

JOINT COMMISSION'S REVISIONS TO THE SOURCE OF FUNDING REGULATIONS AND REPORTABLE BUSINESS RELATIONSHIP DISCLOSURE GUIDELINES

Pursuant to Legislative Law Article 1-A (the "Lobbying Act") §§1-e(c)(8) and 1-j(b)(6), certain lobbyists and clients are currently required to disclose any "Reportable Business Relationship" ("RBR") with elected officials and state employees. Additionally, Sections 1-h(c)(4) and 1-j(c)(4) of the Lobbying Act require certain lobbyists and clients to disclose the sources of funding for their lobbying efforts in New York. The Joint Commission has issued RBR Guidelines as well as proposed source of funding ("SOF") regulations, which are in effect on an emergency basis. In response to comments and feedback, the Joint Commission has made revisions to both the RBR Guidelines and the proposed SOF Regulations.

RBR Guidelines

The revised RBR Guidelines remove the following factor from the "Reason to know" analysis:

"Any efforts by the lobbyist to obtain information relating to the fact that the individual is a State Person or the Requisite Involvement of the State Person in the entity at issue."

With respect to clients of lobbyists, the revised RBR Guidelines include the following new language under the heading "Accuracy of Reported Information:"

For the purposes of determining if any proprietor, partner, director, or member of the executive management of an entity has a business relationship that must be disclosed as a Reportable Business Relationship, the entity that is responsible for making the filing may reasonably rely on the information provided by a proprietor, partner, director, or member of the executive management in response to a general questionnaire or form that is designed to elicit the information necessary to make such a determination.

The revised RBR Guidelines, which are in effect immediately, can be found on the Joint Commission's web site by [clicking here](#)

A sample questionnaire that may be used, or appropriately modified, by a client can be found on the Joint Commission's web site by [clicking here](#).

Additionally, instructions to assist filers in the RBR disclosure process are available [here](#).

SOF Regulations

The revisions below to the proposed SOF regulations have been submitted for public comment pursuant to the State Administrative Procedure Act. An announcement will be sent when the regulations are published in the State Register and the public comment period commences.

Additionally, the SOF regulations, *with the revisions below*, have been adopted on an emergency basis and are, therefore, in effect.

The proposed revised rulemaking is limited in its scope and encompasses both non-substantive and substantive revisions. As for the non-substantive changes, based on comments and the filings the Commission has received, it was apparent that some filers were confused by the definition of “Single Source.” The proposed revisions are an attempt to mitigate this confusion. The definition of “Single Source” has been changed to “Source” and a new definition – “Affiliate Relationship” has been added to help clarify existing aggregation rules and reporting requirements. Additionally, subsections a, b, and c of the previous definition of “Single Source” (now, merely “Source”) are incorporated into the definition of “Affiliate Relationship.”

There are two sets of substantive revisions. The first set of revisions is in response to comments received noting that the identity of some Sources of funding can be effectively shielded from public disclosure when the contribution is made through certain entities, such as an LLC. The proposed revisions address this issue, in part, by requiring certain additional disclosures when the entity making the contribution has a relationship with the Client Filer that satisfies any one of a number of criteria. Specifically, under Part 938.3(e)(iv), when any of the following are present, additional disclosure is required for contributions made by a corporation, partnership, organization, or entity:

- (1) The Client Filer makes decisions or establishes policy for the corporation, partnership, organization, or entity;
- (2) The corporation, partnership, organization, or entity makes decisions or establishes policy for the Client Filer;
- (3) The Client Filer has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the corporation, partnership, organization, or entity;
- (4) The corporation, partnership, organization, or entity has the authority to hire, appoint, discipline, discharge, demote, remove, or otherwise influence other persons who make decisions or establish policies for the Client Filer; or
- (5) The Client Filer and the corporation, partnership, organization, or entity, share a majority of directors on their governing boards, or share a majority of executive management, or maintain banks accounts with shared signatories.

Under Part 938.3(e)(iii), the additional required disclosures are the following: (1) name address and principal place of business of at least one natural person (such as an officer, director, partner or proprietors) who shares or exercises discretion or control over the activities of the corporation, partnership, organization, or entity, or (2) the sources of the funds contributed by the corporation, partnership, organization, or entity to the Client Filer.

The second set of revisions is in response to comments concerning the constitutionality of the standard for reviewing an application for an exemption from the disclosure requirements. The proposed revisions address the constitutional concerns by changing the standard for an exemption in Part 938.4(b) from “substantial likelihood” to a “reasonable probability.” In this same vein, the proposed revisions clarify Part 938.4(a) by also including the “reasonable probability language.” Finally, consistent with both constitutional mandates and the statutory language, the proposed revisions alter Part 938.4(a) and Part 938.4(b) to provide that when the standard of an exemption has been satisfied, the Commission “shall” grant the exception. The previous version of the regulations provided that the Commission “may” grant the exception upon a showing that the standard had been satisfied

The revised proposed SOF Regulations can be found on the Joint Commission’s web site by [clicking here](#)

All lobbyists and clients should carefully review their submissions to ensure all information is accurate prior to submitting their reports. All Commission reporting forms and instructions are available on the Commission’s website. Always check our website for the most up-to-date information and latest forms at www.jcope.ny.gov. If you have any questions regarding reporting requirements, or the online filing system, you may contact Commission staff at (518) 408-3976.