City of New York
OFFICE OF THE COMPTROLLER

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FINANCIAL AUDIT

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Audit Report on the Conflicts of Interest Board’s Oversight over Collection and Reporting of Enforcement Fines

FK17-068A
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To the Residents of the City of New York:

My office has audited the Conflicts of Interest Board’s (COIB’s) oversight over the collection and reporting of enforcement fines. We audit entities such as the COIB to ensure that they collect, properly safeguard, and accurately report all fines due to the City.

The audit found that the COIB did not adequately safeguard enforcement fines that were collected, in that it did not deposit cash receipts, consisting of checks and money orders, in a timely manner and did not properly secure these items pending their deposit. Consequently, enforcement fines were susceptible to risk of misappropriation or loss. In addition, the COIB did not collect enforcement fines in a timely manner and this increased the risk that these sums could potentially remain uncollected.

The audit makes six recommendations including that the COIB should deposit all cash receipts in the bank on at least a daily basis, and accurately represent its internal control structure in its Comptroller’s Directive #1 Checklist. The audit also recommends that the COIB place restrictive endorsements on incoming checks and money orders as soon as they are received, and secure checks and money orders awaiting deposit in a locked safe which has a combination that is changed periodically and known to few individuals. Finally, the audit recommends that the COIB ensure that all fines are collected in accordance with the Enforcement Dispositions, and that the COIB document its efforts to collect fines that are not paid in accordance with the Enforcement Dispositions.

The results of this audit have been discussed with COIB officials and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

Scott M. Stringer
# TABLE OF CONTENTS

## EXECUTIVE SUMMARY
- Audit Findings and Conclusions ................................................................. 1
- Audit Recommendations ............................................................................... 2
- Auditee Response ...................................................................................... 2

## AUDIT REPORT
- Background .................................................................................................. 3
- Objectives ...................................................................................................... 3
- Scope and Methodology Statement ............................................................. 3
- Discussion of Audit Results ........................................................................ 4

## FINDINGS AND RECOMMENDATIONS
- The COIB Did Not Deposit Cash Receipts in a Timely Manner .................. 6
  - Recommendations .................................................................................. 6
- The COIB Did Not Restrictively Endorse Checks as They Were Received, and Did
  Not Properly Secure Cash Receipts .......................................................... 8
  - Recommendations ................................................................................. 9
- The COIB Did Not Collect Enforcement Fines in a Timely Manner .......... 9
  - Recommendations ............................................................................... 11

## DETAILED SCOPE AND METHODOLOGY

## ADDENDUM
THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
FINANCIAL AUDIT

Audit Report on the Conflicts of Interest Board’s
Oversight over Collection and Reporting of
Enforcement Fines

FK17-068A

EXECUTIVE SUMMARY

The Conflicts of Interest Board (COIB) is responsible for administering, enforcing, and interpreting Chapter 68 of the New York City Charter, the City’s Conflicts of Interest Law. The Conflicts of Interest Law prohibits certain types of holdings, employment positions, and conduct by the City’s public servants to prevent conflicts between their public duties and private interests and covers such topics as gifts, outside employment, business-ownership interests, volunteering, political activities, and misuse of position. The Charter authorizes the COIB to receive complaints; direct the New York City Department of Investigation to conduct investigations; impose fines of up to $25,000 for violations of the Conflicts of Interest Law; and order payment to the City for the value of any gain or benefit obtained as a result of the violation. The COIB also publishes advisory opinions on issues that may arise regarding the application of the Conflicts of Interest Law and collects and reviews the annual financial disclosures submitted by City employees.

The COIB collects cash receipts related to enforcement fines, annual disclosure fines, and fees for copying COIB documents.1 This audit examined only the COIB’s controls over the collection and reporting of enforcement fines. In its 2016 Annual Report, the COIB reported that it closed 429 enforcement cases. Of those cases, the COIB determined that the Conflicts of Interest Law had been violated in 56 cases, and imposed fines in 54 cases. Further, the COIB reported that it collected $110,150 in fines from violators.

Audit Findings and Conclusions

We found that the COIB did not adequately safeguard enforcement fines that were collected, in that it did not deposit cash receipts, consisting of checks and money orders, in a timely manner and did not properly secure these items pending their deposit. Consequently, enforcement fines were susceptible to risk of misappropriation or loss. In addition, the COIB did not collect

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1 Comptroller’s Directive #11, Section 4, provides, in part, “Cash receipts, for the purposes of this Directive, encompass all payments and deposits received in the form of cash or cash equivalents, including currency, coins, checks, money orders, credit card payments, and electronic fund transfers.” The COIB's cash receipts for enforcement fines during the audit scope period consisted of checks and money orders. Cash currency is not accepted.
enforcement fines in a timely manner and this increased the risk that these sums could potentially remain uncollected.

**Audit Recommendations**

To address these issues, we make six recommendations, including that the COIB should:

- Deposit all cash receipts in the bank on at least a daily basis.
- Accurately represent its internal control structure in its Directive #1 Checklist.
- Place restrictive endorsements on incoming checks and money orders as soon as they are received.
- Secure checks and money orders awaiting deposit in a locked safe which has a combination that is changed periodically and known to few individuals.
- Ensure that all fines are collected in accordance with the Enforcement Dispositions.
- Document its efforts to collect fines that are not paid in accordance with the Enforcement Dispositions.

**Auditee Response**

In its response, the COIB agreed with the three recommendations related to the accuracy of its Directive #1 Checklist and the security of cash receipts awaiting deposit. In addition, the COIB contended that it is already in compliance with the recommendation that it document its collection efforts. However, since the COIB did not provide us with documentation of its collection efforts, we cannot determine the validity of its claim. The COIB did not agree to ensure that all fines are collected in accordance with the Enforcement Dispositions and deposit them upon receipt.
AUDIT REPORT

Background

The COIB is responsible for administering, enforcing, and interpreting Chapter 68 of the New York City Charter, the City’s Conflicts of Interest Law. The Conflicts of Interest Law prohibits certain types of holdings, employment positions, and conduct by the City’s public servants to prevent conflicts between their public duties and private interests and covers such topics as gifts, outside employment, business-ownership interests, volunteering, political activities, and misuse of position. The Charter authorizes the COIB to receive complaints; direct the New York City Department of Investigation to conduct investigations; impose fines of up to $25,000 for violations of the Conflicts of Interest Law; and order payment to the City for the value of any gain or benefit obtained as a result of the violation. The COIB also publishes advisory opinions on issues that may arise regarding the application of the Conflicts of Interest Law and collects and reviews the annual financial disclosures submitted by City employees.

The COIB collects cash receipts related to enforcement fines, annual disclosure fines, and fees for copying COIB documents. This audit examined only the COIB’s controls over the collection and reporting of enforcement fines. In its 2016 Annual Report, the COIB reported that it closed 429 enforcement cases. Of those cases, the COIB determined that the Conflicts of Interest Law had been violated in 56 cases, and imposed fines in 54 cases. Further, the COIB reported that it collected $110,150 in fines from violators.

In accordance with the City Charter, Administrative Code, and Rules of the City of New York, the Mayor, the Comptroller, and various oversight agencies have established rules and regulations to standardize administrative, financial, and management procedures across all City agencies. The Office of the New York City Comptroller has issued Internal Control and Accountability Directives (Comptroller’s Directives) that agencies must follow. Comptroller’s Directive #1, *Principles of Internal Control*, outlines specific internal control functions that are necessary in satisfying the agency’s overall responsibility for successfully achieving its assigned mission and assuring full accountability for resources. Further, Comptroller’s Directive #11, *Cash Accountability and Control*, outlines the basic internal controls and accountability requirements for establishing bank accounts, recording receipts and disbursements, and the reconciliation of all cash or cash equivalents, including currency, checks, money orders, credit cards, and electronic fund transfers.

Objectives

To determine whether the COIB:

- ensured that violators paid fines; and
- properly safeguarded and accurately reported fines that it collected.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our
findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers Fiscal Year 2016 (July 1, 2015 through June 30, 2016). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

**Discussion of Audit Results**

The matters covered in this report were discussed with COIB officials during and at the conclusion of this audit. The preliminary draft report was sent to the COIB on November 13, 2017 and was discussed at an exit conference held on November 29, 2017. On December 6, 2017 we submitted a draft report to the COIB with a request for written comments. On December 20, 2017, we received written comments from the COIB.

In its response, the COIB agreed with the three recommendations related to the accuracy of its Directive #1 Checklist and the security of cash receipts awaiting deposit. Further, the COIB contended that it is already in compliance with the recommendation to document its collection efforts. However, since the COIB did not provide us with documentation of its collection efforts, we cannot determine the validity of its claim. The COIB did not agree to ensure that all fines are collected in accordance with the Enforcement Dispositions and deposit them upon receipt.

While the COIB generally agreed with the report’s recommendations, in its response the agency stated,

> the delays in depositing cash receipts were far less extensive than the Report posits. The Report measures ‘lateness’ by the standard that cash receipts should be deposited on the day they are received, regardless of whether the Board has a legal right to the money it has received. This standard is incorrect. The appropriate standard for when a cash receipt should be deposited is the date on which the City first has a legal right to that receipt. . . . The Board, and thus the City, obtains a legal right to any payment of a proposed fine only after the Board accepts the settlement offer made by the respondent by approving the language of the proposed disposition and approving the amount of the proposed fine at one of the Board’s Charter-mandated monthly meetings.

However, we find this claim unpersuasive since the COIB has not presented a valid reason why the fact that it is in possession of payments in advance of its settlements being finalized would prevent it from depositing those funds into an appropriate City bank account on a timely basis to ensure their safe keeping.

Additionally, the COIB stated in its response,

> [t]he Report employs an incorrect metric for measuring when enforcement fine payments are due. . . . [T]he Report uses as its metric for assessing when a fine payment is ‘past due’ the Board’s standard disposition language, which states: ‘I agree to pay a fine of [dollar amount] to the Board...at the time of my signing this Disposition.’ . . . As a matter of law, this language does not give the Board a legal right to any fine payment made pursuant to the disposition.

We do not take issue with the COIB’s contention that it does not have a legal right to settlement payments before agreements are finalized. However, as stated in its response, the COIB must
have both a signed settlement agreement and payment for the settlement offer to be complete, and ready to present to the Board for approval. Therefore, as an administrative matter, the COIB should ensure that respondents pay fines by the dates specified in their Enforcement Dispositions so the COIB can settle cases in a timely manner.
FINDINGS AND RECOMMENDATIONS

We found that the COIB did not adequately safeguard enforcement fines that were collected, in that it did not deposit cash receipts, consisting of checks and money orders, in a timely manner and did not properly secure these items pending their deposit. Consequently, enforcement fines were susceptible to risk of misappropriation or loss. In addition, the COIB did not collect enforcement fines in a timely manner and this increased the risk that these sums could potentially remain uncollected.

These findings are discussed in the following sections of this report.

The COIB Did Not Deposit Cash Receipts in a Timely Manner

Comptroller’s Directive #11 states that the “inordinate accumulation of in-office cash receipts is not acceptable and, generally, all funds received must be deposited in the bank on at least a daily basis.” In its Directive #1 Financial Integrity Statement and Checklist for Calendar Year 2016, the COIB stated that cash receipts were recorded daily but deposited only monthly. The COIB stated that its “small size, as well as its limited budget, has prevented the agency from fully implementing all of the Comptroller’s Directives.” In the Checklist, the COIB also stated that it followed mitigating controls prescribed by Comptroller’s Directive #11. However, we found that mitigating controls such as the use of restrictive endorsements and safes were not properly utilized. Moreover, the COIB did not deposit cash receipts monthly as it reported in the Checklist. These issues are discussed in detail below.

Based on our review, 48 of the 49 payments totaling $68,550 collected in Fiscal Year 2016 were not deposited in accordance with Directive #11. We found that the COIB held these cash receipts, consisting of checks and money orders, from 1 to 126 days, and on average for 38 days. At the exit conference, COIB officials maintained that the COIB is not legally entitled to the cash receipts until the Enforcement Dispositions under which they are collected are signed by the Board and the settlements are finalized and so the agency did not have the authority to deposit the funds.

However, the fact that the COIB is in possession of payments in advance of its settlements being finalized should not prevent it from timely depositing those funds into an appropriate City bank account to ensure their safety. If depositing those funds into the City’s general fund were determined as a legal matter to be prohibited given that the settlements were not finally approved, then a determination should be made as to whether the COIB needs to deposit those funds in escrow in a different City account pending finalization of the settlements.

Moreover, even by the COIB’s standard of depositing payments when settlements are finalized, we found that the COIB held cash receipts after such finalizations from 1 to 67 days, and on average for 18 days. By holding onto cash receipts and not depositing them on a daily basis, COIB incurs the risk that they could be lost or stolen, resulting in loss of revenue for the City.

**Recommendations**

The COIB should:

1. Deposit all cash receipts in the bank on at least a daily basis.
**COIB Response:** “The Board acknowledges that, in Fiscal Year 2016, cash receipts were not deposited in a sufficiently timely manner and commits to making more frequent deposits of cash receipts. . . .

Additionally, the delays in depositing cash receipts were far less extensive than the Report posits. The Report measures ‘lateness’ by the standard that cash receipts should be deposited on the day they are received, regardless of whether the Board has a legal right to the money it has received. This standard is incorrect. The appropriate standard for when a cash receipt should be deposited is the date on which the City first has a legal right to that receipt. . . .

As a general matter, the Board formally considers a potential settlement of a charged violation of the conflicts of interest law only after the respondent has satisfied all of the required pre-conditions of that settlement, most notably the agreement to and signing of a public disposition, incorporating admissions of specific violations of the conflicts of interest law, and the payment of a proposed fine. The Board, and thus the City, obtains a legal right to any payment of a proposed fine only after the Board accepts the settlement offer made by the respondent by approving the language of the proposed disposition and approving the amount of the proposed fine at one of the Board’s Charter-mandated monthly meetings. . . .

While not a ‘recommendation,’ the Report suggests the Board make a legal determination as to whether it should deposit cash receipts provided as part of settlement offers into an escrow account. The Board does not utilize an escrow account for a number of reasons. First, the City’s Department of Finance issued a Bank Account Policy, effective October 1, 2010, specifically seeking to reduce the number of City bank accounts due to the cost of maintaining such accounts. In recognition of and in compliance with this policy, the Board has not opened another bank account. Second, to utilize such an account would require additional staff time to manage these funds: either to transfer funds from that account to the City’s primary account when the Board becomes legally entitled to a payment made as part of a settlement offer; to issue a check to a respondent who had decided to rescind a settlement offer prior to Board acceptance, as the respondent has the legal right to do; or to issue a check to a respondent if the Board rejects the settlement offer, which the Board can and does do.”

**Auditor Comment:** As previously stated, the COIB has not provided a valid reason why the fact that the COIB is in possession of payments from respondents in advance of settlements being finalized would prevent it from promptly depositing those funds into an appropriate City bank account to ensure their safety. If depositing those funds into the City’s general fund is prohibited, the COIB should deposit them in escrow, in a different City bank account if necessary, pending finalization of the settlements.

It should be noted that under Comptroller’s Directive #11, which requires daily bank deposits, cash receipts “encompass all payments and deposits received.” [Emphasis added.] Thus, the checks received by the COIB are defined as cash receipts and their handling is governed by Directive #11, as noted.

Moreover, the Department of Finance Bank Account Policy cited by the COIB was not issued specifically to reduce the number of City bank accounts. The stated purpose of the policy is to “establish adequate control procedures over
City cash assets, minimize the City’s risk of financial loss, and reduce the City’s bank fees.” With regard to reducing bank fees, the policy simply states that “[b]ank accounts that have been dormant for more than six months should be closed.”

Furthermore, the COIB’s assertion that it cannot use an escrow account because it would require additional staff time is not reasonable. As noted in the report, the COIB received only 49 enforcement fine payments during Fiscal Year 2016. Depositing those payments into a City escrow account on or within a day of their receipt, as required by Comptroller’s Directive #11, and transferring them to the City’s general fund once the settlements are approved by the Board each month would require a nominal effort. By following such a procedure, the COIB could ensure that the cash receipts are adequately safeguarded the whole time they are in the COIB’s possession.

2. Accurately represent its internal control structure in its Directive #1 Checklist.

COIB Response: “The Board will make weekly deposits of those cash receipts that the Board has either accepted as settlement or ordered as resolution of Chapter 68 violations and will accurately represent that procedure in its Directive #1 Checklist.”

Auditor Comment: As previously stated, it would take a nominal effort to deposit the enforcement fines in an escrow account on a daily basis and then transfer the payments to the City’s general fund once they are approved by the Board each month. The COIB has not presented a persuasive argument why the Directive #11 requirements cannot be followed here.

The COIB Did Not Restrictively Endorse Checks as They Were Received, and Did Not Properly Secure Cash Receipts

Comptroller’s Directive # 1 provides that

[a]n agency must establish physical control to secure and safeguard vulnerable assets. Examples include security for and limited access to assets such as cash, securities, inventories, computers and other equipment, which might be vulnerable to risk of loss or unauthorized use.

Additionally, Comptroller’s Directive # 11 requires that

[c]ash and checks received too late to be included in the daily deposit must be stored overnight in an agency safe. Safes should also be used for temporary security of cash receipts awaiting the daily deposit.

The restrictive endorsement required by Comptroller’s Directive #11 is a stamped notation on a check or money order, which states that the item is for deposit only to a specified agency bank account.

In its Directive #1 Financial Integrity Statement and Checklist for Calendar Year 2016, the COIB stated that it placed a restrictive endorsement on incoming checks as soon as they were received, and that it properly secured cash receipts in a locked safe with a periodically changed combination known to few individuals.
However, during the audit, COIB officials informed us that the agency did not place restrictive endorsements on incoming checks and money orders as they were received, but did so later—when they were prepared for deposit. As noted above, cash receipts were held for 38 days on average, and in some instances, as long as 126 days before being deposited. Further, we observed that the COIB did not secure checks and money orders awaiting deposit in a locked safe. Instead, payments were stored in a locked bag that was stored in a locking desk drawer until they were deposited. By not restrictively endorsing checks and money orders upon receipt, and not storing them in a safe while they await deposit, the COIB runs the risk that cash receipts could be lost or stolen, which would result in loss of revenue for the City.

**Recommendations**

The COIB should:

3. Place restrictive endorsements on incoming checks and money orders as soon as they are received.

  *COIB Response:* “[T]he Board is now placing restrictive endorsements on incoming checks and money orders as soon as they are received.”

4. Secure checks and money orders awaiting deposit in a locked safe which has a combination that is changed periodically and known to few individuals.

  *COIB Response:* “[T]he Board now stores all cash receipts in a locked safe with a combination that will be changed periodically and is known to few individuals.”

**The COIB Did Not Collect Enforcement Fines in a Timely Manner**

COIB fines are stipulated in Enforcement Dispositions and are payable by Conflicts of Interest Law violators upon signing or in accordance with payment schedules. The Directive #1 Financial Integrity Statement and Checklist states that “collection procedures should be adhered to and monitored. Following-up on outstanding violations is important and may be the most significant control feature in the entire process.”

In its Directive #1 Financial Integrity Statement and Checklist for Calendar Year 2016, the COIB stated that it had controls that allow for the collection of fines on a timely basis and that it takes timely legal action when a violator fails to pay fines.

However, based on our review, the COIB did not ensure that violators paid fines by their due dates in 33 out of the 38 cases for which fines were imposed during Fiscal Year 2016. For those 33 cases, the COIB imposed fines totaling $64,900 which were due to be paid in 55 payments. (In 28 cases, fines were due upon signing or another specified date. Five fines were scheduled to be paid in 27 installment payments.) We found that 51 of the 55 payments due (totaling $63,650) were received from 1 to 398 days late, and on average 52 days late.

The COIB maintained that it contacted violators regarding late payments and documented its collection efforts in its case files. We requested that the COIB provide us with documentation showing its efforts to collect fines totaling $47,142 that were outstanding for more than one week. The COIB declined to provide the requested documentation, citing New York City Charter § 2603(k), which states that certain COIB records shall be confidential, and the COIB added that
the documents may also be protected by attorney work product privilege. On those points we informed the COIB that in our view the communications it makes to others outside of the office related to the collection of fines ordered through public Enforcement Dispositions are not confidential under Charter § 2603(k). Moreover, the Comptroller’s Office is entitled under Charter Section 93(c) to obtain access to agency records required by law to be kept confidential, other than those protected by the privileges for attorney-client communications, attorney work products, or material prepared for litigation. Nevertheless, the COIB did not provide us with any documentation of its efforts to collect outstanding fines. In the absence of such documentation, we cannot verify the COIB’s assertion that it made efforts to follow up on outstanding fines, and therefore, the COIB risks that collection of late fines could be overlooked, and the fines could ultimately remain uncollected.

**COIB Response:** “[T]he Report uses as its metric for assessing when a fine payment is ‘past due’ the Board’s standard disposition language, which states: ‘I agree to pay a fine of [dollar amount] to the Board…at the time of my signing this Disposition.’ . . . Relying on this language as a measure of ‘lateness’ is inappropriate, both legally and practically.

As a matter of law, this language does not give the Board a legal right to any fine payment made pursuant to the disposition. The Board only obtains a right to a fine payment if and when the Board formally approves the settlement. Instead, this language is part of the Board’s effort to encourage respondents to make the payments required to complete settlement offers; in other words, by having the respondent state that he or she agrees to make payment at the time of the signing of the tentative disposition, it conveys that the payment is part and parcel of a complete settlement offer. But until the Board approves that settlement offer in its entirety, the document remains just that: an offer to settle.”

**Auditor Comment:** The COIB’s claim that payments can never be “past due” contradicts the language in its own Enforcement Dispositions and its procedures. Moreover, apart from the question of when the COIB obtains a “legal right” to collect a fine pursuant to a settlement, as stated in its response, the COIB must have both a signed settlement agreement and payment of the fine for the settlement offer to be complete, and ready to present to the Board for approval. Therefore, as an administrative matter, the COIB should ensure that respondents pay fines by the dates specified in their Enforcement Dispositions so the COIB can settle cases in a timely manner.

**COIB Response:** “[T]he Report states that the Board declined to provide the Comptroller’s Office with records documenting the Board’s efforts to obtain payment from respondents because the Board maintains that the documents are confidential pursuant to City Charter § 2603(k) and are further protected as attorney work product. The Report goes on to state that the view of the Comptroller’s Office is that ‘the communications [the Board] makes to others outside of the office related to the collection of fines ordered through public Enforcement Dispositions are not confidential under Charter § 2603(k)’ and that ‘the Comptroller’s Office is entitled under Charter Section 93(c) to obtain access to agency records required by law to be kept confidential, other than those protected by the privilege for attorney-client communications, attorney work products, and material prepared for litigation.’ . . .

The Comptroller’s Office errs in several ways. First, the documents described are all confidential pursuant to Chapter 68 of the City Charter. See City Charter §§ 2603(h)(4), 2603(k); Board Rules §§ 2-05(f), 2-05(h). Second, the documents described are all attorney work product, in that they include the notes made by Board attorneys of telephone calls with respondents in the course of settlement discussions. N.Y. C.P.L.R. 3101(c). Third, as described above, the vast majority of these communications are not
'communication [the Board] makes to others outside the office for the collection of fines ordered through the public Enforcement Dispositions,’ but rather communications with respondents as part of settlement negotiations and are, therefore, materials prepared for litigation. N.Y. C.P.L.R. 4547.”

**Auditor Comment:** As stated in the report, the Comptroller’s Office is entitled under Charter Section 93(c) to obtain access to agency records required by law to be kept confidential, other than those protected by the privileges for attorney-client communications, attorney work products, or material prepared for litigation. As we informed the COIB during the audit, in our view the communications it makes to others outside of the office related to the collection of fines ordered through public Enforcement Dispositions are not confidential and are not privileged either as attorney work product or as material prepared for litigation, and as expressly provided by § 93(c) of the City Charter, we are entitled to review them in connection with our audit.\(^2\) The COIB did not present any persuasive authority or rationale to support its claims to the contrary. Moreover, it did not present any authority for its contention that the broad confidentiality rules associated with its proceedings that protect individuals alleged to have violated the conflicts of interests laws would shield the agency itself from the City Charter mandated oversight of the City Comptroller’s office. See *Comptroller v. New York City Department of Finance*, 46 Misc.3d 403, 415 (N.Y. Co. 2014).

### Recommendations

The COIB should:

5. Ensure that all fines are collected in accordance with the Enforcement Dispositions.

**COIB Response:** COIB disagreed, stating, “The Board successfully collected all enforcement fines in accordance with the enforcement dispositions. Of the 37 cases in which the Board approved settlements involving the payment of a fine, all but three of those dispositions were signed by the Board Chair only after the respondent had fully completed payment of the proposed fines. In the remaining three cases, one respondent made one on-time payment, the second respondent made two on-time payments, and the third respondent made several late, but nevertheless complete, payments. No action is needed.”

**Auditor Comment:** While the COIB ultimately collected all fines that were due, the COIB did not collect fines in the time frames specified in Enforcement Dispositions. As previously stated, the COIB did not ensure that violators paid fines by their due dates in 33 out of the 38 cases for which fines were imposed during Fiscal Year 2016. For those 33 cases, the COIB imposed fines totaling $64,900 which were due to be paid in 55 payments. (In 28 cases, fines were due upon signing or another specified date. Five fines were scheduled to be paid in 27 installment payments.) We found that 51 of the 55 payments due

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2 Reference to CPLR 4547’s protection of statements made in the course of settlement negotiations from use as proof of liability against a party at trial is not relevant to the Comptroller’s entitlement in the course of an audit to review confidential City agency records so long as they are kept confidential by the Office of the Comptroller. Indeed, the CPLR specifically notes that “The provisions of this section shall not require the exclusion of any evidence, which is otherwise discoverable, solely because such evidence was presented during the course of compromise negotiations.”
(totaling $63,650) were received from 1 to 398 days late, and on average 52 days late.

6. Document its efforts to collect fines that are not paid in accordance with the Enforcement Dispositions.

**COIB Response:** “[T]he Board makes and maintains thorough records of its efforts to collect fines.”

**Auditor Comment:** As previously stated, without documentation we cannot verify the COIB’s assertion that it made efforts to follow up on outstanding fines.
DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers Fiscal Year 2016.

To obtain an understanding of the procedures and regulations that govern the COIB’s collection, safeguarding, and reporting of enforcement fines, we reviewed relevant portions of Chapter 68 of the New York City Charter; New York City Comptroller’s Internal Control and Accountability Directives #1, Principles of Internal Control; Directive #11, Cash Accountability and Control; as well as the COIB’s Directive #1 Checklist responses for Calendar Year 2016. These Comptroller’s Directives were used as criteria in evaluating the COIB’s controls over cash receipts. We also requested and reviewed the COIB’s available internal policies and procedures, and interviewed COIB officials to obtain an understanding of the COIB’s procedures for recording, collecting, and safeguarding enforcement fines that it collected.

We observed the extraction of a report of all cases closed in Law Manager for Fiscal Year 2015 and Fiscal Year 2016 (July 1, 2014 to June 30, 2016). To determine whether the COIB correctly classified each type of case, we randomly selected 50 out of 1,024 cases from Fiscal Year 2016 and obtained and reviewed redacted documentation from the case file, to verify the correct case type was recorded in Law Manager.

To ensure the COIB included all enforcement cases on its Enforcement Fines List for Fiscal Year 2016, we obtained and compared COIB’s CY 2015 and CY 2016 Annual Reports (i.e., the Enforcement Case Summaries section) and its Enforcement Fines List. We also obtained the Enforcement Dispositions for all cases listed on the Fiscal Year 2016 Enforcement Fines List to determine whether the listing accurately reflected the penalties that were imposed in the Enforcement Disposition. We also determined whether the list included all instances of fines owed to the COIB. For Fiscal Year 2016, we determined that, in total, there were 38 enforcement cases for which the COIB imposed fines totaling $74,550.

For all 49 payments totaling $74,550 received between July 1, 2015 to June 30, 2016, we requested and reviewed copies of checks/money orders, Enforcement Fine Forms, deposit slips and related bank documentation, and FMS documentation to determine whether fines were properly recorded, collected, and deposited in a timely manner. We reviewed the Enforcement Dispositions and deposit documentation to ensure that the COIB collected the full amount of the fined that were imposed. We compared the date payments were received to the dates payments were due as stipulated in the Enforcement Dispositions, and calculated the number of days that fines were outstanding. In addition, to determine whether the COIB deposited cash receipts in a timely manner, we compared the date payments were received to the deposit dates on the bank receipts, and calculated the number of days that cash receipts were held before deposit. We also determined whether there was evidence of adequate segregation of duties between the

3 Law Manager is the system the COIB uses to track its enforcement, disclosure, and advice cases.
individuals responsible for the collection, recording, and deposit of fines. Lastly, we observed where the COIB stored checks and money orders that were awaiting deposit.

The results of the above tests, while not statistically projected to their respective populations, provided a reasonable basis for us to assess that the COIB correctly classified the case type in Law Manager.
December 20, 2017

BY E-MAIL

Marjorie Landa
Deputy Comptroller for Audit
New York City Office of the Comptroller
Municipal Building
One Centre Street, Room 1100
New York, New York 10007

Re: Audit Report on the Conflicts of Interest Board’s Oversight Over Collection and Reporting of Enforcement Fines FK17-068A

Dear Ms. Landa:

The Conflicts of Interest Board (the “Board” or “COIB”) has reviewed the Comptroller’s December 6, 2017, Draft Audit Report (the “Report”) on the Board’s collection and reporting of enforcement fines in Fiscal Year 2016. The stated objectives for the Comptroller’s audit are “To determine whether the COIB: ensured that violators paid fines; and properly safeguarded and accurately reported fines that it collected.” The Board thanks the Comptroller’s Office for identifying opportunities for the Board to improve its processes for collecting and reporting enforcement fines, as the Board is always seeking to improve its processes even when, as was the case in the period audited by the Comptroller’s Office, the Board successfully collected, secured, and reported every enforcement fine it imposed.

The Report provides four recommendations regarding the depositing and safeguarding of cash receipts and provides two recommendations regarding the collection of enforcement fines.

A. Depositing and Safeguarding Cash Deposits

The Report provides four recommendations related to the frequency of cash receipt deposits and the security of cash receipts awaiting deposit.
The Board acknowledges that, in Fiscal Year 2016, cash receipts were not deposited in a sufficiently timely manner and commits to making more frequent deposits of cash receipts.

However, none of the dangers identified in the Report as potentially accompanying deposit delays manifested themselves in Fiscal Year 2016. The Report states that cash receipts not deposited the day they were received “were susceptible to risk of misappropriation or loss and could potentially remain uncollected.” No cash receipts were misappropriated, lost, or uncollected by the Board during Fiscal Year 2016, as acknowledged in the Report.

Additionally, the delays in depositing cash receipts were far less extensive than the Report posits. The Report measures “lateness” by the standard that cash receipts should be deposited on the day they are received, regardless of whether the Board has a legal right to the money it has received. This standard is incorrect. The appropriate standard for when a cash receipt should be deposited is the date on which the City first has a legal right to that receipt. As is acknowledged in the Report, COIB does not deposit cash receipts unless and until the Board itself makes a formal determination that a Chapter 68 violation has occurred, either by issuing an Order imposing a fine after a hearing or by accepting a settlement offer in resolution of a violation.

An understanding of the Board’s enforcement process is critical here. As a general matter, the Board formally considers a potential settlement of a charged violation of the conflicts of interest law only after the respondent has satisfied all of the required pre-conditions of that settlement, most notably the agreement to and signing of a public disposition, incorporating admissions of specific violations of the conflicts of interest law, and the payment of a proposed fine. The Board, and thus the City, obtains a legal right to any payment of a proposed fine only after the Board accepts the settlement offer made by the respondent by approving the language of the proposed disposition and approving the amount of the proposed fine at one of the Board’s Charter-mandated monthly meetings. Prior to the Board accepting such a settlement offer – offers that the Board can and does reject – the respondent may choose to revoke his or her settlement offer, in which case Board staff would be required to commence a formal proceeding against the respondent at the City’s Office of Administrative Trials and Hearings (“OATH”). Only after the Board makes a finding of a violation of the conflicts of interest law, whether by acceptance of a settlement offer or by the issuance of an Order after a formal proceeding at OATH, is the Board entitled to deposit funds received from a respondent to address that violation.

The incorrect standard applied in the Report results in a significant overstatement of the Board’s delay in making deposits. If the correct standard for when a deposit should be made is applied, the delay in making a deposit ranges from 1 to 58 days (as opposed to 1 to 126 days, as cited in the Report), and the average delay was 19.5 days (as opposed to 38 days, as cited in the Report). Nevertheless, the Board agrees that the deposit of cash receipts in Fiscal Year 2016 took too long. To address that issue, the Board has modified its procedures to insure that deposits occur in a more timely manner as described below.

While not a “recommendation,” the Report suggests the Board make a legal determination as to whether it should deposit cash receipts provided as part of settlement offers into an escrow account. The Board does not utilize an escrow account for a number of reasons. First, the City’s Department of Finance issued a Bank Account Policy, effective October 1, 2010, specifically
seeking to reduce the number of City bank accounts due to the cost of maintaining such accounts. In recognition of and in compliance with this policy, the Board has not opened another bank account. Second, to utilize such an account would require additional staff time to manage these funds: either to transfer funds from that account to the City’s primary account when the Board becomes legally entitled to a payment made as part of a settlement offer; to issue a check to a respondent who had decided to rescind a settlement offer prior to Board acceptance, as the respondent has the legal right to do; or to issue a check to a respondent if the Board rejects the settlement offer, which the Board can and does do.

With regard to the four specific recommendations regarding the deposit and safeguarding of cash receipts, the Board responds as follows:

**Recommendation 1:**
Deposit all cash receipts in the bank on at least a daily basis.

**Board Response to Recommendation 1:**
The Board is an agency with only two employees in its Administration Unit and 26 employees overall. Additionally, the Board does not receive fine payments on a daily basis. As the Board stated at the exit conference, in order to balance the acknowledged value of making more frequent deposits of cash receipts with the need to use the time of the Board’s small staff efficiently by not sending staff to make deposits when there is little to nothing to deposit, the Board has modified its procedure such that it will make weekly deposits of any cash receipts ready for deposit, meaning payments of fines where the Board has either accepted a settlement offer or ordered payment in resolution of Chapter 68 violations.

**Recommendation 2:**
Accurately represent its internal control structure in its Directive #1 Checklist.

**Board Response to Recommendation 2:**
The Board will make weekly deposits of those cash receipts that the Board has either accepted as settlement or ordered as resolution of Chapter 68 violations and will accurately represent that procedure in its Directive #1 Checklist.

**Recommendation 3:**
Place restrictive endorsements on incoming checks and money orders as soon as they are received.

**Board Response to Recommendation 3:**
As the Board stated at the exit conference, the Board is now placing restrictive endorsements on incoming checks and money orders as soon as they are received.

**Recommendation 4:**
Secure checks and money orders awaiting deposit in a locked safe which has a combination that is changed periodically and known to few individuals.
Board Response to Recommendation 4:
As the Board stated at the exit conference, the Board now stores all cash receipts in a locked safe with a combination that will be changed periodically and is known to few individuals.

B. Collection of Enforcement Fines and Confidentiality of Board Records

The Report states that the Board did not collect enforcement fines in a timely manner. However, the analysis that undergirds this assessment is flawed. The Report conflates enforcement fines, which are fines that the Board has approved or imposed, with payments provided to the Board by a respondent as part of settlement offers that have not been approved by the Board. By relying on this conflation, the metric employed in the Report for when payments are due to the Board measures something largely irrelevant to the collection of enforcement fines. The Report also suggests that the Board should have provided documentation of its collection efforts, disputing the Board’s conclusion that such documents are confidential. The Board maintains that these documents are confidential as a matter of law.

1. The Report’s Account of the Board’s Collection of Enforcement Fine Payments

The Report employs an incorrect metric for measuring when enforcement fine payments are due. This error originates with the Report’s incorrect characterization of respondents from whom the Board is seeking payment as “violators.” Most respondents have not, at the time they provide payment to the Board, been found by the Board to have violated Chapter 68. Rather, the Board has made only an initial finding that it is more likely than not that a respondent has violated certain stated provisions of the conflicts of interest law, and the respondent is actively negotiating a resolution with Board staff as to how those violations will be described in a disposition. That negotiated settlement language only becomes a final determination of a violation when the Board approves both the proposed settlement language and the proposed fine at a Charter-mandated Board meeting.

Critically, this error results in the Report mischaracterizing many of the payments made by respondents to the Board as “past due” when they have not come due in any meaningful sense. The vast majority of the Board’s enforcement cases – including 37 out of the 38 cases in which fines were imposed during the audited period – are settled by the Board. In almost all of these settled cases – and 34 out of the 37 settled cases in the audited period – the Board requires that the respondent provide payment as part of his settlement offer.1 There is no legal obligation on the part of any respondent (or, generally speaking, for any litigant in a civil matter) to make a settlement offer, much less to make a settlement offer by any particular date. Thus, a payment made to the Board as part of a settlement offer, but prior to formal Board approval of the settlement, can never, as a legal matter, be “past due.”

The Board has adopted the procedure of directing Board staff to negotiate proposed enforcement settlements because it saves significant time and resources. If the Board had not implemented this procedure, enforcement actions could not be resolved expeditiously during an

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1 This practice obviates the need for any collection efforts subsequent to the Board’s finding of a violation, which would be nearly impossible to do given that the entire Enforcement Unit of the Board consists of four people.
initial informal process handled by Board staff, but instead would need to be filed as formal Petitions at OATH to be adjudicated before an Administrative Law Judge and ultimately by the Board itself. Such formal proceedings require the expenditure of substantial Board staff time and resources, not to mention the time of City investigators to testify and prepare documents for admission into evidence, the time of City employees who may be witnesses to the alleged violations, and the time of OATH staff who have to schedule settlement conferences and hearings, make pre-trial rulings, prepare transcripts, hear the cases, and make recommended findings. It is for the benefit of all of these City employees, including the respondent himself or herself,\(^2\) that Board staff makes every effort to achieve a negotiated settlement, including giving the respondent time to provide the payment to the Board as part of a settlement offer.

Ignoring the Board’s enforcement procedure, which generally requires payment of the proposed fine be made prior to the presentation of that settlement for approval by the Board, the Report uses as its metric for assessing when a fine payment is “past due” the Board’s standard disposition language, which states: “I agree to pay a fine of [dollar amount] to the Board by money order or by cashier check, bank check, or certified check, made payable to the ‘New York City Conflicts of Interest Board,’ at the time of my signing this Disposition.” This language is found in 31 of the 37 settlements to which the Board agreed during the audited period.\(^3\) Relying on this language as a measure of “lateness” is inappropriate, both legally and practically.

As a matter of law, this language does not give the Board a legal right to any fine payment made pursuant to the disposition. The Board only obtains a right to a fine payment if and when the Board formally approves the settlement. Instead, this language is part of the Board’s effort to encourage respondents to make the payments required to complete settlement offers; in other words, by having the respondent state that he or she agrees to make payment at the time of the signing of the tentative disposition, it conveys that the payment is part and parcel of a complete settlement offer. But until the Board approves that settlement offer in its entirety, the document remains just that: an offer to settle. The Board has no authority to enforce any element of a disposition unless and until the Board accepts the settlement offer. The Board could, arguably, change or even omit the quoted language in its dispositions, but, given the Board’s remarkable success settling cases and perfect record of collecting and reporting enforcement fines, changing this practice would be an error. Thus, in the context of ongoing settlement negotiations, the metric used in the Report does not measure the timeliness of payment of enforcement fines.

Moreover, it does not make sense as a practical matter to construe, as the Report does, the quoted language to mean that a fine payment is “late” if it is not received by the Board on the same day a respondent signs the disposition. A Board disposition states that the respondent agrees “to pay

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\(^2\) Avoiding a hearing is advantageous to a respondent because the Board generally seeks a more substantial fine once a case proceeds to OATH and because, relative to a negotiated settlement, a respondent has less control over the information that an OATH proceeding will reveal to the public regarding the respondent’s misconduct.

\(^3\) In five of the six negotiated dispositions that did not include this language, payments were made pursuant to a payment plan. The Board occasionally offers to accept a series of installment payments when respondents represent that their current financial situations prevent them from paying their fines in single, lump-sum payments.
a fine of [dollar amount] to the Board . . . at the time of my signing this Disposition” (emphasis added). As the Board explained at the exit conference, to have a completed settlement offer, a respondent must provide the Board with a disposition bearing the respondent’s original signature (and the original signature of his or her attorney or legal representative, if applicable) and a fine payment in the form of a bank, certified, or cashier’s check, or a money order. Most respondents submit the signed disposition and the fine payment to the Board by mail in a single envelope, and the process of compiling these materials and submitting them to the Board can take several days. Thus, for example, if the respondent signs the proposed disposition on January 1, obtains the fine payment from his or her bank on January 2, mails these materials to the Board on January 3, and these materials arrive at the Board’s office on January 6, according to the metric in the Report, that fine payment would be five days “late,” when it is not late by any realistic measure. In short, the metric employed in the Report does not measure the timeliness of the Board’s collection of enforcement fines.

There were three enforcement cases settled in the audited period where, contrary to the Board’s standard procedure, fine payments were received after the Board had approved the settlement. In each of these cases, the Board decided to accept a settlement offer with payment to be made after the disposition was signed and published. In one of these three cases, several of the payments were late, but all payments were eventually collected without the need for additional legal action.

In one case, settlement negotiations were not successful. After a trial at OATH and consideration of the OATH Administrative Law Judge’s Report and Recommendation, the Board issued an Order requiring the respondent to pay a fine. That Order stated that the respondent had 30 days to pay the fine. However, a respondent has four months to appeal the Board’s Order to New York State Supreme Court, and the Board cannot take legal action to force payment until such time to appeal has elapsed. See N.Y. C.P.L.R. 217. In this case, the respondent paid his fine 95 days after the Order was issued, or 65 days after the date set in the Order for payment, but still long before the time to appeal had elapsed. This payment should not be described as “late,” as the Board had no legal recourse to collect this fine until the expiration of the respondent’s time to appeal.

2. The Confidentiality of the Board’s Records

Finally, the Report states that the Board declined to provide the Comptroller’s Office with records documenting the Board’s efforts to obtain payment from respondents because the Board maintains that the documents are confidential pursuant to City Charter § 2603(k) and are further protected as attorney work product. The Report goes on to state that the view of the Comptroller’s Office is that “the communications [the Board] makes to others outside of the office related to the collection of fines ordered through public Enforcement Dispositions are not confidential under Charter § 2603(k)” and that “the Comptroller’s Office is entitled under Charter Section 93(c) to obtain access to agency records required by law to be kept confidential, other than those protected by the privilege for attorney-client communications, attorney work products, and material prepared for litigation.” The Report further states: “In the absence of such documentation, [the Comptroller’s Office] cannot verify the COIB’s assertion that it made efforts to follow-up on outstanding fines, and therefore, the COIB risks that collection of late fines could be overlooked, and the fine could ultimately remain uncollected.”
The Comptroller’s Office errs in several ways. First, the documents described are all confidential pursuant to Chapter 68 of the City Charter. See City Charter §§ 2603(h)(4), 2603(k); Board Rules §§ 2-05(f), 2-05(h). Second, the documents described are all attorney work product, in that they include the notes made by Board attorneys of telephone calls with respondents in the course of settlement discussions. N.Y. C.P.L.R. 3101(c). Third, as described above, the vast majority of these communications are not “communication [the Board] makes to others outside the office for the collection of fines ordered through the public Enforcement Dispositions,” but rather communications with respondents as part of settlement negotiations and are, therefore, materials prepared for litigation. N.Y. C.P.L.R. 4547. As such, these are not financial documents, but legal documents. Fourth, the best verification of the Board’s assertion that it made efforts to follow up on outstanding fines is, as the Report avoids stating explicitly, that the Board actually successfully collected and reported every penny of every enforcement fine imposed in the audited period.

With regard to the two specific recommendations regarding the collection of enforcement fines, the Board provides the following responses:

**Recommendation 5**: Ensure that all fines are collected in accordance with the Enforcement Dispositions.

**Board Response to Recommendation 5:**
The Board successfully collected all enforcement fines in accordance with the enforcement dispositions. Of the 37 cases in which the Board approved settlements involving the payment of a fine, all but three of those dispositions were signed by the Board Chair only after the respondent had fully completed payment of the proposed fines. In the remaining three cases, one respondent made one on-time payment, the second respondent made two on-time payments, and the third respondent made several late, but nevertheless complete, payments. No action is needed.

**Recommendation 6**: Document its efforts to collect fines that are not paid in accordance with the Enforcement Dispositions.

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4 In the rare instance when the Board does refer a matter for collection to the City’s Law Department, of which there were none during the audited period, it does not view those communications – which are in fact “communications … to others outside the office for collection of fines ordered through the public Enforcement dispositions” – to be confidential.
**Board Response to Recommendation 6:**
As stated throughout the audit process, including at the exit conference, the Board makes and maintains thorough records of its efforts to collect fines. These records are confidential pursuant to City Charter §§ 2603(h)(4) and 2603(k) and Board Rules §§ 2-05(f) and 2-05(h). The records are also protected as attorney work product and, in almost all cases, as materials prepared for litigation. N.Y. C.P.L.R. 3101(c); N.Y. C.P.L.R. 4547.

Very truly yours,

Ethan A. Carrier
General Counsel