



August 16, 2012

**Joint Commission on Public Ethics**  
**540 Broadway**  
**Albany, New York 12207**  
**Email: [jcope@jcope.ny.gov](mailto:jcope@jcope.ny.gov)**

**VIA EMAIL**

Dear Commissioners,

We write in response to the invitation for public comment by the Joint Commission on Public Ethics (JCOPE) on draft guidelines relating to new disclosure requirements of business relationships of lobbyists and clients pursuant to The Public Integrity Reform Act of 2011 (PIRA).

Citizens Union is a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union serves as a civic watchdog, combating corruption and fighting for political reform. We work to ensure fair and open elections, honest and efficient government, and a civically-engaged public.

Citizens Union commends JCOPE for soliciting input not only following the release of guidelines for reporting business relationships but also prior to drafting the guidelines.

We also thank JCOPE for integrating in its draft guidelines two of our four previous recommendations. We are pleased that a State Person playing a significant role, but not necessarily exclusive or primary role, in performing or providing goods or services in a business relationship with lobbyists or clients will still be reported by those advocates. We also appreciate that JCOPE adopted several of our recommended factors to determine whether lobbyists or clients in a business relationship with a corporation or firm had “reason to know” a State Person was an owner or served in a management capacity at the entity at issue.

We generally believe the draft guidelines for reportable business relationships are well crafted and are intended to maximize transparency, as the guidelines should. This is evident in several instances in the draft guidelines. The calculation of the \$1000 annual threshold that triggers reporting is expansive. For example, contracts that don’t necessarily result in a payment of \$1000 every year are still reported in the event the relationship is ongoing over several years. This is consistent with the law’s provisions of reporting when the payment is to be paid or is paid. JCOPE’s adoption of our recommendation for defining “Performed or Provided” ensures that lobbyists and clients must report business relationships when a State Person is involved in the

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provision of goods, services or anything of value even if they are not solely responsible for performing or providing the goods or service. JCOPE also wisely decided to aggregate the value of business relationships a lobbyist or client may have with the same State Person. This will prevent many transactions that are small in value but significant in sum from being hidden from public view. We commend JCOPE for its approach in maximizing transparency in numerous instances in crafting these guidelines.

Our recommendations to refine the final guidelines are summarized immediately below and described in full in the subsequent sections of this commentary. Several of these recommendations were provided in our initial testimony and are repeated here again.

1. Disclosure by lobbyists and clients of business relationships should be prospective with reporting only required for new business relationships or new matters for existing business relationships reported.
2. Lobbyists and clients should report the general subjects of business relationships in conformance with a listing of subject areas that is created for the purposes of reporting by JCOPE. The listing should match the subjects of business relationships disclosed by public officers and state employees in their financial forms, namely bills, resolutions, contracts and grants.
3. Exemptions should be granted to disclosure of business relationships that relate to personal medical and financial transactions that have no implications for broader policy-making.
4. Lobbyists' and clients' duty to amend their biennial registration should be limited to instances in which the amount of compensation related to the business relationship changes significantly (for example, 20 percent or more) unless it results in new disclosure as a result of exceeding the \$1000 threshold.
5. Online ethics training for lobbyists should reflect the need to report sources of income and business relationships as applicable.
6. Complaint procedures should be modified to allow for complaints for lack of disclosure of sources of income and business relationships.
7. Auditing should check for disclosure of sources of income and business relationships.
8. Computer databases available to the public should integrate new reporting requirements and allow for searches by source of income and business relationships.
9. The annual report issued by the Commission should include top sources of income to lobbying entities; lobbyists and clients with the most business relationships; and the business relationships of the highest dollar values ranked overall and by subject area.

## **Disclosure of Reportable Business Relationships**

### *PIRA*

The Public Integrity Reform Act of 2011 requires that lobbyists in their statement of registration and clients in their semi-annual reports disclose "reportable business relationships." A reportable business relationship is defined in the Lobbying Law as:

“a relationship in which compensation is paid by a lobbyist or by a client of a lobbyist, in exchange for any goods, services or anything of value, the total value of which is in excess of one thousand dollars annually, to be performed or provided by or intended to be performed or provided by (i) any statewide elected official, state officer, state employee, member of the legislature or legislative employee, or (ii) any entity in which the lobbyist or the client of a lobbyist knows or has reason to know the statewide elected official, state officer, state employee, member of the legislature or legislative employee is a proprietor, partner, director, officer or manager, or owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange).”

Lobbyists and clients are required to disclose for each reportable business relationship the public office address of any statewide elected official, state officer, state employee, member of the legislature or legislative employee (referred to in the guidelines as a “State Person) and entity in which any State Person has a substantial ownership stake or is in a senior management position (referred to in the guidelines as the “Requisite Involvement”). They are additionally required to disclose the general subjects of the business transaction and the costs and compensation involved and the amount of each that has been paid to date or is scheduled to be paid.

#### *Effective Date*

In finalizing the guidelines for disclosure of reportable business relationships, JCOPE should make explicit the effective date for the reporting of business relationships by lobbyists and clients. Reporting of business relationships is laid out in sections eight and nine of PIRA of Part A of the law. Section 22 makes clear that Part A of the law takes effect immediately with some provisos. One of those conditions is the formation of JCOPE itself, which was established in December of 2011. This would suggest the date of JCOPE’s formation is in fact the effective date for reporting business relationships. However, given the fact that the guidelines are yet to be finalized, we believe JCOPE should require reporting prospectively starting with the semi-annual client report and the lobbyist registration next submitted (January 2013) after the date the guidelines are approved. This will provide adequate notice to lobbyists and clients reporting the relationships as to which information they need to report and facilitate proper record keeping. Lobbyists and clients should be required to report new relationships or new matters for old relationships predating PIRA in the reports subsequent to the finalization of the guidelines by JCOPE. This is consistent with the disclosure of business relationships required of public officers and state employees who are required to report new business relationships or new matters for existing business relationships in their financial disclosure reports as a result of the PIRA.

#### *Reporting General Subjects*

In our previous testimony, Citizens Union called for JCOPE to provide a listing of general business subjects that lobbyists and clients would have to report relationships in conformance with. To do otherwise will frustrate disclosure via a database or by other means. Allowing lobbyists and clients to define the business subjects of their relationship prevents analysis by categories under which these relationships fall. JCOPE should provide drop down menus for lobbyists and clients to

categorize the business subjects of their relationship with write-in space for additional details. The listing of general business subjects provided by JCOPE through drop down menus should mirror the required reporting in law by the counterparty to the business transaction with lobbyists and clients: the public officers and state employees. Public officers and state employees are required to disclose certain business relationships in their financial disclosure forms.<sup>1</sup>

This list created by JCOPE should include general subjects that match categories disclosed under by public officers and state employees in their financial forms. Those subjects should include bills, resolutions, contracts, grants and cases, proceedings, or applications before a state agency that is not a ministerial matter. Matching general subjects reported by lobbyists and clients with those reported by public officers and state employees in their financial disclosure forms will enable more direct comparisons to be made which, while varying in dollar value, will ensure required reporting is being done by both parties of the business relationship.

#### *Exemptions to Disclosure of Business Relationships*

While this may be more an issue pertaining to the law rather than the guidelines, Citizens Union is concerned that because reportable business relationship is broadly defined (see page 3 of this commentary) a literal interpretation may require lobbyists and clients to report personal transactions with state employees. For example, it is unclear if a lobbyist receiving health services from a doctor at a public hospital would be required to report that transaction as a business relationship. Likewise, the current law raises questions as to whether a lobbyist or client would have to report a business relationship if they regularly visit a psychiatrist or social worker that happens to be a state employee yet provides services outside of their job working for the state. Similarly, would TimeWarner Cable or Verizon Wireless, known lobbyists, have to report business relationships with customers who are State Persons that it has contracts with exceeding \$1000 annually? To the extent the law provides flexibility, Citizens Union believes exemptions should be granted for privacy particularly as it pertains to health services obtained by lobbyists and clients from State Persons.

#### *Amending Biennial Registrations*

The draft guidelines require lobbyists amend registrations when the compensation related to a business relationship changes. Citizens Union supports updated information being reflected in registrations but does not feel it is meaningful unless substantial changes occur. If compensation or expenses changes by 20 percent, for instance, that may warrant an amendment to a registration but minor changes in costs of a business transaction ought not to require registration changes that will only be unduly burdensome to lobbyists who file such paperwork.

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<sup>1</sup> As required by Public Officers Law 73-A, and amended by the Public Integrity Reform Act of 2011, public officers and state employees are required to report as of June 1, 2012, new customers and clients or new matters for existing customers and clients in instances in which they refer the customer or client to the firm or corporation of which they are part or personally provide services valued over \$10,000 annually in connection with bills, resolutions, large contracts, grants and cases, proceedings, or applications before a state agency that is not a ministerial matter.

### **Integrating New Reporting Requirements in JCOPE's Work**

Beyond these recommendations for disclosure of business relationships, JCOPE should consider detailing in its guidelines integration of these new requirements into its existing practices. Online ethics training for lobbyists should reflect the need to report business relationships as applicable. Complaint procedures should be modified to allow for complaints for lack of disclosure of business relationships. Auditing should check for disclosure of business relationships. Computer databases made available to the public should integrate this new reporting requirement so searches can be conducted by business relationships. The annual report issued by the Commission should include lobbyists and clients with the most business relationships and the business relationships of the highest dollar values ranked overall and by subject area.

Citizens Union thanks JCOPE for the opportunity to submit our comments, and is available to discuss our recommendations in greater detail. Should you have any questions or comments, please contact Alex Camarda, Citizens Union's Director of Public Policy & Advocacy, who participated in writing this testimony at [acamarda@citizensunion.org](mailto:acamarda@citizensunion.org) or 212-227-0342 ext 24.

Sincerely,

A handwritten signature in black ink that reads "Dick Dadey". The signature is written in a cursive, slightly slanted style.

Dick Dadey  
Executive Director



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Michael Fallon, Esq.  
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August 15, 2012

New York State Joint Commission on Public Ethics  
540 Broadway  
Albany, NY 12207

RE: Comments on Proposed RBR Guidelines

To Whom It May Concern:

Hinman Straub PC represents over 80 lobbying clients before the Executive and Legislative branches of state government. We provide our clients with guidance and support on lobbying compliance in order to ensure that all of their lobbying and reporting activities are conducted in conformance with state law.

I write to express our concerns regarding your proposed "reportable business relationship" guidelines, and to suggest changes to these guidelines that will enable our clients to fully comply with the letter and spirit of the 2011 amendments to the Lobbying Act.

The *Public Integrity Reform Act of 2011* amended the Legislative Law to require lobbyists and clients to disclose the names of every state official and employee, including legislators and legislative employees, with whom the lobbyist has a "reportable business relationship.

JCOPE's proposed guidelines define "compensation" to mean "any salary, fee, gift, payment, benefit, loan, advance or any other thing of value paid, owed, given or promised" by a lobbyist of client to a "State Person." Where a lobbyist or client has provided compensation in excess of \$1,000 in a year to a state person, then the lobbyist or client is required to disclose to JCOPE "either the actual or anticipated amount of Compensation, including expenses, to be paid by virtue of the Business Relationship."

Our concern is the scope of this disclosure mandate, specifically its application to "loans," is far too broad, and that as a result it will be difficult, if not impossible, for our clients to comply with the proposed guidelines.

As currently written, the proposed guidelines would require any credit union, bank or other credit-issuing entity to report to JCOPE the recipient and amount of any loan or line of credit provided to any "state person" – e.g. all 200,000+ employees of the executive, legislative and judicial branches of state

government, and those who are employed by independent state entities. Presumably, this disclosure mandate would also apply where a “state person” co-signs a loan.

The proposed guidelines would require lobbyist/client reporting of home mortgages, vehicle loans, student loans, small business loans, home equity loans, lines of credit, among others.

The Public Officers Law properly recognizes that these transactions are not the types of “business relationships” that the Governor and Legislature intended to require disclosure of when it enacted amended the *Public Integrity Reform Act of 2011*.

I recommend that JCOPE modify its proposed guidelines to include exemption language similar that found in Question #19 of the state’s Annual Statement of Financial Disclosure, which is set forth in Public Officers Law § 73-a(3).

This language requires the reporting individual to list their liabilities (loans owed) that are in excess of \$5,000, but specifically provides that the following do not have to be reported:

- loans incurred in the ordinary course of business, trade or professional practice;
- obligations to pay child support or maintenance in a matrimonial action;
- educational loans;
- mortgages and home improvement loans; and
- loans relating to the purchase of a vehicle, household appliances or furniture.

Transactions of this nature occur every day in the normal course of business, and thus they should not be defined within the term “reportable business relationship” in JCOPE guidelines.

Thank you for the opportunity to share these concerns and suggestions. Please feel free to contact me if I can provide any additional information on this issue.

Yours,



Michael Fallon



**KENNETH J. POKALSKY**  
Vice President, Government Affairs

August 16, 2012

Joint Commission on Public Ethics  
540 Broadway  
Albany, NY 12207

I am submitting the following comments on the Joint Commission's draft guidelines regarding the Lobbying Act's new "reportable business relationship" reporting requirements.

The Business Council has been engaged with the prior commissions charged with implementing and enforcing the Lobbying Act, and has regularly provide written comments on proposed commission guidance, regulations and policies.

In doing so, our objective has been to assure that any implementation regulations or guidelines are both consistent with statutory provisions and legislative intent, and to provide advocacy organizations with straightforward, workable compliance requirements.

The following comments identify three key compliance issues relating to JCOPE's draft guidance, as well as practical approaches to addressing them in a way that meets statutory requirements and sets forth reasonable compliance measures.

We appreciate this opportunity to provide formal input into your guideline development process, and look forward to providing you with any additional information you may need regarding our comments.

**"Reason to Know"** - The Business Council has concerns about the ability of clients and lobbyists to comply with statutory requirements that statements of registration and semi-annual reports identify any reportable business relationships with entities that the client/lobbyist "knows or has reason to know" has a statewide elected official, state officer, state employee, member of the legislature or legislative employee as a proprietor, partner, director, officer/manager, or significant owner (i.e., owns or controls ten percent or more of the stock of such entity (or one percent in a publicly traded company.)

Such relationships with high profile public officials may be obvious. However, with more than 200,000 New York State employees included in the Act's definition of state official, concerns have been raised about how the "reason to know" test will be applied to contracts with entities that have less obvious public official involvement.

We appreciate JCOPE's effort to craft a reasonable person test in its compliance guide. However, the draft guidance still leaves a considerable gray area

regarding the degree and depth of inquiry that would be sufficient to meet the "reason to know" test.

We recommend that JCOPE's final guidance include a safe harbor provision on which clients and lobbyists can rely for compliance. For example, we believe that JCOPE's guidance could provide that, if clients and lobbyists make a good faith inquiry of a potential contractor as to the presence of a public official as partner, manager or owner within the company, that inquiry and its results should be sufficient to satisfy the "reason to know" test. After all, it is unclear how else a person or business would be able to obtain information about owners, managers and key employees of an enterprise - especially a non-publicly traded enterprise - other than making such a direct inquiry.

The draft guidelines already say that "any efforts by the client [or lobbyist] to obtain information" related to public official's involvement in a potential contract will be a factor used in evaluating the "reason to know" test, and that an adequate inquiry at least falls somewhere short of submitting freedom of information requests for official's "financial disclosure forms."

We believe a reasonable safe harbor provision will meet the legislative intent set forth in the "reportable business relationship" mandate and provide clients and lobbyists with a workable compliance requirement. We urge JCOPE to include some form of "safe harbor" provision in its final guidance.

**Definition of "Client"** - The draft guidelines' definition of "client," goes well beyond the statutory definition of "client" found in the Lobbying Act, which is "every person or organization who retains, employs or designates any person or organization to carry on lobbying activities on behalf of such client."

While the proposed guideline's definition includes this statutory language, it expands substantially upon the statutory definition by adding, "With respect to an organization, the term Client also includes the following: Proprietors, partners, directors, or executive management of the organization; Individuals who own or control ten percent or more of the stock of the organization (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange); Employees of the organization whose duties or responsibilities relate to lobbying activities in the State; and Employees of the organization whose duties or responsibilities relate to procurement activities with the State."

We object to this expanded definition of what constitutes a "client" on legal grounds as it goes well beyond what is provided for in statute. This expanded definition is also inconsistent with JCOPE's recently amended and published "Guidelines to the Lobbying Act," (see [http://www.jcope.ny.gov/about/lob/Lobbying%20Guidelines%204\\_24\\_12revised\\_2.pdf](http://www.jcope.ny.gov/about/lob/Lobbying%20Guidelines%204_24_12revised_2.pdf)), and - to our knowledge - is unsupported by any prior Temporary Commission or Public Integrity Commission advisory opinion.

This draft definition is of practical concern as well as it would impose substantial new compliance obligations on lobby clients for which compliance will be difficult if not impossible to achieve.

For organizations, the business relationship reporting mandate is meant to capture formal and informal agreements between the organization and public officials. Under JCOPE's proposed rule, the organization will be required to somehow identify and assess business relationships between a potentially large number of its employees and public officials – business relationships that likely have no connection to or relevance for the client/organization.

Since this guidance document will presumably influence JCOPE's compliance determination and civil enforcement actions, it is critical that it both reflect statutory intent and spell out clear and reasonable compliance obligations. We believe the proposed expansion fails on both count.

To address this, we strongly recommend that this final guidance reflect the statutory definition of the term "client."

**Reportable Business Relationship** – We are concerned that, as written, the draft guidance would result in a wide range of common credit arrangements – including credit cards and other lines of credit, mortgages, car loans, etc. – being publicly disclosed "reportable business relationships."

The draft guidelines carry over the statutory definition of "compensation," which includes "loans" along with salaries, fees, gifts and other things of value. As such, a business that retains a lobbyist would be required to disclose any such "loans" of more than \$1,000 to public officials as a "reportable business relationship."

We believe that the Lobbying Act allows for a more reasonable application of law.

The Act provides flexibility, in saying that the definitions set forth in Section 1-c are to be applied as written "unless the context otherwise requires." We believe that the provision of Sections 1-e (c )(8)(i) and 1-j(b)(6)(i) of the Act– which speak to compensation to be paid - combined with the statutory definition of "reportable business relationship" - i.e., a relationship in which compensation is paid to a public official by a lobbyist or client in exchange for goods or services - present a sufficiently different context to justify a modified definition of "compensation."

Commercial loans are not "paid to" their recipients in exchange for services. This definition of compensation was drafted to describe payments to lobbyists, for purpose of determining whether a lobbyist had met the financial threshold for registration, and therefore strikes us as inconsistent with the purpose of the reportable business relationship reporting requirement.

In addition, the final guidance's definition of compensation should also carry forward statutory language that excludes political contributions subject to the state Election Law.

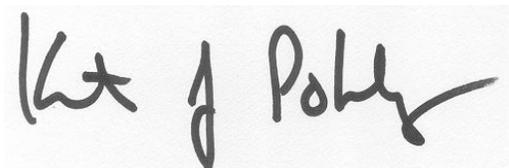
For these reasons, we recommend the final guidance contain a definition of compensation that includes any "salary, fee, gift, payment, benefit, advance or any other thing of value paid, owed, given or promised by a client/lobbyist to a

State Person, except loans and other forms of credit that provided on the same terms and conditions as offered to the general public or segments thereof and contributions reportable pursuant to article fourteen of the election law."

Again, on behalf of The Business Council and its members, I appreciate your efforts to reach out to us and other stakeholders in developing your final compliance guidelines.

I hope these comments are useful, and I look forward to working with you in any way as you finalize your compliance guidelines.

Sincerely,

A handwritten signature in black ink on a light-colored background. The signature reads "Kurt J. Pohly" in a cursive style. The first name "Kurt" is written with a large 'K' and a small 'u'. The middle initial "J." is written with a small 'J' and a period. The last name "Pohly" is written with a large 'P' and a long, sweeping tail that extends to the right.

kp