



Chapter 6: Reportable Business Relationships (RBR)

What is a Reportable Business Relationship?

A relationship, regardless of when the relationship commenced, in which a formal or informal agreement or understanding exists in which a Lobbyist or Client of a Lobbyist pays, has paid or promises Compensation to:

- (a) an individual whom the Lobbyist or Client knows or has reason to know is a State Person;
- (b) a non-governmental entity for which the Lobbyist or Client knows or has reason to know that the State Person is a proprietor, partner, director, officer or manager of a non-governmental entity, or owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange) (These roles and positions are referred to as the “Requisite Involvement.”); or,
- (c) a third-party as directed by the State Person or as directed by the entity in which the State Person has the Requisite Involvement;

and

- (d) the payment or promise of Compensation is or was in exchange for goods, services or anything of value, the total value of which exceeds \$1,000 annually, either performed or provided or intended to be performed or provided by the State Person or an entity in which the State Person has the Requisite Involvement.

The agreement or understanding need not be express or in writing and need not be enforceable under contract law to be considered a Reportable Business Relationship.

- ★ **NOTE:** An agreement is only considered a Reportable Business Relationship when Compensation is provided to the State Person, not when a State Person provides Compensation to the Lobbyist or Client.

RBR Definitions

Lobbyist

The lobbying firm or organization (the Principal Lobbyist for filing purposes) and every person identified on a Statement of Registration, as well as any equity partners, officers, or directors of the organization who operate out of the same geographic office as any person identified on a Statement of Registration.

Client

Every person or organization that retains, employs or designates any person or organization to carry on Lobbying Activities on behalf of such Client. With respect to an organization, the term Client also includes High-Level Individuals of the organization.

High Level Individuals

A proprietor, partner, director, trustee or person within the executive management of a Client organization.

When a college, as defined under Section 2 of the Education Law, is a Client organization, the members of the college's governing board, the president or chief executive, and the provost or chief academic officer are High-Level Individuals.

\$1,000 Threshold

A Relationship whose total aggregated value of Compensation paid to the State Person or an entity in which the State Person has the Requisite Involvement exceeds \$1,000 annually (within 12 consecutive months). Such threshold is met once more than \$1,000 in Compensation is paid or owed to such State Person or entity for services Performed or Provided or Intended to be Performed or Provided.

Aggregation

If a Lobbyist or Client has multiple Relationships with the same State Person, the same entity or entities in which a State Person has the Requisite Involvement, then the value of the Compensation paid for goods, services or anything of value relating to such Relationships must be aggregated. If the aggregated value of such Compensation is more than \$1,000 annually (within 12 consecutive months), then **each** relationship is a Reportable Business Relationship (assuming all other criteria are satisfied).

Compensation

Any salary, fee, gift, payment, benefit, loan, advance or any other thing of value.

It does **not** include:

- commercially available consumer and business loans or lines of credit as available to the general public;
- goods and services and discounts available to the general public;
- dividends or payments related to stock purchases; or
- contributions reportable under Article 14 of the New York State Election Law.

Intended to be performed or provided

The goods, services or anything of value have not yet been performed or provided, but the Lobbyist or

Client, as applicable, reasonably anticipates such goods, services, or value to be performed or provided in the future.

Performed or provided

A State Person or an entity in which the State Person has the Requisite Involvement either (i) actually performed or provided the goods, services or anything of value, or (ii) had a significant, but not necessarily exclusive or primary role, in performing or providing the goods, services or anything of value.

Reason to know

Whether a Lobbyist **or** Client has “**reason to know**” that (i) an individual is a State Person, or (ii) a State Person has the Requisite Involvement with an entity, is based on an examination of the totality of the facts and circumstances.

If a reasonable person, looking at all the facts and circumstances, would conclude that a Lobbyist or Client should know that an individual is a State Person or that a State Person has the Requisite Involvement with the relevant entity, then the “reason to know” standard has been satisfied.

Some, but not all, factors that *may* be considered in this analysis are:

- Origins of the relationship between the parties;
- Length of such relationship;
- The type and actual value of the goods, services or items provided; and/or
- Whether the fact that the individual is a State Person or the Requisite Involvement of the State Person with the entity at issue is generally known to the public.

A Lobbyist **or** Client will be deemed to have had reason to know if his lack of knowledge results from willfully ignoring information that would lead a reasonable person to:

- (i) conclude that the individual was a State Person, or that a State Person had the Requisite Involvement, or,
- (ii) undertake further research to determine whether either fact exists.

Requisite Involvement in an entity

When a State Person is a proprietor, partner, director, officer, or manager of a non-governmental entity, or owns or controls 10% or more of the stock of a non-governmental entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange).

State Person

- (i) statewide elected officials;
- (ii) members of the legislature or legislative employees;
- (iii) heads of State departments and their deputies and assistants, other than members of the board of regents of the university of the State of New York who receive no compensation or are compensated on a per diem basis;
- (iv) officers and employees of statewide elected officials;
- (v) officers and employees of State departments, boards, bureaus, divisions, commissions, councils, or other State agencies; and
- (vi) employees of public authorities (other than multi-state authorities), public benefit corporations and commissions at least one of whose members is appointed by the governor, and members or directors of such authorities, corporations, and commissions who are compensated other than on a per diem basis.

RBR Filing Information

Who must report a Reportable Business Relationship?

Lobbyists and Clients are required to publicly disclose information about business relationships with State Persons, regardless of when the relationship commenced, if the criteria for an RBR exist.

For a Client Organization, whose Reportable Business Relationships must be reported?

For organizations that constitute a Client of a Lobbyist, each Reportable Business Relationship of all its High-Level Individuals must be reported by the Client organization if:

- (i) The High-Level Individual entered in to the Reportable Business Relationship in his or her personal capacity; or
- (ii) Another entity entered in to the Reportable Business Relationship at the direction or request of the High-Level Individual.

For example: As a Client Organization's High-Level Individuals have significant influence over decisions made by the Organization, any Reportable Business Relationships under the personal control or direction of such High-Level Individuals should also be disclosed.

Reportable Business Questionnaire

A Lobbyist or Client organization may use, and rely upon in good faith, responses to a questionnaire provided by the Commission to send to its equity partners, officers, directors or High Level Individuals, as

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applicable, to determine whether such persons have business relationships that must be reported. (Questionnaire provided below.)

When am I required to report a Reportable Business Relationship?

Once a Reportable Business Relationship exists a Lobbyist or Client must complete a Reportable Business Relationship Form and submit it to the Commission within 10 days of the RBR's existence. For ongoing Reportable Business Relationships, Lobbyists and Clients must disclose such relationships on their Reportable Business Relationship Form filed with their Statements of Registration and/or Client Semi-Annual Reports covering periods in which the Reportable Business Relationship is in existence.

When does a Reportable Business Relationship exist?

A Reportable Business Relationship exists during the reporting period if all of the following criteria are met:

- 1) A formal or informal agreement or understanding exists in which a Lobbyist or Client of a Lobbyist pays, has paid or promises Compensation to:
 - (a) An individual whom the Lobbyist or Client knows or has Reason to Know is a State Person;
 - (b) A non-governmental entity for which the Lobbyist or Client knows or has Reason to Know that the State Person has the Requisite Involvement; or
 - (c) A third-party as directed by the State Person or as directed by the entity.
- 2) The payment or promise of Compensation is or was in exchange for goods, services, or anything of value either Performed or Provided or Intended to be Performed or Provided by the State Person or an entity in which the State Person has the Requisite Involvement; and
- 3) The total value of the Compensation paid to the State Person or an entity in which the State Person has the Requisite Involvement, which must be aggregated if applicable, exceeds \$1,000 annually (in any 12 consecutive months). Such threshold is met once more than \$1,000 in Compensation is paid or owed to such State Person or entity for services Performed or Provided or Intended to be Performed or Provided.

How do I report a Reportable Business Relationship?

A Lobbyist or Client must complete a separate Reportable Business Relationship Form. The Form shall be considered a part of the Lobbyist's Statement of Registration or the Client's Semi-Annual Report, as applicable.

- ★ **NOTE:** Certain entities file both Lobbyist Statements of Registration and Client Semi-Annual Reports as they are considered both a Lobbyist and Client. These entities shall only be required to file the Lobbyist Reportable Business Relationship Form to comply with the filing requirement.

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When completing the form, please note the following:

- Be as specific as possible when describing the business relationship, including the role each party plays in the arrangement.
- If there is no known date for the end of the relationship, leave the *End Date* field blank.
- If the RBR is with an individual who is listed as an additional Lobbyist in the Statement of Registration, a Filer should identify the “Principal Lobbyist”, and then identify the appropriate individual where the form indicates “Last Name” and “First Name.”

List each RBR separately, reporting additional RBRs with different individuals or entities.

What information is required to be submitted within a Reportable Business Relationship Form?

For each Reportable Business Relationship, a Lobbyist or Client must provide the following information within the Reportable Business Relationship Form:

- The name and public office address of the State Person or entity with which the State Person has the Requisite Involvement;
- A description of the general subject or subjects of the transactions between the Lobbyist or Client and the State Person (or the entity with which the State Person has the Requisite Involvement); and
- The actual or anticipated amount of Compensation, including reimbursable Expenses, to be paid and paid to the State Person (or entity with which the State Person has the Requisite Involvement) by virtue of the business relationship.

What happens if I have multiple Relationships with the same State Person or entity?

When multiple Relationships exist with the same State Person, the same entity or entities in which a State Person has the Requisite Involvement, then the value of the Compensation paid for goods, services, or anything of value relating to such relationships must be aggregated. If the aggregated value of such Compensation is more than \$1,000 annually (within 12 consecutive months), then **each** relationship is an RBR (assuming all other criteria are satisfied).

If I have previously reported an RBR, must I disclose it again?

Yes. As long as the Relationship continues to exist, the RBR must be reported.

RBR Amendment

Can an RBR be amended after being submitted?

Yes. A Filer has a duty to amend an RBR if any material change – permanent or temporary – occurs relating to the information previously reported on an RBR, which must be completed and submitted to the Commission **within 10 days of such change.**

A material change may include, for example, changes in the actual or anticipated amount of Compensation paid.

You are required to submit an amended RBR form if you subsequently form a new RBR with a different State Person.

RBR Exclusions

Are there any types of Relationships that are excluded from the reporting requirements?

Yes. Even if all the criteria for an RBR are met, a Relationship in which a Lobbyist or Client provides Compensation to a State Person or an entity in which the State Person has Requisite Involvement that relate to the following are excluded from reporting requirements:

- Medical, dental and mental health services and treatment; and
- Legal services with respect to:
 - investigation or prosecution by law enforcement authorities;
 - bankruptcy; and
 - domestic relations matters.

Penalties

Failure to report a Reportable Business Relationship in a timely manner subjects the Lobbyist or Client to civil penalties as prescribed by section 1-o(b)(i) of the Lobbying Act and/or late fees as prescribed by sections 1-e(e)(iii) and 1-j(c)(iii) of the Lobbying Act.

In addition, the submission of false Filings subjects the Lobbyist or Client to a civil penalty as prescribed by section 1-o(b)(ii) of the Lobbying Act.

RBR Examples

1. **A trade association is a Client of a registered Lobbyist. Does the trade association need to disclose the RBRs of its directors and executive managers?**

Yes. In the Reportable Business Relationship Guidelines ("Guidelines"), the definition of Client includes the directors and executive management of the organization. As a result, all RBRs between a director or executive manager with a State Person must be disclosed.

2. **A trade association is a Client of a registered Lobbyist. The president of the association, who is a salaried employee of the association, has recently been appointed to serve on a State commission in an uncompensated position. Must the trade association now disclose its relationship with its employee, and the employee's salary, as an RBR?**

No. Because the association president was appointed to an uncompensated position, he/she is not a State Person for the purposes of RBR disclosure.

3. **A trade association has 100 members on its board of directors. Does it need to disclose RBRs for all board members?**

Yes. Every board member's RBR with a State Person, as that term is defined, that involves Compensation more than \$1,000 within 12 consecutive months must be reported.

4. **A member of a Client trade association's board of directors is a State Person and is paid by the association for his work on the board. Is this an RBR?**

Yes. The salary paid to the board member by the trade association would be considered Compensation, as that term is defined, and must be reported.

5. **Does an RBR exist when a trade association's board member buys a product or service at market rates from a company owned by a State Person?**

Yes. Even though the product or service was purchased at market rates, this is an RBR. The "commercially available/market rate" exception to Compensation covers only a limited range of products, i.e., consumer and business loans and lines of credit.

6. **Does an RBR exist when a trade association's board member employs a law firm in which a State legislator is a partner, but the retainer is not with the legislator?**

Yes. If the Lobbyist or Client has reason to know that the State legislator has a Requisite Involvement in the law firm, an RBR has been created.

7. **To what extent is the board member of a trade association required to investigate the business relationships it has with outside firms?**

The test is whether a reasonable person looking at all the facts and circumstances would conclude that the board member should know that an individual is a State Person or has a Requisite

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Involvement with the relevant entity. There is no absolute requirement to investigate in order for the “reason to know” standard to be satisfied.

8. **A known State Person owns an apartment building and advertises the availability of units in a local newspaper. The State Person rents an apartment to a Client on the same lease terms as any other tenant, including the amount of rent and the term of the lease. Is this an RBR?**

Yes. Even though the lease is made commercially available and the rent is at market rates, this is an RBR. The “commercially available/market rate” exception to Compensation covers only a limited range of products: consumer and business loans and lines of credit.

9. **If a Lobbyist or Client compensates a State Person as a speaker on the same terms as it would a member of the general public, has an RBR been created?**

Yes. Even though the speaker was paid at “market rates,” this is an RBR. The “commercially available/market rate” exception to Compensation covers only a limited range of products: consumer and business loans and lines of credit.

10. **Do business relationships with state or local judges or with county legislators need to be disclosed?**

No. Only Reportable Business Relationships with a State Person must be disclosed. State Person, as defined in both the Lobbying Act and the Guidelines, include: Statewide elected officials, State officers, State employees, Members of the Legislature, and legislative employees.

11. **Is a gift by a Lobbyist or Client to a State Person that is not in exchange for goods, services, or anything of value considered to be an RBR?**

No. In order for an RBR to be created, the goods, services, or anything of value provided by the Lobbyist or Client must be in exchange for goods, services, or anything of value either performed or provided, or intended to be performed or provided, by the State Person or an entity in which the State Person has the Requisite Involvement. See Part 934 of the Commission’s Regulations for rules relating to gifts given by Lobbyists or Clients to Public Officials.

12. **Does a 501(c)(3) organization that is a Lobbyist or a Client need to report on the RBRs for all employees, including those who do not perform any Lobbying Activities?**

Yes. There is no exemption for 501(c)(3) organizations from the RBR disclosure requirements. Therefore, all RBRs involving the organization’s directors or executive management must be disclosed.

13. **On the Lobbyist Registration Statement, there is one Principal Lobbyist listed and four additional Lobbyists. Who is required to disclose RBRs?**

All individuals (including additional Lobbyists) identified on the Registration Form are required to disclose RBRs. In addition, if the Lobbyist is a firm and the firm itself has a business relationship with a State Person or an entity in which the State Person has the Requisite Involvement, then that RBR must also be disclosed.

RBR Sample Questionnaire

This sample questionnaire may be used, or appropriately modified, by a Lobbyist or Client Organization to send to its equity partners, officers, directors or High Level Individuals, as applicable, to determine whether such persons have Reportable Business Relationships that must be disclosed.

The purpose of this sample form is not to elicit all the information that is required under the RBR reporting requirements. Instead, it is to aid in determining whether further efforts must be conducted to determine if a Reportable Business Relationship exists.

A questionnaire like this one is not submitted to JCOPE. It is strictly for the benefit of the Filer.

Name: _____

Title: _____

Address of Primary Work Location(s): _____

1. Do you currently have any business relationships in which you purchased or will purchase goods or services valued at more than \$1,000 annually from a person or entity located within the State of New York?

Yes: ____

No: ____

If **“Yes,”** go to Question #2.

If **“No,”** sign and date the form.

NOTE: Reportable Business Relationships include formal and informal relationships that may or may not be based on written contracts.

The value of any outstanding Compensation owed as well the value of goods or services to be performed must be considered when determining if the \$1,000 threshold is met.

2. Do the services you are purchasing fall into one or more of the following categories:

- Treatments for medical, dental, and mental health services;
- Legal services with respect to: investigation or prosecution by law enforcement; bankruptcy; domestic relations.

Yes: ____

No: ____

If **“Yes,”** go to Question #3.

If **“No,”** sign and date the form.

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3. (a) If the business relationship is with a person, is that individual a New York State employee or a New York State elected official?

Yes: _____

No: _____

Not that I am aware of: _____

- ★ **NOTE:** The answer “Not that I am aware of” is only appropriate when, based on the totality of the circumstances, the person signing this form does not have a “reason to know” that the business relationship is with a New York State employee or a New York State elected official.

3. (b) If the business relationship is with an entity, is a New York State employee or a New York State elected official a proprietor, partner, director, officer, or manager of the entity?

Yes: _____

No: _____

Not that I am aware of: _____

- ★ **NOTE:** The answer “Not that I am aware of” is only appropriate when, based on the totality of the circumstances, the person signing this form does not have a “reason to know” that the business relationship is with an entity in which a New York State employee or a New York State elected official is the proprietor, partner, director, officer, or manager.

3. (c) If the business relationship is with an entity, does a New York State employee or a New York State elected official own or control 10% or more of the stock of the entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange)?

Yes: _____

No: _____

Not that I am aware of: _____

- ★ **NOTE:** The answer “Not that I am aware of” is only appropriate when, based on the totality of the circumstances, the person signing this form does not have a “reason to know” that the business relationship is with an entity in which a New York State employee or a New York State elected official owns or controls 10% or more of the stock of the entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange).

I attest and affirm that the foregoing information is, to the best of my knowledge, true and accurate.

Name

Date