclosure Law and the Conflicts of Interest Law thus impose certain additional responsibilities on City policymakers. No principled reason exists for defining policymaker differently in these two laws. Furthermore, linking the policymaking position rule and the substantial policy discretion rule would ensure that all public servants with substantial policy discretion file financial disclosure reports. Such a linkage also provides a simple definition and avoids a multiplicity of rules, one for substantial policy discretion and one for policymaking position. In addition, adopting a single rule for both laws will reduce, by 50%, the burden on City agencies in identifying their employees who fall within the rules. Finally, the Board has had in place for some time a system for determining which public servants exercise substantial policy discretion, and that system has worked well.

Indeed, many ethics laws link financial disclosure filing status and restrictions on high-level public servants. For example, the New York State Ethics Commission, by rule, prohibits State officers and employees who hold "policymaking positions" from moonlighting without the approval of the Commission and ties the definition of "policymaking position" for that purpose to the definition of "policymaking position" in the State financial disclosure law. See 9 NYCRR § 932.1(e) (defining "policymaking position" by cross-reference to the State financial disclosure law, NYS Pub. Off. Law §§ 73-a(1)(c)(ii) and 73-a(1)(c)(iii)) and § 932.3(c) (imposing a moonlighting restriction on individuals serving in policymaking positions). Similarly, Westchester County's Code of Ethics imposes post-employment restrictions on "reporting officers or employees," defined as those full-time County officers and employees required to file a financial disclosure statement. See Laws of Westchester County §§ 883.11(l), 883.21(h), 883.21(i)(3), 883.61.

It should be noted that this policymaker category of financial disclosure filers applies only to employees, not to officers, and thus not to members of boards and commissions. Such members must file financial disclosure reports under Ad. Code § 12-110(b)(3)(a)(1), but only if they are entitled to compensation. If they serve without compensation, they do not file financial disclosure reports, despite the fact that they exercise substantial policy discretion, as defined in 53 RCNY § 1-02(a).

**CITY OF NEW YORK  
CONFLICTS OF INTEREST BOARD**

Notice of Adoption of Rule Defining “Policymaking Position” within the  
Meaning of Section 12-110(b)(3)(a)(3) of the Administrative Code

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*[new matter is underscored]*

§ 1-14. CITY EMPLOYEES HOLDING POLICYMAKING POSITIONS FOR PURPOSES OF THE FINANCIAL DISCLOSURE LAW {PRIVATE}

For purposes of Administrative Code § 12-110(b)(3)(a)(3), a City employee shall be deemed to hold a policymaking position, and therefore be required to file a financial disclosure report, if such employee is charged with substantial policy discretion

within the meaning of Section 1-02 of Title 53 of the Rules of the City of New York.

STATUTORY AUTHORITY: Sections 2603(a) of the New York City Charter and Section 12-110(b)(3)(a)(3) of the New York City Administrative Code.

STATEMENT OF BASIS OF PURPOSE OF THE RULE:

Local Law 43 of 2003 amended the City’s Financial Disclosure Law, Section 12-110 of the Administrative Code, to, among other things, add to the list of required filers those City employees holding a “policymaking position..., as defined by rule of the conflicts of interest board....” Ad. Code § 12-110(b)(3)(a)(3). In analogous provisions, the City’s Conflicts of Interest Law (City Charter Chapter 68, § 2600 et seq.) imposes restrictions on the political activity of certain public servants “charged with substantial policy discretion as defined by rule of the [conflicts of interest] board....” Charter § 2604(b)(12) (prohibiting certain political fundraising by appointed public servants with substantial policy discretion) and § 2604(b)(15) (prohibiting public servants with substantial policy discretion from holding certain political party offices). “Substantial policy discretion” is defined in Board Rules § 1-02. Both the Financial Disclosure Law and the Conflicts of Interest Law thus impose certain additional responsibilities on City policymakers. No principled

reason exists for defining policymaker differently in these two laws. Furthermore, linking the policymaking position rule and the substantial policy discretion rule would ensure that all public servants with substantial policy discretion file financial disclosure reports. Such a linkage also provides a simple definition and avoids a multiplicity of rules, one for substantial policy discretion and one for policymaking position. In addition, adopting a single rule for both laws will reduce, by 50%, the burden on City agencies in identifying their employees who fall within the rules. Finally, the Board has had in place for some time a system for determining which public servants exercise substantial policy discretion, and that system has worked well.

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Similarly, Westchester County's Code of Ethics imposes post-employment restrictions on "reporting officers or employees," defined as those full-time County officers and employees required to file a financial disclosure statement. *See* Laws of Westchester County §§ 883.11(1), 883.21(h), 883.21(i)(3), 883.61.

It should be noted that this policymaker category of financial disclosure filers applies only to employees, not to officers, and thus not to members of boards and commissions. Such members must file financial disclosure reports under Ad. Code § 12-110(b)(3)(a)(1), but only if they are entitled to compensation. If they serve without compensation, they do not file financial disclosure reports, despite the fact that they exercise substantial policy discretion, as defined in 53 RCNY § 1-02(a).

[Financial Disclosure: FD Amendments: Policymaker rule adoption notice]