



Kenneth J. Pokalsky
Vice President

October 16, 2017

Ms. Carol Quinn
Deputy Director of Lobbying Disclosure
JCOPE
540 Broadway
Albany, NY 12207

Dear Ms. Quinn:

I am submitting these comments on behalf of The Business Council of New York State, Inc.

Our comments are based on input from member companies, as well as our direct experience in filing client statements and lobbyist registrations and periodic reports.

We commend JCOPE for reaching out to regulated entities and the interested public last fall for input on an informal draft rule. That approach helped inform JCOPE's development of a formal rulemaking by generating comments on proposed language in a setting where concepts and language are more easily amended.

We also commend JCOPE for its intention to clarify compliance requirements for clients and lobbyists subject to the Lobbying Act, and for streamline compliance obligations consistent with statutory requirements.

Unfortunately, in maintaining the current regulatory provisions for determining whether an entity exceeded the source of funding+reporting threshold, this rule makes compliance significantly more difficult and more costly for some regulated entities such as trade associations. Our specific comments on these provisions are provided below. We strongly urge the Commission to adopt an approach more consistent with the underlying statutory language and intent.

Our specific comments include the following:

§938.2(m) . The proposed rule defines total expenditures+as including any promise to pay, or a promise for a payment or a transfer of anything of value. The legal meaning of promise to pay+is ambiguous. In contrast, JCOPE's proposed Part 943 rule simply states that expenses be accounted for using accrual basis accounting.+ (proposed rule at Part 943.9(d)(i)). That standard should be adopted here as well.

§Part 938.3(a) . The proposed rule says that its provisions apply to client semi-annual reports due on January 15, 2013 and each such report due after that date. Actually, new compliance provisions set forth in this proposed rule only apply to reports due on January 15, 2017 and later; different reporting rules apply to semi-annual reports filed prior to that date. Any final

proposal rule needs to accurately depict compliance obligations applicable in each time period as set in statute.

§938.3(c) - We again express our concerns about JCOPE's implementation of the %source of funding+provisions of the Lobbying Act. In incorporating the new, lower statutory threshold of %each source of funding that has contributed over two thousand five hundred dollars from a single source that were used to fund the lobbying activities,+the draft rule carries forward JCOPE's current approach and requires disclosure of all contributors of that amount in total, regardless of what share of those payments is in fact used to pay for lobby expenses.

This language is of particular, if not exclusive, concerns to trade associations and similar organizations. Generally speaking, trade associations receive little or no payments specifically for lobbying. Instead, their lobbying activities are funded from a portion of dues payments and other revenue sources. Our JCOPE filings for 2015 illustrate the incongruous outcome from JCOPE's compliance mandate, as we reported more than \$627,292 in reportable source of lobbying fund receipts, but just over \$363,000 in actual reportable lobbying expenses . not quite a two to one ratio. More important, since this type of calculation is not automated in our accounting system, our finance staff has to review thousands of separate transactions to identify payers of more than \$5,000 in aggregate in order to compile this source of funding report which, for 2015, included less than five hundred transactions and included reported amounts as low as \$6. Our compliance efforts will be made even more time consuming as the threshold falls to \$2,500.

While we supported the statutory provision that excludes the *reporting* of funds received for membership dues, adopted in 2016, the JCOPE rule still requires an extensive amount of work to determine which members exceed the threshold.

As an alternative, we continue to support a workable, common-sense approach, under which JCOPE would use existing lobby expense data as reported to JCOPE to define the %source of funds+required to be disclosure. Specifically, an entity's ratio of reportable lobby expenses to total expenses would be applied to total payments from a single source. As example, for an organization whose ratio of lobbying expenditures to total expenditures is 25 percent, the organization would disclose the source, amount and date of payments exceeding \$10,000 in the aggregate. We urge that approach be adopted in JCOPE's formal rulemaking.

We welcome the opportunity to discuss these comments with Commission staff. Thank you again for this opportunity to review your informal draft rule and provide comments.

Sincerely,

A handwritten signature in black ink that reads "Kate J. Pohly". The signature is written in a cursive, flowing style.