

[*Note:* This document compares the proposed amended regulations to the current regulations. Where possible, the changes are identified in a redline format. Additions are shown in blue underline. Deletions are indicated in ~~red strikethrough~~. When appropriate, a brief description of a proposed change is provided in brackets below the regulatory language.]

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Title 19 NYCRR Part 932 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF  
NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 932 OUTSIDE ACTIVITY RESTRICTIONS AND APPROVAL PROCEDURES FOR  
POLICY MAKERS

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932.1 Purpose of Regulations.

The purpose of these regulations is to effectuate the statutory provisions of Public Officers Law §§73 and 74 and to provide an approval procedure for outside activities by Policy Makers.

932.2 Definitions.

(a) Appointing Authority, for officers and employees of a State Agency, shall mean (i) that individual or body that has the authority by law, rule, or regulation to appoint a person to a position or (ii) that individual or body to whom the authority to approve requests made pursuant to this Part has been properly delegated by law, rule, or regulation.

[The current regulations contain the term “Approving Authority” and “appointing authority,” but only define Approving Authority. The presence of these two terms has generated confusion. The proposed amendments seek to remedy this by utilizing only “Appointing Authority,” the definition of which incorporated concepts from the definition of Approving Authority in the current regulations.]

(b) Commission shall mean the New York State Joint Commission on Public Ethics and, where applicable, its predecessor agencies.

(c) ~~Nominal Compensation shall mean no more than either: (1) the per diem amount provided to such position, where no other compensation for such appointment is received; or (2) the economic consideration received by a Policy Maker in exchange for personal services actually rendered, e.g., wages, salaries, health insurance benefits, professional fees, royalties, bonuses, or commissions on sales, and. As applied to any business venture that portion of is owned or controlled by a Policy Maker, whether or not incorporated, Compensation shall also include income received from a corporation or unincorporated trade or business which represents a reasonable allowance for salaries and compensation for personal services actually rendered.~~ such venture.

~~Income received by the individual from transactions involving the individual's own securities, person property or real estate is not included in determining annual compensation for personal services actually rendered, provided the transactions are not with any State agency.~~

[The changes are intended to provide more clarity to the definition.]

(d) Outside Activity Approval Form shall mean a form designated by the Commission as the Outside Activity Approval Form and available on the Commission's website.

[The definition incorporates concepts contained in the current regulations.]

(e) Party shall mean (i) any organization which at the last preceding election for governor of the State of New York polled at least fifty thousand votes for its candidate for governor or (ii) the national political entity affiliated with such organization.

[The current regulations use the term "political party" but do not define it.]

(f) Party Committee shall mean any State committee, county committee, and such other committee (including national committee) as the rules of the Party may allow.

[The current regulations use the term "party committee" but do not define it.]

(g) Policy Maker shall mean

(1) a Statewide Elected Official;

(2) a head of a State Agency, and

(3) an officer, employee, director, commissioner, or member of a State Agency (other than a multi-state authority) who holds a policy making position pursuant to Public Officers Law §73-a(1)(c).

[The current regulations define the term "Policy-making Position." Subsection (g)(3) of the definition in the proposed amendments incorporates the operative language from the "Policy-making Position" definition in the current regulations.]

The individuals covered by subsections (g)(1) and (g)(2) in the proposed amendments are referenced in the current regulations. They are included in the definition here to promote organizational clarity only and not to effectuate any change in the scope of the regulations.]

(h) Political Organization shall mean any organization that is affiliated with, or subsidiary to, a political party, and shall include, for example, partisan political clubs. Political organization shall not include an organization supporting a particular cause with no partisan inclination, for example, the League of Women Voters, and shall Party. The term does not include campaign or fundraising committees.

[The changes here are intended to simplify the definition and not to alter its scope.]

(i) State Agency shall mean any State department, or division, board, commission, or bureau of any State department, any public benefit corporation, public authority, or commission at least

one of whose members is appointed by the Governor. State Agency shall also include the State University of New York or the City University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

(j) Statewide Elected Official shall mean the Governor, Lieutenant Governor, Attorney General, or Comptroller of the State of New York.

[The definition incorporates language in the current regulations.]

### 932.3 Restrictions on Certain Political Activities Applicable to All Policy Makers.

(a) No Policy Maker, regardless of whether the person serves on an unpaid or per diem basis, shall serve as an officer, director, or board member of any Party or Political Organization.

[The change is not intended to alter the scope of the current prohibition. Instead, it is designed to reflect long-established guidance in applying the current regulations.]

(b) No Policy Maker, regardless of whether the person serves on an unpaid or per diem basis, shall serve as a member, officer, director, or board member of any ~~political Party~~ eCommittee, ~~including political party district leader (however designated) or member of the national committee of a political party~~

[This change is not intended to alter the scope of the current prohibition. The deleted language was considered confusing.]

(c) Nothing in this section shall prohibit a Policy Maker from serving as a delegate to a State or national Party convention.

[The language was included to reflect long-established guidance in applying the regulations.]

### 932.4 Required Prior Approval for Salaried Policy Makers.

(a) A Policy Maker who (i) is not a Statewide Elected Official or the head of a State department or State Agency and (ii) serves the State on other than a nonpaid or per diem basis, shall obtain the following approvals prior to engaging in the activities listed below:

[The current regulations do not list the requirements below in a chart. Rather, they are contained in 932.3(b)-(e). In terms of substance, any changes are reflected in a redline format in the chart below.]

Outside Activity	Required Approvals / Actions						
<p>A job, employment, or business venture that generates, or is expected to generate, between \$1,000 and <del>\$4,000</del> <u>\$5,000</u> in Compensation annually</p> <p>[This language includes <i>public employment</i>. The requirement for agency approval when compensation is at least \$1000 for public employment is <i>new</i>.]</p>	<p>Appointing Authority must approve</p>						
<p>A job, employment, or business venture that generates, or is expected to generate, more than <del>\$4,000</del> <u>\$5,000</u> in Compensation annually</p> <p>[This language includes public employment. The current regulations have public employment separated out from private employment. The two categories are combined here to facilitate clarity. The requirement for Commission approval beyond the monetary threshold is <i>not</i> new.]</p>	<p>Appointing Authority <b>and</b> the Commission must approve</p>						
<p>Holding public office (<u>regardless of Compensation</u>) in addition to service as a Policy Maker</p> <p>[The change is intended to clarify the wording in the current regulations.]</p>	<p>Appointing Authority <b>and</b> the Commission must approve</p>						
<p>Serving as a director or officer of a for-profit entity (regardless of Compensation received)</p>	<p>Appointing Authority <b>and</b> the Commission must approve</p>						
<p>Serving as a director or officer of a not-for-profit entity.</p>							
<table border="1"> <tr> <td data-bbox="342 1352 919 1570"> <p><u>Compensation is \$0 - \$999 annually</u></p> <p>[This is a new requirement.]</p> </td> <td data-bbox="919 1352 1393 1570"> <p><u>Approval not required, but must notify Appointing Authority in writing prior to commencing service</u></p> </td> </tr> <tr> <td data-bbox="342 1570 919 1717"> <p>Compensation is between \$1,000 and \$5,000 annually</p> </td> <td data-bbox="919 1570 1393 1717"> <p>Appointing Authority must approve</p> </td> </tr> <tr> <td data-bbox="342 1717 919 1858"> <p>Compensation is more than \$5,000 annually</p> </td> <td data-bbox="919 1717 1393 1858"> <p>Appointing Authority <b>and</b> the Commission must approve</p> </td> </tr> </table>	<p><u>Compensation is \$0 - \$999 annually</u></p> <p>[This is a new requirement.]</p>	<p><u>Approval not required, but must notify Appointing Authority in writing prior to commencing service</u></p>	<p>Compensation is between \$1,000 and \$5,000 annually</p>	<p>Appointing Authority must approve</p>	<p>Compensation is more than \$5,000 annually</p>	<p>Appointing Authority <b>and</b> the Commission must approve</p>	
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<p>Compensation is more than \$5,000 annually</p>	<p>Appointing Authority <b>and</b> the Commission must approve</p>						

(b) A head of a State Agency or a Statewide Elected Official shall obtain approval from the Commission prior to engaging in the outside activities listed in Section 932.4(a).

#### 932.5 Approval Procedures.

(a) A Policy Maker who requires approval, pursuant to Part 932.4(a), from his Appointing Authority only, shall submit to the Appointing Authority a written approval request prior to commencing the outside activity.

(1) The Appointing Authority shall make its determination based on its interpretation of whether the proposed outside activity is in accordance with the applicable provisions of sections 73 and 74 of the Public Officers Law, as well as , Commission Advisory Opinions, pertinent State Agency policies, procedures, ~~or rules and~~ regulations governing employee conduct, and such other factors as the ~~approving authority~~ Appointing Authority may deem appropriate. The interpretations of the Appointing Authority of the Public Officers Law shall not be binding on the Commission ~~in any later investigation or proceeding.~~

[The changes are intended to clarify the current regulations.]

(b) A Policy Maker who also requires Commission approval pursuant to Part 932.4(a), or a head of a State Agency or Statewide Elected Official who requires Commission approval pursuant to Part 932.4(b), shall submit to the Commission a request on the Outside Activity Approval Form that contains a signature of approval from the Appointing Authority. The Commission will not consider requests without such written prior approval.

(1) For a head of a State Agency or a Statewide Elected Official, that agency's ethics officer or other designated individual must sign the Outside Activity Approval Form indicating State Agency approval of the request.

(2) The Commission shall make its determination based on its interpretation of whether the proposed outside activity ~~interferes with or is in conflict~~ accordance with the ~~proper and effective discharge of such individual's duties. In making its determination, the Commission shall consider the~~ applicable provisions of ~~sections 73 and 74 of the Public Officers Law,~~ Commission Advisory Opinions, regulations, and policies. The Commission may require additional information as it deems appropriate.

[The changes are intended to clarify the current regulations.]

#### 932.6 Previously Approved Outside Activity: Annual Disclosure and Material Changes

(a) Once an outside activity has been approved pursuant to Part 932.5 it shall remain effective unless and until there is a material change in the Policy Maker's State responsibilities or in the outside activity, at which point the Policy Maker must submit a new request for approval in accordance with Parts 932.4 and 932.5

[This language was included to reflect long-established guidance and practice in applying the current regulations.]

(b) On an annual basis, a Policy Maker who has received approval for an outside activity pursuant to Part 932.5, or has otherwise disclosed the not-for-profit board service pursuant to

Part 932.4, must inform, in writing, his Appointing Authority (or, in the case of a head of a State Agency or a Statewide Elected Official, that State Agency's ethics officer or other designated individual) if he is still engaged in the outside activity for which approval was granted. The Appointing Authority (or, in the case of a head of a State Agency or a Statewide Elected Official, that State Agency's ethics officer or other designated individual) shall determine when such annual disclosure is to be made.

[This is a new requirement.]

### **~~932.6 – Complaints.~~**

~~Any person may file a complaint with the State Ethics Commission which alleges that a violation of the provisions of this Part has occurred. The Commission, pursuant to its authority under §94 of the Executive Law, may conduct an investigation and take such other action as it deems proper.~~

[This language is superfluous.]

### 932.7 Enforcement.

In addition to any penalty contained in any other provision of law, a ~~knowing and intentional violation of this Part by an individual~~ Policy Maker's performance of an outside activity that is in violation of the Public Officers Law, Commission Advisory Opinions, regulations, or policies, may subject him or her to ~~it may result in appropriate action taken by the State Ethics~~ a civil penalty or other Commission action or referral ~~by it~~ to the ~~individual's appointing authority.~~ Policy Maker's Appointing Authority. The ~~appointing authority~~ Appointing Authority, after such a referral, may take disciplinary action ~~which~~ that may include a fine, suspension without pay, or removal from office or employment in the manner provided by law.

[The changes are intended only to clarify this provision of the current regulations.]

932.8 Codes of Ethics for Uncompensated and Per Diem Directors, Members and Officers. The boards or councils whose officers or members are subject to §73-a of the Public Officers Law and are not subject to §73 of such law by virtue of their uncompensated or per diem compensation status and the commissions, public authorities and public benefit corporations whose member or directors are subject to §73-a of the Public Officers Law and are not subject to §73 by virtue of their uncompensated or per diem compensation status shall adopt a code of ethical conduct covering conflicts of interest and business and professional activities, including outside activities, of such directors, members or officers both during and after service with such boards, councils, commissions, public authorities and public benefit corporations. Such codes of ethical conduct shall be filed with the Commission.

### 932.9 Agencies Permitted More Restrictive Rules.

Nothing contained in this Part shall prohibit any State Agency from adopting or implementing its own rules, regulations, or procedures with regard to outside activities that are more restrictive than the requirements of this Part.