

DRAFT PROPOSED RULE -REVISION FORMAT - 931

Title 19 NYCRR Part 931 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 931

OFFICIAL ACTIVITY EXPENSE PAYMENTS AND SERVICE PAYMENTS TO THE
STATE: LIMITATIONS AND APPROVAL

931.1 Definitions.

(a) *Approving Authority* for a State Officer or Employee shall mean the head of a State Agency or appointing authority, as appropriate, or his or her designee; and, in the case of a Statewide Elected Official, and the head of a State Agency, it shall mean the New York State Joint Commission on Public Ethics.

(b) *Commission* shall mean the New York State Joint Commission on Public Ethics.

(c) *Covered Person(s)* shall mean:

- (1) State Officers or Employees as defined in subdivision (l) of this section;
- (2) Statewide Elected Officials as defined in subdivision (m) of this section;

(d) *Interested Source*. The term Interested Source shall mean any person or nongovernmental entity, on his or her own behalf or on behalf of a nongovernmental entity, that:

- (1) is regulated by, or negotiates with, appears before in other than a Ministerial Matter, seeks to contract with or has contracts in excess of \$500 with, or does other business with either: (i) the Covered Person in his or her official capacity; or (ii) the State Agency with which a Covered Person is employed or affiliated;
- (2) is required to be listed on a statement of registration pursuant to §1-e(a)(1) of article 1-A of the Legislative Law, or is the spouse or unemancipated child of a person who is required to be listed on a statement of registration;
- (3) is involved in any action or proceeding, in which administrative and judicial remedies thereto have not been exhausted, and which is adverse to either: (i) the Covered Person in his or her official capacity; or (ii) the State Agency with which the Covered Person is employed or affiliated; or

(4) has received or applied for funds from the State Agency employing the Covered Person at any time during the previous calendar year up to and including the date of the proposed or actual receipt of the Official Activity Expense Payment or Service Payment.

(e) *Ministerial Matter* shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(f) *Official Activity* shall mean a Covered Person's attendance or Service at a meeting, conference, seminar, convention, or professional program that is part of his or her official duties and benefits the Covered Person's State Agency.

(g) *Official Activity Expense Payment* shall mean a payment or reimbursement for the cost of attendance, registration, travel, food or lodging related to a Covered Person's Official Activity as defined in subdivision (f) of this section. Official Activity Expense Payment does not include a Service Payment.

(h) *Official Activity Approval* shall mean a completed and signed record created by the Approving Authority in accordance with section 931.2(c) of this Part.

(i) *Service* shall mean any action or service performed by a Covered Person. Such action may include, but is not limited to, delivering a speech, writing, or publishing an article, or making a presentation.

(j) *Service Payment* shall mean any payment of money made in consideration for a Service provided.

(k) *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, or the State University of New York or the City University of New York, including all their constituent units except community colleges of the State University of New York and the independent institutions operating statutory or contract colleges on behalf of the State.

(l) *State Officer or Employee(s)* shall mean:

(1) Heads of State departments and their deputies and assistants, other than members of the board of regents of the State University of New York, who receive no compensation or who are compensated on a per diem basis;

(2) Officers and employees of Statewide Elected Officials;

(3) Officers and employees of State departments, boards, bureaus, divisions, commissions, councils or other State Agencies other than officers of such boards, commissions or councils who receive no compensation or who are compensated on a per diem basis;

(4) Members or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the Governor, who receive compensation on other than a per diem basis, and employees of such authorities, corporations and commissions.

(m) *Statewide Elected Official(s)* shall mean the Governor, Lieutenant Governor, Comptroller, or Attorney General.

931.2 Approval Procedures.

(a) An Official Activity Expense Payment or a Service Payment must be approved by the Covered Person's Approving Authority in accordance with this Part.

(b) Within a reasonable period of time prior to engaging in the Official Activity, a Covered Person shall submit to his or her Approving Authority a written request to approve an Official Activity Expense Payment or Service Payment.

(c) The Approving Authority shall review a request for an Official Activity Expense Payment or Service Payment in accordance with the procedures and conditions set forth in section 931.2 and 931.3 of this Part. If approved, the Official Activity Approval shall contain the information set forth in (1) through (5) of this subdivision:

(1) The name of the Covered Person to whom, or on behalf of whom, the Official Activity Expense Payment or Service Payment is offered;

(2) Identity of the offeror and nature of the offeror's business;

(3) A detailed description of the Official Activity or Service, including date and location;

(4) The amount of the Official Activity Expense Payment and, where applicable, an itemization of costs for the attendance, registration, travel, lodging, and meals, and the amount of a Service Payment, if any; and

(5) A statement that the Approving Authority has approved the Official Activity Expense Payment and Service Payment, if any, in accordance with the conditions set forth in section 931.3 of this Part.

(d) The Approving Authority shall retain all completed and signed Official Activity Approvals for a period of three years from the date of the Official Activity for which an Official Activity Expense Payment or Service Payment, if any, is offered and shall be made available to the Commission upon request.

(e) The Approving Authority shall provide the Covered Person with a copy of the Official Activity Approval.

931.3 Conditions for Approval.

(a) An Approving Authority may approve a request for an Official Activity Expense Payment or Service Payment provided the following conditions are met:

(1) The Official Activity Expense Payment or Service Payment covers only the period of time that the Covered Person is reasonably required to be present for such Official Activity;

(2) The Official Activity Expense Payment or Service Payment is not offered by or on behalf of an Interested Source, unless under circumstances in which it could not be reasonably inferred that such Official Activity Expense Payment or Service Payment:

(i) is intended to influence the Covered Person in the performance of his or her official duties;

(ii) could reasonably be expected to influence the Covered Person in the performance of his or her official duties; or

(iii) is intended as a reward for any official action on his or her part; and

(3) The Official Activity Expense Payment, if not made by the offeror, could be lawfully paid by the State Agency in accordance with its travel policy;

(4) The Official Activity Expense Payment is made on behalf of the Covered Person at a rate not greater than the rate at which the State Agency would pay or reimburse the Covered Person under its travel policy, unless otherwise reasonable under the circumstances;

(5) After reasonable due diligence, the Approving Authority determines that the offeror is not being used to conceal that the Official Activity Expense Payment or Service Payment is actually offered or paid by an Interested Source;

(6) The Official Activity and the corresponding Official Activity Expense Payment or Service Payment is consistent with Public Officers §74; and

(7) If a Covered Person's Official Activity includes a Service and an offer for a Service Payment, in connection with such Official Activity, the Approving Authority shall approve the Service Payment provided such Official Activity comports with the conditions set forth in section 931.3 of this Part. The Approving Authority shall direct that such Service Payment shall be made directly to the general fund of the State or to such fund as is appropriate for a public authority, public benefit corporation, or commission not funded through State general fund appropriation.

931.4 Minimum Requirements.

Nothing contained in this Part shall prohibit any State Agency from adopting or implementing its own rules, regulations, or procedures governing Official Activity Expense Payments for Official Activities that are more restrictive than the requirements of this Part.

931.5 Enforcement.

This Part will apply to an Official Activity that occurs after the effective date of these regulations. The Commission is authorized pursuant to Executive Law §94 to investigate possible violations of Public Officers Law §73 and §74 and their corresponding regulations and take appropriate action as authorized in these statutes.

931.6 Reporting.

Any Covered Person who is required to file a financial disclosure statement pursuant to §73-a of the Public Officers Law shall report any Official Activity Expense Payment in excess of \$1,000, or Official Activity Expense Payments the aggregate total of which exceed \$1,000, received from each offeror in his or her statement of financial disclosure for the applicable year.

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