

FINANCIAL DISCLOSURE APPEALS PROCESS

A. Applicability

Any person designated as a required filer may appeal his or her agency's determination that he or she is required to file a financial disclosure report with the Conflicts of Interest Board ("COIB").

B. Appeal to the Agency Head

1. The employee must complete a "Notice of Appeal to the Agency Head" form, providing the employee's name, employee identification number ("EIN") or agency identifier, agency name, agency code, civil service title, office title, and a brief statement of the grounds for the appeal. The form is available from the agency's financial disclosure liaison.

2. The employee must file the completed Notice of Appeal with his or her agency financial disclosure liaison before the deadline for filing his or her financial disclosure report (not including the grace period) but in any event the employee shall have no less than 21 days in which to file the Notice of Appeal after receiving the notification by the agency that he or she must file a financial disclosure report. Failure to file the Notice of Appeal by that deadline will waive the right to appeal and the filer will be required to file a financial disclosure report.

3. The agency financial disclosure liaison must:

- a. Immediately time and date stamp the Notice of Appeal to indicate receipt;
- b. Immediately give the employee a copy of the time and date-stamped receipt of the Notice of Appeal;
- c. Transmit the Notice of Appeal forthwith to the agency head (or the agency head's designee); and
- d. Within five days of the receipt of the Notice of Appeal, notify the COIB by e-mail or facsimile of the pendency of the appeal. Such notice shall contain the employee's name and EIN or agency identifier and the date that the appeal was filed.

4. No later than 14 days after filing the Notice of Appeal, the employee must either:

- a. Submit to the agency head (or the agency head's designee) a written statement setting forth the reasons that the employee believes he or she should not be designated as a required filer of a financial disclosure report, or

- b. Request, in writing, a meeting with the agency head (or the agency head's designee) to discuss the agency's reasons for designating the employee as a required filer.

Failure either to submit the written statement or to request in writing a meeting within the 14-day period shall waive the right to appeal except if an employee can show good cause for his or her failure to submit a written statement or to request a meeting.

5. Where the employee has submitted a written statement (Step 4(a) above), the agency head or the agency head's designee, within 14 days of receipt of that statement, shall advise the employee and the employee's collective bargaining representative or other attorney or representative, if any, in writing, of the decision as to whether or not the employee must file. If the agency head or the agency head's designee fails to meet that 14-day deadline, the appeal shall be granted upon default.

6. Where the employee has requested a meeting with the agency head (or the agency head's designee) to discuss the agency's reasons for designating the employee as a required filer, the agency shall hold that meeting within 14 days of the receipt of that request. Either party shall, upon written request made no later than the scheduled date of the meeting, be entitled to one and only one 14-day extension. If the employee fails to appear at the meeting, the appeal shall be denied on default, except if an employee can show good cause for his or her failure to appear and the employee shall file a financial disclosure report within 30 days after the agency notifies him or her, his or her representative, if any, and the COIB of such default. If the agency head or the agency head's designee fails to appear at the meeting, the appeal shall be granted on default. Within 14 days after the meeting, the agency head or the agency head's designee shall advise the employee and the employee's collective bargaining representative or attorney or other representative, if any, in writing, of the decision as to whether or not the employee must file. If the agency head or the agency head's designee fails to meet that 14-day deadline, the appeal shall be granted upon default.

7. Any written decision of the agency head or agency head's designee that denies an appeal shall must set forth the reasons for that determination and the specific evidence in support of the determination. Agencies are advised that the burden rests upon the agency to come forward with specific evidence showing that the employee performed duties falling within one of the required filing categories. See New York City Administrative Code §12-110(b)(3)(a)(1)-(4) and Rules of the City of New York, Title 53, §§ 1-02, 1-14, and 1-15.

8. The agency may consult with the COIB prior to rendering a decision.

C. Procedure Where Agency Grants Appeal

If the agency grants the employee's appeal, the agency shall forthwith notify the COIB of the agency's decision. The COIB shall remove the employee from its list of required filers. The agency shall not place the employee back on the list until or unless his or her title, position, duties, or responsibilities change in such a way that he or she would be required to file pursuant to the criteria specified by NYC Administrative Code § 12-110(b).

D. Procedure Where Agency Denies Appeal

1. Where the agency denies an appeal, the agency must give notice of its decision within the time prescribed by either Section B(5) or B(6) above, whichever is applicable, and must submit forthwith to the COIB by email or facsimile the date on which, and manner by which, the notice of that denial was sent to the employee.
2. An employee whose appeal is denied by his or her agency must either: (1) file a financial disclosure report with the COIB or (2) file a Notice of Appeal to the COIB ("further appeal"), as set forth below.
3. If the employee elects to file a financial disclosure report and forego a further appeal, he or she shall, within 30 days after the agency gives notice of the denial, file a completed financial disclosure report with the COIB. Failure to file the report within that 30-day period may result in the imposition of the statutory late filing fine.
4. If the employee elects to file a further appeal, the employee must complete a "Notice of Appeal to the COIB" form, available from the employee's financial disclosure liaison or the COIB.
5. Within 30 days after the agency gives notice of the denial of the appeal, the employee must file with the COIB the following materials:
 - a. The completed Notice of Appeal to COIB form;
 - b. A copy of the materials submitted to the agency by the employee on the appeal;
 - c. A copy of the agency's decision on the appeal; and
 - d. Any supplemental materials that the employee elects to provide pursuant to Section D(6) below.

Failure to file the Notice of Appeal to the COIB by the 30-day deadline shall waive the right to a further appeal and require the employee to file a financial disclosure report within 30 days after the expiration of the 30-day deadline for filing the Notice of Appeal to the COIB.

6. Within 30 days after filing the Notice of Appeal to the COIB, the employee may file with the COIB such additional material as he or she deems necessary, to either rebut evidence produced by the agency or to further support his or her position.

7. Both the employee and the agency should be prepared to provide whatever additional information the COIB requests. Failure of the agency to timely provide any of the requested information may result in a summary finding in favor of the employee; failure of the employee to timely provide such information may require referral of the matter to an Office of Collective Bargaining Neutral Referee (“OCB neutral”) for fact-finding and recommendation.

8. The COIB will review the agency determination and rule either that:

a. The agency’s determination is reversed. In that case, the COIB will issue an order to the agency that the employee is not required to file a report and that the employee shall be removed from the COIB’s required filers list for subsequent years, unless the employee’s title, position, duties, or responsibilities change such that he or she should be a required filer.

or

b. The matter should be referred to an OCB neutral for a fact-finding hearing, report, and recommendation to the COIB as to whether the appeal should be granted or denied.

9. Within five days after its determination, the COIB shall provide written notice to the employee, his or her representative, if any, and the agency of the COIB’s determination. If the COIB does not reverse the agency’s determination, the COIB shall cause to be transmitted to OCB copies of any and all materials relating to the appeal.

10. Within 60 days after OCB receives from the COIB materials relating to an appeal, an OCB neutral shall conduct a hearing and submit his or her report and recommendation to the COIB, simultaneously with a copy to the employee, his or her representative, and the agency. The 60-day deadline may be extended for no more than an additional 30 days upon agreement of the employee, the agency, and the OCB neutral.

11. The OCB neutral may require the submission of additional materials he or she deems necessary to its report and recommendation to the COIB.

12. If the OCB neutral fails to submit a report and recommendation to the COIB within 90 days after receiving materials from the COIB, the COIB shall proceed to make a final determination, after the submission of such additional materials and such hearing, if any, as the COIB deems appropriate.

13. Upon receipt of the OCB report and recommendation, the COIB shall make the final determination on whether to grant or deny the appeal, as provided by law. See NYC Administrative Code § 12-110(c)(2). The COIB will notify the employee, his or her representative, and the agency of the result of the appeal.

14. If the COIB grants the appeal, the employee will not be required to file a financial disclosure report for that filing year or in future years until or unless the employee's title, position, duties, or responsibilities change such that he or she should be a required filer.

15. If the appeal is denied, the employee must file a financial disclosure report for that filing year within 30 days after notification of the denial of the appeal by the COIB.

E. General Provisions

1. At all stages of the financial disclosure appeals process, the employee may be represented by a union representative and/or an attorney or other person.

2. During the pendency of the appeal, the employee need not file a report, and no late filing fines will be assessed for that period.

3. Whenever a deadline in the above process is measured from the giving of notice and notice is given by mail, five days shall be added to the deadline.

4. In a case where an appeal has been granted on the merits, the employee is to be removed from the COIB required filers list and need not file, and may not be designated as a filer, until or unless his or her title, position, duties, or responsibilities change such that he or she should be a required filer.

5. In the case of any appeal that is granted by default, the grant of the appeal shall apply to that filing year only and shall not be a determination on the merits.

6. Unless otherwise stated, any reference to a number of days specified as a time period within which an act is required to be done means such number of calendar days.