



NEW YORK CITY COMPTROLLER
BRAD LANDER

Maura Hayes-Chaffe
Deputy Comptroller for Audit

Follow-up Audit Report on the Conflicts of Interest Board's Oversight over the Collection and Reporting of Enforcement Fines

FM22-091F | October 27, 2022



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

October 27, 2022

To the Residents of the City of New York,

My office has conducted a follow-up audit of the Conflicts of Interest Board's (COIB's) oversight over the collection and reporting of enforcement fines to determine whether COIB implemented the six recommendations made in the *Audit Report on the Conflicts of Interest Board's Oversight over Collection and Reporting of Enforcement Fines* (Audit #FK17-068A), issued December 27, 2017. We conducted this follow-up audit to determine whether COIB now has proper controls over its collection of assessed fines and assures the adequate processing and stewardship of City funds.

I am pleased to note that the audit found that two of the six recommendations have been implemented, with positive effect. One was found not to have been implemented, one is no longer applicable, and the auditors were unable to verify the implementation status of the remaining two recommendations because of insufficient evidence.

Specifically, COIB did not implement the 2017 audit's recommendation to deposit all cash receipts on at least a daily basis or its own internal requirement to deposit cash receipts on a weekly basis—67 of 136 cash receipts from July 1, 2019 through February 15, 2022, were deposited more than five business days after COIB took possession of the cash receipts, including 19 cash receipts received outside of the COVID-19 pandemic. The auditors could not verify whether COIB accurately represented its internal control structure in its Comptroller's Directive #1 Checklist for Calendar Years 2019 and 2020, nor whether restrictive endorsements were placed on cash receipts as soon as they were received.

To address the issues that still exist, the audit recommends that COIB adheres to internal written policies regarding the depositing of cash receipts on at least a weekly basis and that it maintains evidence that restrictive endorsements are placed on cash receipts as soon as they are received.

The results of the audit have been discussed with COIB officials, and their comments have been considered in preparing this report. COIB's 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,

A handwritten signature in black ink, appearing to read "B. Lander".

Brad Lander
New York City Comptroller

TABLE OF CONTENTS

AUDIT IMPACT	1
Summary of Findings.....	1
Intended Benefits.....	1
INTRODUCTION	2
Background	2
Objective.....	2
Discussion of Audit Results with COIB	3
RESULTS OF FOLLOW-UP AUDIT	4
RECOMMENDATIONS	7
Recommendations Follow-up	7
SCOPE AND METHODOLOGY	8
ADDENDUM	

AUDIT IMPACT

Summary of Findings

The findings in this follow-up audit report relate to the implementation status of six recommendations contained in the *Audit Report on the Conflicts of Interest Board's Oversight over Collection and Reporting of Enforcement Fines* (Audit # FK17-068A), issued December 27, 2017. The audit found that two of those recommendations have been implemented, one has not been implemented, and one is no longer applicable. The auditors were unable to verify the implementation status of the remaining two recommendations because of insufficient evidence.

Intended Benefits

This follow-up audit is intended to identify areas in which COIB has improved its controls over its collection of assessed fines and its processing and stewardship of City funds.

INTRODUCTION

Background

This follow-up audit assesses the implementation of recommendations made in the 2017 audit, which was conducted to determine whether COIB collected, properly safeguarded, and accurately reported all fines due to the City.¹

COIB is responsible for administering, enforcing, and interpreting Chapter 68 of the New York City Charter and 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. COIB is authorized by the Charter to receive complaints, direct the New York City Department of Investigation to conduct investigations, and impose fines not exceeding \$25,000 for violations of the Conflicts of Interest Law.

As part of this mandate, COIB collects cash receipts related to enforcement fines, annual disclosure fines, and fees for copying COIB documents. COIB may also incorporate additional penalties in its final dispositions, such as the forfeiting of annual leave, unpaid suspension, and termination.

During the audit's scope period (July 1, 2019 through February 15, 2022), COIB imposed monetary fines in response to 92 violations—a total of \$304,075 in assessed fines. Of this total amount, COIB collected \$250,525 during this period. In four instances, COIB reduced fines by a total of \$12,050, after the respondents satisfactorily demonstrated financial hardship. COIB was unable to collect an additional \$41,500; these cases are either pending appeal in the New York State Supreme Court or referred to collection. COIB also incorporated additional penalties of forfeited annual leave valued at \$33,892 and unpaid suspensions valued at \$44,853.

The prior audit found that COIB did not adequately safeguard enforcement fines that were collected, did not deposit cash receipts consisting of checks and money orders in a timely manner, did not properly secure these items pending their deposit, and did not collect fines in a timely manner.

To address these findings, the audit report made six recommendations. In its Audit Implementation Plan submitted to the New York City Comptroller's Office on November 1, 2018, COIB detailed the status of the six recommendations, stating that five of the six had been fully implemented and that the remaining one was confidential due to the City Charter and COIB's Board Rules.

Objective

The objective of this audit was to determine whether the six recommendations made in the 2017 report have been fully implemented.

¹ See *Audit Report on the Conflicts of Interest Board's Oversight over Collection and Reporting of Enforcement Fines* (Audit # FK17-068A)

Discussion of Audit Results with COIB

The matters covered in this report were discussed with COIB officials during and at the conclusion of this audit. An Exit Conference Summary was sent to COIB on September 22, 2022, and discussed with COIB officials at an exit conference held on September 30, 2022. On October 7, 2022, we submitted a Draft Report to COIB with a request for written comments. After discussing with COIB officials, we re-issued the Draft Report on October 13, 2022, to modify the information included in Recommendation #6 of the 2017 audit. We received a written response from COIB on October 24, 2022.

In its response, COIB did not directly address the two recommendations made in this follow-up audit to address the issues that still exist.

The full text of COIB's response is included as an addendum to this report.

RESULTS OF FOLLOW-UP AUDIT

The audit found that two of the six recommendations have been implemented (#4, #5), one has not been implemented (#1), and one is no longer applicable (#6). The auditors were unable to verify the implementation status of the remaining two recommendations because of insufficient evidence (#2, #3). The initial audit's recommendations and the current audit's findings pertaining to their implementation status are summarized below.

Recommendation #1

Deposit all cash receipts on at least a daily basis.

This recommendation has NOT BEEN IMPLEMENTED.

The 2017 audit found that COIB did not timely deposit 48 of 49 payments collected in Fiscal Year 2016, totaling \$68,550, and did not comply with Comptroller's Directive #11, which states that "[a]ccumulation of in-office cash receipts is not acceptable and all funds received must be deposited in the bank on at least a daily basis." That audit found that COIB held cash receipts (consisting of checks and money orders) for an average of 38 days with one receipt held for 126 days.

In the Audit Implementation Plan, COIB stated that "[t]he Board began to deposit cash receipts on a weekly basis. The weekly schedule reflects both the less-than-daily frequency with which the Board generally receives cash receipts and that the Board is an agency with only two employees in its Administration Unit and 26 employees overall. [...] The Board received approval for the escrow account in February 2018 and began using the escrow account in March 2018."

However, COIB did not implement this recommendation to deposit cash receipts on a timely basis—it did not comply with the Directive #11 requirement to deposit cash receipts on at least a daily basis or its own internal requirement to deposit cash receipts on a weekly basis.

According to its internal records, 67 of the 136 cash receipts COIB received (49%) during the audit scope period, totaling \$105,858, were deposited more than five business days after it took possession of the cash receipts. These cash receipts took an average of 17 business days to deposit into the escrow account. COIB officials stated that the weekly deposit of cash receipts "was not practicable during the pandemic because respondents mailed checks to the COIB office while staff worked remotely." However, 19 of these late cash receipts (28%) were received before or after the COVID-19 pandemic and took on average 11 days to deposit into the escrow account.² While these figures reflect improvements from the previous audit, enforcement fines continue to be susceptible to misappropriation or loss.

In its response to the Draft Report, COIB declined to implement this recommendation on the basis that no actual misappropriation or loss of funds was found by the auditors. While this is true, the auditors nonetheless recommend this be implemented. Delayed deposit of enforcement fines

² The COVID-19 pandemic was defined as the period from March 17, 2020, when former Mayor Bill de Blasio directed New York City employees to work remotely, through September 13, 2021, when City employees were directed to return to office full time.

goes against both COIB's internal policy and Comptroller's Directive #11. Noncompliance with these policies represents risk that should be avoided in future.

Recommendation #2

*Accurately represent its internal control structure in its Directive #1 Checklist.*³

The implementation status of this recommendation COULD NOT BE VERIFIED.

COIB stated that it did not receive the Directive #1 Checklist from the Mayor's Office of Operations and/or the Comptroller's Office, and the auditors could not confirm whether a request was sent for the completed calendar years during the audit's scope (Calendar Years 2019, 2020, and 2021). A copy for 2021 was re-sent to COIB.

Recommendation #3

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

The implementation status of this recommendation COULD NOT BE VERIFIED.

During the prior audit, COIB officials informed the auditors 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. A restrictive endorsement, as required by Comptroller's Directive #11, is a stamped notation on a check or money order which states that the payment is to be deposited in a specified agency bank account. The auditors were unable to verify the status of this recommendation. While a COIB employee presented the auditors a stamp used for endorsements and stated that the financial instruments are endorsed and that COIB keeps copies of the faces of checks and money orders it receives, copies are not made of the backs of these payments where the restrictive endorsement is placed. Therefore, the auditors could not verify whether restrictive endorsements were made.

Recommendation #4

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

This recommendation has been IMPLEMENTED.

The prior audit noted that COIB did not secure checks and money orders awaiting deposit in a locked safe. Instead, payments were stored in a locked bag and placed in a locked desk drawer. During the follow-up, auditors observed the use of a locked safe with a combination code known to only two employees. This is now used to secure checks awaiting deposit.

³ The Comptroller's Office requires all agencies, as part of their compliance with Comptroller's Directive #1, *Principles of Internal Control*, to complete and submit to the Comptroller's Office an annual *Agency Financial Integrity Statement*, which has an associated checklist (Directive #1 Checklist). The Office of the Comptroller considers the subject matter covered by the questions to be criteria that agency management should follow in maintaining a reliable and effective system of internal controls.

Recommendation #5

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

This recommendation has been IMPLEMENTED.

While four imposed fines, totaling \$41,500, were uncollectable, COIB provided evidence that these fines were either pending appeal in the New York State Supreme Court or referred to a collection agency.

Recommendation #6

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

This recommendation is NO LONGER APPLICABLE.

The 2017 audit found that COIB did not ensure that violators paid enforcement fines by their due dates in 33 of 38 cases. However, COIB stated in its response to the prior audit that “[t]he Board only obtains a right to a fine payment if and when the Board formally approves the settlement,” and “until the Board approves the settlement offer in its entirety, the [disposition] document remains. . .an offer to settle.” COIB officials reiterated during the exit conference that its staff negotiates settlement agreements with the respondent and their representative including an agreed-upon penalty for the Board’s review and approval. Therefore, for dispositions by agreement, fine payments cannot be considered “late” during this negotiation period because the date the respondent signs the settlement agreement does not signal the execution of the disposition by the Board. In addition, a payment of a fine is part of the disposition by agreement where the respondent pays the agreed-upon fine. A fine can only be considered “late” when the Board imposes a penalty that the respondent has not agreed to. In this case, the respondent has 30 days to pay the fine or appeal—otherwise any unpaid amounts are referred for collection. During the audit scope period, all monetary fines associated with enforcement dispositions were fully paid by the disposition date with the exception of the four uncollectable fines of \$41,500, described previously. Therefore, this recommendation was no longer applicable.

RECOMMENDATIONS

To address the findings that still exist, the auditors propose that COIB:

1. Adhere to internal written policies regarding the depositing cash receipts on at least a weekly basis; and
2. Maintain evidence that restrictive endorsements are placed on cash receipts as soon as they are received.

COIB did not directly address the recommendations made in this follow-up audit report. However, COIB officials stated that, “[it] will continue all possible efforts, as it has done both during the audit period and throughout its history, to ensure the timely collection, restrictive endorsement, and deposit of all enforcement fines.”

Recommendations Follow-up

Follow-up will be conducted periodically to determine the implementation status of each recommendation contained in this report. Status updates are reported in the Audit Recommendations Tracker available here: <https://comptroller.nyc.gov/services/for-the-public/audit/audit-recommendations-tracker/>

SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). 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 objective. 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 was July 1, 2019 through February 15, 2022, the date of the latest disposition executed in the auditors' request.

The auditors reviewed the prior audit entitled *Audit Report on the Conflicts of Interest Board's Oversight over Collection and Reporting of Enforcement Fines* (Audit # FK17-068A), issued on December 27, 2017, to obtain an understanding of the methodology used to conduct the audit testing, the findings, the six recommendations, and COIB's responses to each of the recommendations. In addition, the auditors reviewed COIB's Audit Implementation Plan, submitted on November 1, 2018.

To obtain an understanding of COIB's policies, procedures, and laws related to the implementation of the recommendations made by the prior audit, the auditors reviewed and used as criteria:

- COIB Fine Collection Procedures revised 1-25-2017;
- COIB Fine Collection Procedures revised 8-10-2018;
- COIB Fine Collection Procedures revised 2-22-2022;
- Chapter 68 of the New York City Charter;
- NYC Comptroller's Directive #1: *Principles of Internal Control*; and
- NYC Comptroller's Directive #11: *Cash Accountability and Control*.

To obtain an understanding of the controls over the collecting and reporting of enforcement fines, the auditors conducted walkthrough meetings with COIB's senior management and discussed how the agency processes, secures, and accounts for enforcement fines.

To determine whether COIB deposits cash on a weekly basis, the auditors compared the dates fine payments were received with the dates they were deposited into the escrow account.

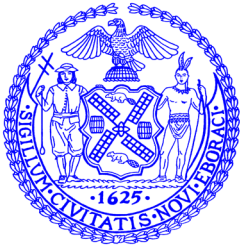
To establish whether COIB accurately represents its internal control structure in its Directive #1 Checklist, the auditors verified whether COIB's Directive #1 Checklist for Calendar Years 2019, 2020, and 2021 were submitted to the Comptroller's Office.

To determine whether COIB placed restrictive endorsements on checks and money orders as soon as they are received, the auditors visited COIB's offices to review the records of financial instruments.

To assess whether COIB appropriately secured checks and money orders awaiting deposit, the auditors conducted a walkthrough meeting with the Administrative Coordinator and examined the safe.

To determine whether all fines were collected in accordance with Enforcement Dispositions, the auditors reviewed all dispositions for the audit scope and assessed whether payments were received or agreed upon before COIB's ratification of the dispositions.

The results of the above tests, while not statistically projected to their respective populations, provide a reasonable basis to determine whether COIB has implemented the recommendations made by the prior report.



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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October 24, 2022

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BY E-MAIL

Maura Hayes-Chaffe
Deputy Comptroller for Audit
New York City Office of the Comptroller
Municipal Building
One Centre Street, Room 1100
New York, New York 10007

Re: Follow-Up Audit on the Conflicts of Interest Board's
Oversight over the Collection and Reporting of Enforcement
Fines FM22-091F

Dear Ms. Hayes-Chaffe:

The Conflicts of Interest Board ("COIB") has reviewed the Comptroller's October 13, 2022, Draft Audit Report (the "2022 Report") following up on the Comptroller's December 27, 2017, Audit Report on COIB's oversight over the collection and reporting of enforcement fines

For Recommendation #1, the 2022 Report concludes that cash receipts were not deposited on a timely basis, taking on average 11 days to deposit, thus making the fines "susceptible to misappropriation or loss." However, there was **no misappropriation or loss** of any enforcement fine during the audit period. In fact, as the Report concludes in Recommendation #6, "[d]uring the audit scope period, all monetary fines associated with enforcement dispositions were fully paid by the disposition with the exception of four uncollectable fines," which the Report notes in Recommendation #5 were appropriately addressed through referrals to a collection agency or pending appeals. Further, as the Report notes in Recommendation #4, COIB uses a locked safe to store all fines awaiting deposit.

For Recommendation #2, the Report concludes that the recommendation "could not be verified" because there were no

records maintained by the Comptroller's Office or the Mayor's Office of Operations that COIB had been sent a request for the Directive #1 Checklist during audit years 2019, 2020, or 2021. The missing request for the Directive #1 Checklist for 2021 was sent to COIB on October 4, 2022, and COIB responded on October 17, 2022.

COIB will continue all possible efforts, as it has done both during the audit period and throughout its history, to ensure the timely collection, restrictive endorsement, and deposit of all enforcement fines. COIB continues to do this essential work without any misappropriation or loss of fines, with its tiny staff, to fulfill its critical mission of ensuring that violations of the conflicts of interest law are addressed and resolved.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Carolyn Lisa Miller". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Carolyn Lisa Miller
Executive Director



NEW YORK CITY COMPTROLLER
BRAD LANDER

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