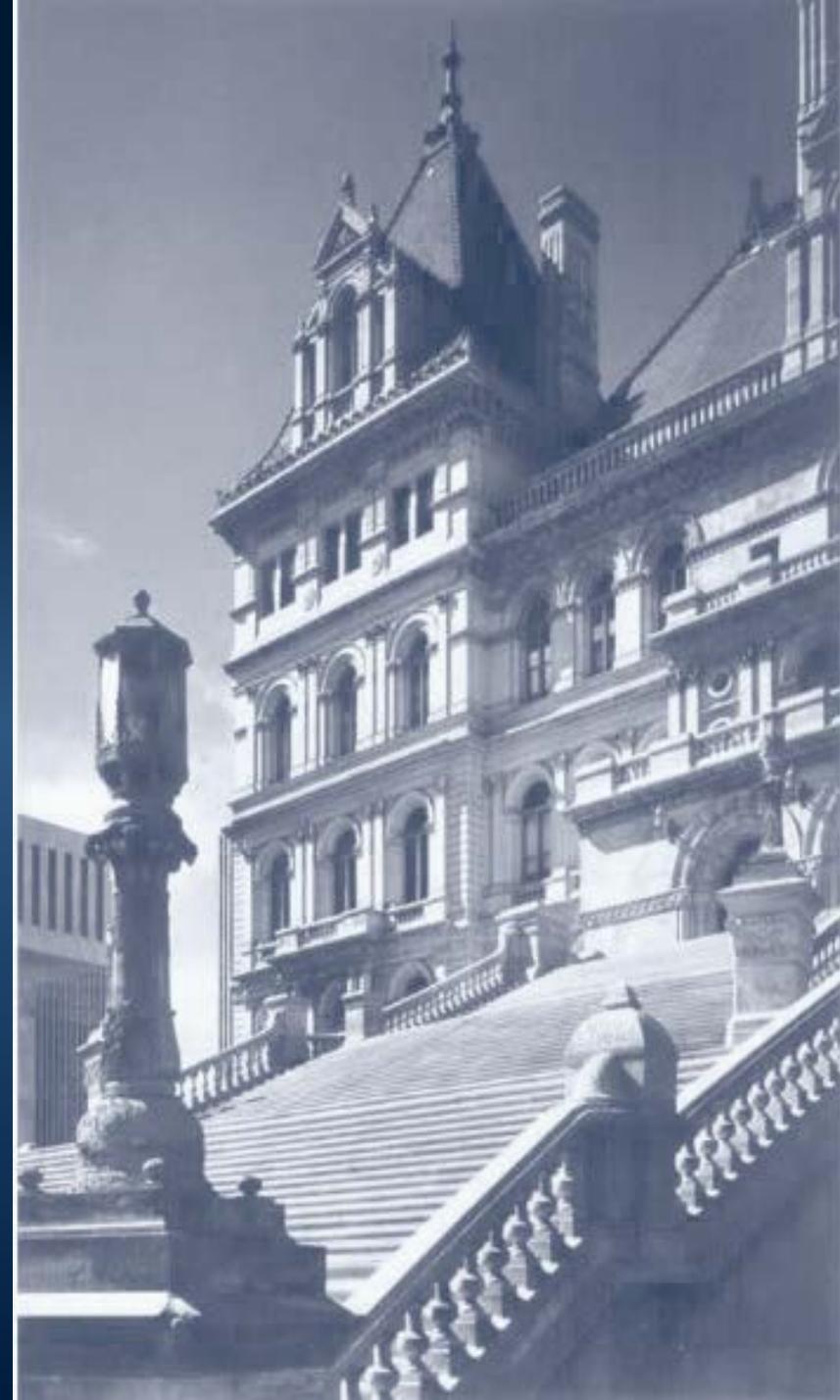




LOBBYING IN NEW YORK STATE

AN OVERVIEW OF THE LOBBYING ACT AND
JCOPE'S NEW REGULATIONS

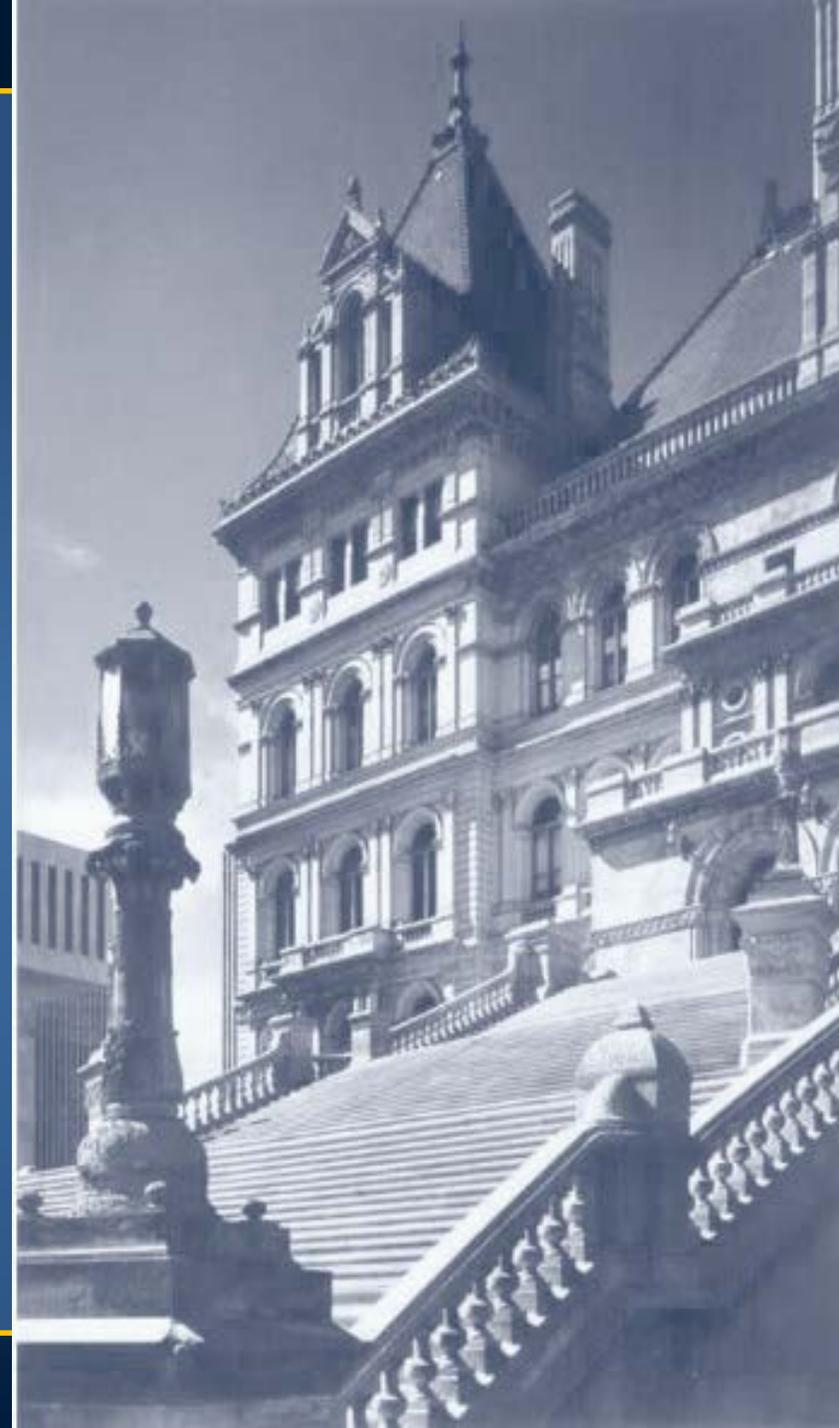
September 20, 2018



JCOPE'S ROLE - TRANSPARENCY

- JCOPE promotes transparency of lobbying activities through oversight and disclosure of the expenses, compensation, and activities of registered Lobbyists and their Clients.
- All lobbying reports required by Legislative Law Article 1-a known as the “Lobbying Act” are publicly available filings.

LOBBYING OVERVIEW



LOBBYING IS ANY ATTEMPT TO INFLUENCE:

- State or local legislation or resolutions
- State or local executive orders
- State or local rules or regulations
- Rate making proceedings by a State agency or municipality
- Governmental procurements
- Tribal-state compacts, memoranda of understanding, or any other tribal-state agreements.

These are known as the Lobbying Act “1-c(c) activities”

WHAT IS CONSIDERED AN “**ATTEMPT TO INFLUENCE?**”

Any activity intended to support, oppose, modify, delay, expedite or otherwise affect any of the 1-c(c) activities.

Any activity intended to influence a Public Official can be considered lobbying...no matter how the contact is made with limited exceptions.

CONTACT IS MADE BY: **DIRECT LOBBYING**

Direct lobbying involves direct contact between a Lobbyist and the individual you are attempting to influence, including but not limited to:

- face-to-face meetings
- telephone calls
- distribution of written materials
- e-mails
- social media interactions



CONTACT IS MADE BY:

GRASSROOTS LOBBYING

Grassroots Lobbying involves a communication that takes a clear position on a specific “**government action**” and urges the public or a segment of the public to contact a Public Official in support of that position.

Grassroots Lobbying is an attempt to influence Public Officials through their constituency, by motivating or enabling the public to contact their elected officials.

REPORTABLE LOBBYING ACTIVITY



TRIGGERS FOR REQUIRED REPORTING

REPORTING IS REQUIRED IF:

1. There is lobbying on any of the 1-c(c) activities and
2. The Lobbyist or Client exceeds, or anticipates exceeding, the \$5,000 threshold.

CALCULATING THE \$5,000 LOBBYING THRESHOLD

You will have reached the \$5,000 threshold if you incur, expend, or receive or reasonably anticipate incurring, expending, or receiving more than \$5,000 in combined reportable compensation and expenses for lobbying activities on a state and/or local level per year.

- **Reportable compensation** is generally money paid to an external Lobbyist, or internal spending (salaries, business costs associated with in-house lobbying).
- **Reportable expenses** include things like advertising, postage and electronic advocacy.

ADDITIONAL LOBBYING ACT DISCLOSURES

- **Reportable Business Relationships**
- **Source of Funding**
- **Disbursement of Public Monies**



REPORTABLE BUSINESS RELATIONSHIPS

Lobbying Act

Sections 1-c(w), 1-e(c)(8) and 1-j(b)(6)



REPORTABLE BUSINESS RELATIONSHIPS ("RBR")



Lobbyists and Clients of Lobbyists are required to publicly disclose information regarding RBRs where a State Person receives **over \$1,000** in compensation from either the Lobbyist or Client in a calendar year.

WHAT IS AN **RBR**?

A formal or informal agreement in which a Lobbyist or Client pays over **\$1,000** in compensation within a **calendar year** to:

- a State Person;
- a non-governmental entity for which the Lobbyist or Client knows or has reason to know that a State Person has Requisite Involvement in; or
- a third party as directed by the State Person or entity

in exchange for goods, services or anything of value performed or provided by the State Person or entity.

WHO IS A **STATE PERSON**?



- Any statewide elected official, State officer, State employee, member of the Legislature or Legislative employee
- This includes CUNY and SUNY employees
- Such relationship does not need to be in writing or enforceable under contract law to be reportable under the Lobbying Act

WHAT IS “**REQUISITE INVOLVEMENT**”?

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).

Aggregation of Compensation

If a Lobbyist or Client has multiple business relationships with the same State Person, or the same entity or entities a State Person has the Requisite Involvement, then the value of Compensation paid must be aggregated to determine if the \$1,000 annual threshold in Compensation is met.

WHOSE RBRs MUST BE DISCLOSED?

- The Lobbyists or Client's RBRs as an entity
- The RBRs of the Lobbyist or Client's board and senior executives ("**High Level Individuals**") are also attributable to the organization. For colleges and universities, this includes the governing board members, the President or Chief Executive, and the Provost or CAO

Use of Questionnaire

Lobbyists and Clients may use, and rely upon in good faith, a Commission Questionnaire to determine RBRs emanating from board and senior executives (High Level Individuals)

HOW AND WHEN TO REPORT?

Once an RBR exists, a Lobbyist or Client must complete an RBR form and submit it to JCOPE **within 10 days** of the RBR's existence.

If the filer is both a Lobbyist and a Client, only one RBR form is needed.

For ongoing business relationships that constitute RBRs, Lobbyists and Clients must disclose on the RBR form all calendar years in which the RBR is/will be in existence.

RBR EXCLUSIONS AND PENALTIES

EXCLUSIONS

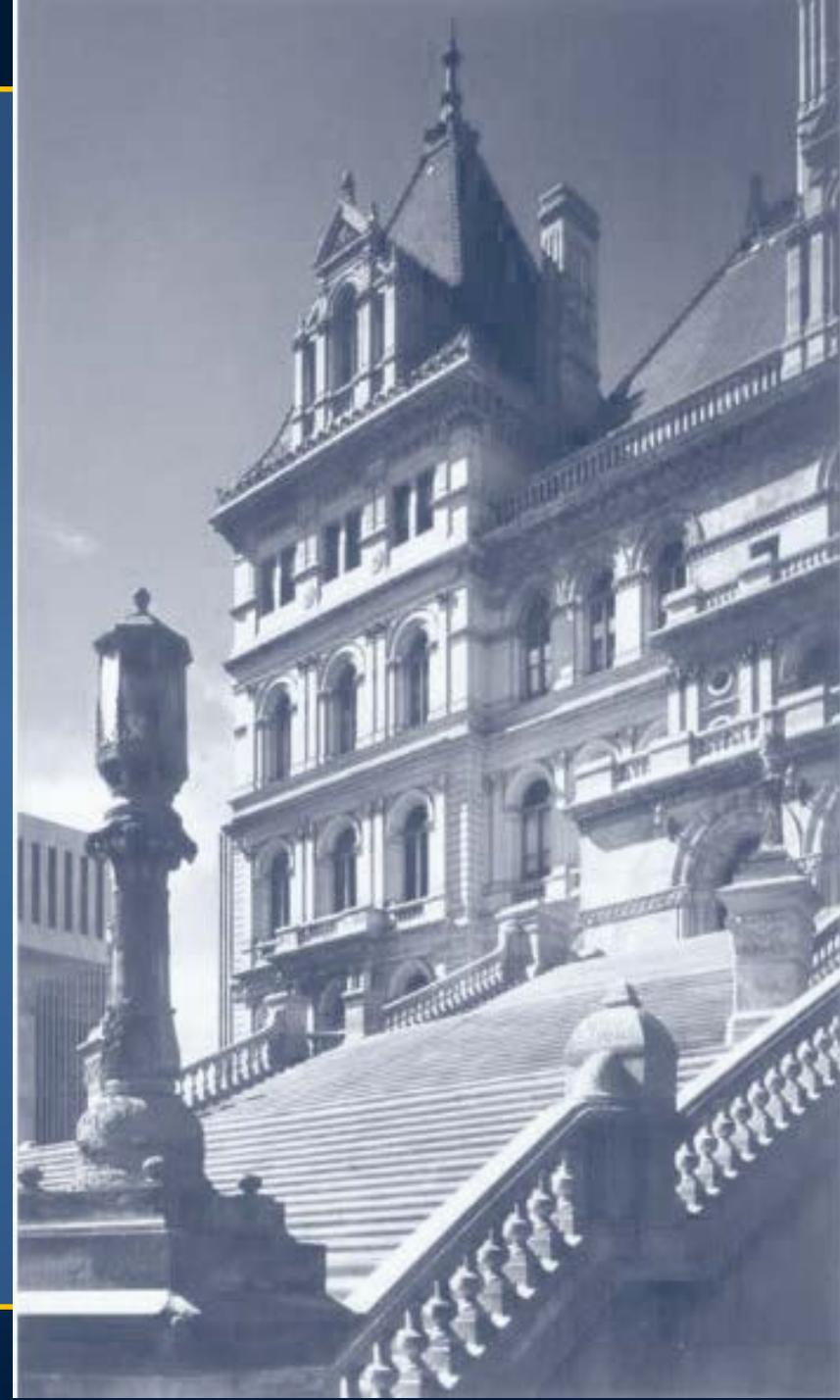
- Medical, dental and mental health services and treatment
- Legal services regarding law enforcement investigations and prosecutions
- Bankruptcy
- Domestic Relations matters

PENALTIES

- Failure to report in a timely manner (Section 1-o(b)(i))
- Late fees (Section 1-e(e)(iii) and 1-j(c)(iii))
- False filing (Section 1-0(b)(ii))

SOURCE OF FUNDING

Lobbying Act Sections 1-h (c)(4) and 1-j(c)(4)



SOURCE OF FUNDING

The policy underlying source of funding disclosure is to provide **transparency** to the public regarding the entities and individuals that financially support lobbying efforts in the State.

The disclosure is required by both **Clients and Lobbyists who lobby on their own behalf.**

EXCLUSION FOR 501(c)3S

Source of Funding Disclosure does not apply to 501(c)(3)s.

However, if a 501(c)(3) makes **in-kind donations** of staff, staff time, personnel, offices, supplies or financial supports of any kind **to a 501(c)(4)**, then the (c)(4) must disclose the (c)(3) as a Source and the (c)(3) must file a report with the Department of Law.

EXPENDITURE THRESHOLD

THE EXPENDITURE THRESHOLD TO DISCLOSE IS MET WHEN:

The Client Filer has spent **more than \$15,000** in reportable compensation and/or expenses for lobbying in NYS during the expenditure threshold period; and

The Client Filer's reportable compensation and/or expenses for lobbying in NYS constitute **at least 3%** of the Client Filer's total expenditures during the expenditure threshold period.

EXPENDITURE THRESHOLD

THE EXPENDITURE THRESHOLD PERIOD:

Client Filers must check to see if they meet the \$15,000/3% expenditure threshold using 2 different calculations:

- 12-month calculation
- Calendar-year calculation

SOURCE OF FUNDING DISCLOSURE

WHO OR WHAT IS A “SOURCE”?

A Source is any person, corporation, partnership, organization, or entity that makes a contribution to or for the benefit of a Client Filer, which is intended to fund, in whole or in part, the Client Filer’s activities or operations.

Once a Client Filer meets the expenditure threshold all contributions by Sources providing more than \$2,500 (in the aggregate) are reportable.

Note: While there is no minimum for disclosing a contribution, whether something is reportable in a particular filing period will depend on the date of the contribution.

DISBURSEMENT OF PUBLIC MONIES



DISBURSEMENT OF PUBLIC MONIES

Public monies are funds appropriated as part of a passed State budget, which are designated for programs, grants or are discretionary funds and have not been allocated to specific recipients.

Lobbyists registered with JCOPE may be required to file separate reports disclosing the reportable compensation and expenses associated with attempts to influence a Public Official with respect to public monies.

DISBURSEMENT OF PUBLIC MONIES

WHEN DOES A PUBLIC MONIES DISCLOSURE REPORT NEED TO BE FILED?

If a Lobbyist (who is otherwise already required to file a Statement of Registration) reasonably anticipates they will expend, incur or receive compensation and expenses exceeding \$5,000 in any calendar year in connection with attempts to influence a Public Official, or by a person or entity working in cooperation with a Public Official, regarding the solicitation award or administration of:

- a grant, loan or agreement involving the disbursement of public monies in excess of **\$15,000**

PROHIBITIONS AND LIMITATIONS UNDER THE LOBBYING ACT



GIFTS

- **Section 1-m of the Lobbying Act**
- **19 NYCRR Part 934**
- **Part 943.5(c)(1) of the New Regulations**



LOBBYING RESTRICTIONS - GIFTS

Lobbyists and Clients (**including both Contractual and Beneficial Clients**) are prohibited from giving gifts to Public Officials.

Public Officials include the four statewide elected officials, members and employees of the Legislature, and officers and employees of State agencies, boards, departments, and commissions.

Officers and employees of local municipalities with a population of over 5,000 also qualify as Public Officials under the lobbying rules.

LOBBYING RESTRICTIONS - GIFTS

Generally, State Public Officials cannot accept gifts valued at more than \$15. The gift restrictions are set in place to avoid the appearance that the gift is being offered to either influence the Public Official or reward them for performing their State job.



GIFT EXCEPTIONS (NON-EXCLUSIVE)

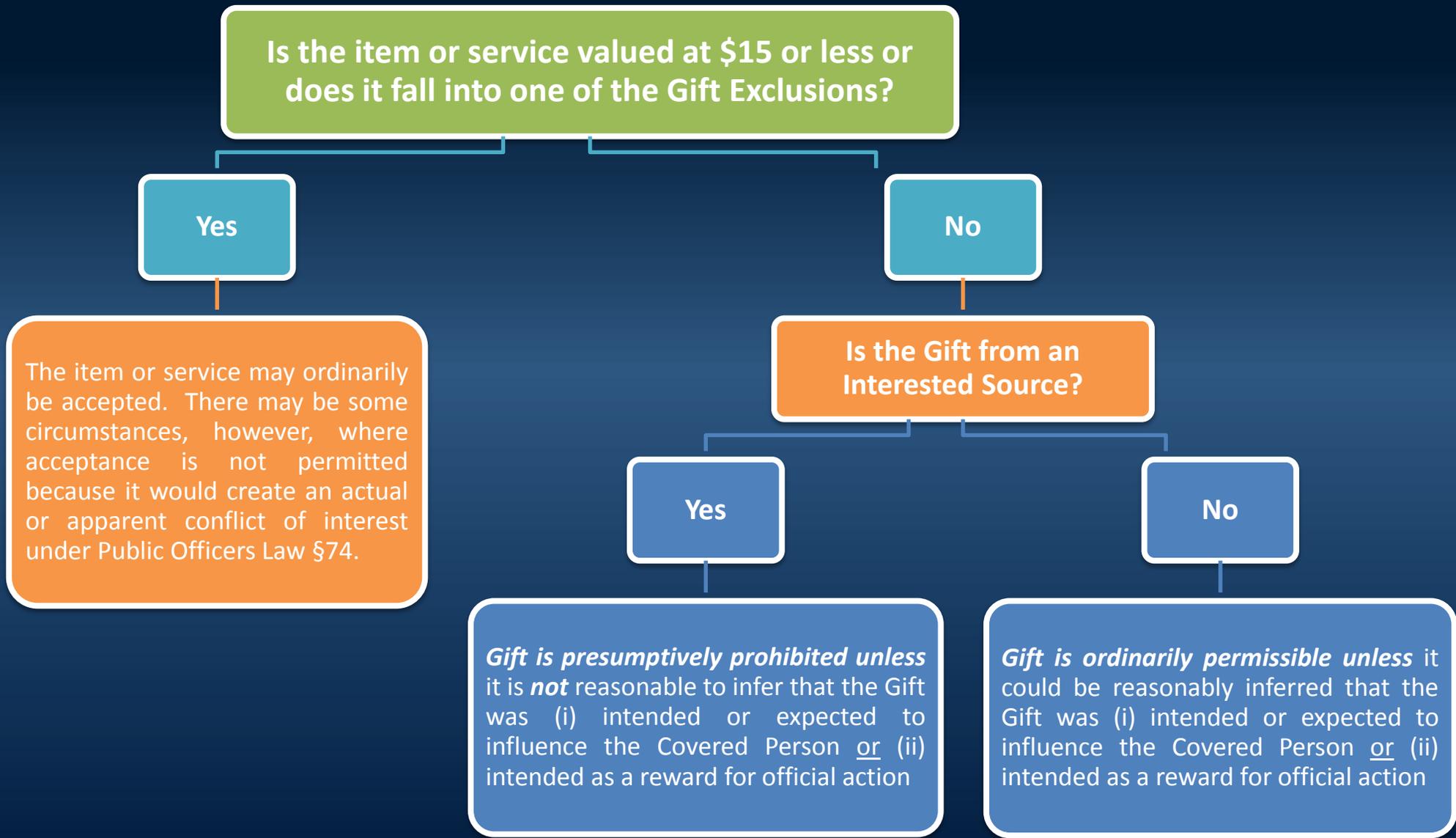
- Campaign contributions
- Food or beverage \leq \$15 at event
- Attendance at “**charitable event**”
- Attendance at “**political event**”
- Attendance at widely-attended events (from event sponsor)
- Awards/Plaques/Ceremonial Items
- Honorary Degrees
- Promotional Items
- Certain discounts
- Gifts from family/friends

GIFTS – INTERESTED SOURCES

AN INTERESTED SOURCE IS AN ENTITY THAT IS:

- regulated by or appears before the official's agency
- has contracts with, or seeks contracts with the official's agency
- a registered Lobbyist or Client of a Lobbyist that lobbies the official's agency
- the spouse or the minor child of a registered Lobbyist or Client of a Lobbyist that lobbies the official's agency
- involved in ongoing litigation that is adverse to the official's agency
- has received or applied for funds from the official's agency at any time during the previous year up to and including the date of the proposed or actual receipt of the gift

GIFTS: STEP-BY-STEP ANALYSIS FOR STATE OFFICIALS



Is the item or service valued at \$15 or less or does it fall into one of the Gift Exclusions?

Yes

The item or service may ordinarily be accepted. There may be some circumstances, however, where acceptance is not permitted because it would create an actual or apparent conflict of interest under Public Officers Law §74.

No

Is the Gift from an Interested Source?

Yes

*Gift is presumptively prohibited unless it is **not** reasonable to infer that the Gift was (i) intended or expected to influence the Covered Person or (ii) intended as a reward for official action*

No

Gift is ordinarily permissible unless it could be reasonably inferred that the Gift was (i) intended or expected to influence the Covered Person or (ii) intended as a reward for official action

CONTINGENT RETAINERS

- Section 1-k of the Lobbying Act
- Part 943.5(c)(2)



CONTINGENT RETAINERS

Lobbyists and Clients (including Contractual and Beneficial Clients) are prohibited from entering into an agreement for a contingent retainer.

- No Lobbyist shall accept employment for lobbying where compensation for such advocacy, in whole or in part, is dependent upon the outcome of any governmental decision.
- A violation of the contingent retainer prohibition is a Class A misdemeanor and \$10,000 penalty.
- The existence of a impermissible contingent retainer can be established without reference to a written agreement.

STOCK AND EQUITY PAYMENTS

PER SE VIOLATION OF THE CONTINGENT RETAINERS PROHIBITION

This presumption can only be overcome by a showing that the value of stock or equity is not directly dependent on the outcome of the government action.

Application to the Commission is required to approve any such stock or equity payments for lobbying activity.



PROCUREMENT LOBBYING



PROCUREMENT LOBBYING

Procurement lobbying is an attempt to influence a government contract or purchasing decision for goods, services, revenue contracts or real property involving an estimated annualized expenditure in excess of \$15,000.



PROCUREMENT LOBBYING

The procurement lobbying restrictions limit the communication that a Lobbyist or Client can have with a governmental entity to the “**designated contact**” during the “restricted period.”

The restricted period begins at the government entity’s earliest attempt to solicit a response with regard to a written procurement contract and ends with the final contract award.



COMMISSION SALESPERSON

TO QUALIFY FOR AN EXEMPTION FROM THE PROCUREMENT LOBBYING RULES:

- Primary purpose is to cause or promote the sale of, or influence another to purchase an Article of Procurement
- Person is an employee or independent contractor of a vendor for a term of not less than 6 months or an indefinite term
- Compensated in whole or in part by the payment of a percentage amount of all or a substantial part of the sales of an Article of Procurement (at least 50% of the number of sales)
- Such percentage amount of commissions paid for sales/purchases to a public body is not substantially greater than any commission payable for comparable sales to another purchaser

WHAT'S NEW?

- **Comprehensive Lobbying Regulations – Part 943**
- **Corresponding Amendments to Source of Funding Regulations – Part 938**



KEY DIFFERENCES – EXISTING PRACTICE VS. NEW REGULATIONS

EXISTING PRACTICE

1. A registration may disclose a Client and, *when applicable*, a Third Party Beneficiary
2. Lobbying reports could identify vague targets of lobbying, i.e., “legislative branch”
3. Direct Lobbying only covered the advocacy meeting (pre 16-01)
4. Limited guidance on:
 - a. Grassroots Lobbying
 - b. Lobby Days
 - c. Coalitions
5. Organizations with in-house lobbying had to file both Lobbyist and Client reports

REGULATIONS

1. Every registration and lobbying report must include a Contractual Client and a Beneficial Client (even if the same)
2. Greater specificity on Lobbying Targets: Every lobbying report must disclose actual individual targets of lobbying
3. Direct lobbying includes contacts made for “door opening”
4.
 - a. **Grassroots Lobbying** is defined and reportable, including social media activities
 - b. **Lobby Days** are defined and include instructions on associated reportable expenses and individuals
 - c. **Coalitions** are defined and filing options and associated filing requirements are provided. Certain Coalition members become Beneficial Clients
5. Only Lobbyist reports are required unless the organization also retains external Lobbyists

WHO ARE YOU AND HOW DO YOU FILE?

- **Clients – Contractual and Beneficial**
- **Lobbyists – Employed, Retained and Designated**
- **Multi-Party Relationships – Sub and Co-Lobbyists**
- **Coalitions**



CLIENTS

Contractual and Beneficial Client



CONTRACTUAL AND BENEFICIAL CLIENTS

THE CONCEPT

- Lobbyists and Clients must identify both the Contractual Client and Beneficial Client on all lobbying filings.
 - Contractual Client and Beneficial Client can be the same.
 - Designed to close loopholes in Source of Funding disclosure and promote transparency by requiring Lobbyists and Clients to identify the “**true**” Client on all lobbying reports.
-

I am a **CONTRACTUAL CLIENT**...



CONTRACTUAL CLIENT

An individual or organization that retains the services of a Lobbyist for the benefit of itself or another.

- Responsible for filing the CSA, except for the Source of Funding Disclosure section of the CSA
- Responsible Party of the Contractual Client signs Lobbying Agreements or Authorizations
- Party that compensates the Lobbyist (internal or external)
- Listed by Lobbyist and Client on all lobbying filings

I am a **BENEFICIAL CLIENT**...



**BENEFICIAL
CLIENT**

The specific individual or organization on whose behalf and at whose request or behest lobbying activity is conducted. The “**true**” client.

- Listed by Lobbyist and Client on all lobbying filings
- Coalition Members (of Coalitions filing lobbying reports) exceeding \$5,000 in cumulative annual lobbying compensation and expenses
- An individual or organization that lobbies on its own behalf (in which case they are the Lobbyist, BC and CC)
- Responsible for Source of Funding Disclosure requirements

LOBBYISTS

**Employed, Designated and Retained
Prime, Co and Sub-Lobbyists**



I am an **EMPLOYED LOBBYIST**...

ADVOCACY
CENTER



EMPLOYED
LOBBYISTS

In this case, the Advocacy Center is both its own Lobbyist and Client

EMPLOYED LOBBYISTS

INDEPENDENT CONTRACTORS

How does an in-house independent contractor have to file?

QUESTIONS TO CONSIDER

- Are they considered a Retained Lobbyist?
- Are they considered an Employed Lobbyist as part of the in-house lobbying team?

EMPLOYED LOBBYISTS

INDEPENDENT CONTRACTORS

The person may be considered an **Employed Lobbyist (In-house)** and listed on the organization's lobbying reports if such person meets the following criteria:

- The only source of lobbying compensation is the lobbying organization;
- Their lobbying activities are supervised by the lobbying organization; and
- The person is not otherwise identified as an Individual Lobbyist on any other Statement of Registration.

I am a **DESIGNATED LOBBYIST**...

ADVOCACY
CENTER



Board
Member,
Director,
or Officer

**DESIGNATED
LOBBYIST**

I am a **RETAINED LOBBYIST**...



LOBBYING
FIRM



RETAINED
LOBBYISTS

MULTI-PARTY RELATIONSHIPS

- **Prime Lobbyists**
- **Sub-Lobbyists**
- **Co-Lobbyists**



REPORTING OBLIGATIONS FOR **ALL PARTIES** TO A LOBBYING ACTIVITY



LOBBYIST

- STATEMENT OF REGISTRATION
- BI-MONTHLY REPORTS
- DISBURSEMENT OF PUBLIC MONIES (If applicable)



CONTRACTUAL CLIENT

- CLIENT SEMI-ANNUAL REPORT



BENEFICIAL CLIENT

- SOURCE OF FUNDING

PRIME OR SUB LOBBYIST?



CLIENT



LOBBY FIRM A
(Prime Lobbyist)



LOBBY FIRM B
(Sub-Lobbyist)



Retains Lobby Firm A

(Contractual and Beneficial)



Lobby Firm A retains
Lobby Firm B to do a
portion of the work

(Contractual Client of Sub)



The Sub-Lobbyist may or
may not have interaction
with the Client

MULTI-PARTY – **CLIENT** REQUIRED FILINGS



CLIENT
(BOTH CONTRACTUAL
AND BENEFICIAL)



CLIENT
SEMI - ANNUAL REPORT



Lists Prime Lobbyist
as the Lobbyist
and discloses lobbying
activity by Prime Lobbyist
on their behalf

MULTI-PARTY – **PRIME LOBBYIST** REQUIRED FILINGS



PRIME LOBBYIST

**STATEMENT OF
REGISTRATION AND
BI-MONTHLY REPORTS**

**Disclose Client and all
Sub-Lobbyists**

**Describes own lobbying
activity**

AND



**A CONTRACTUAL CLIENT
(OF SUB-LOBBYIST)**

**CLIENT SEMI-
ANNUAL REPORT**

**Describes contractual
Client/Lobbyist relationship
between Prime (as the
Contractual Client on behalf
of the Beneficial Client) and
Sub-Lobbyist**

MULTI-PARTY – **SUB-LOBBYIST** REQUIRED FILINGS



SUB-LOBBYIST



**STATEMENT OF REGISTRATION AND
BI-MONTHLY REPORTS**

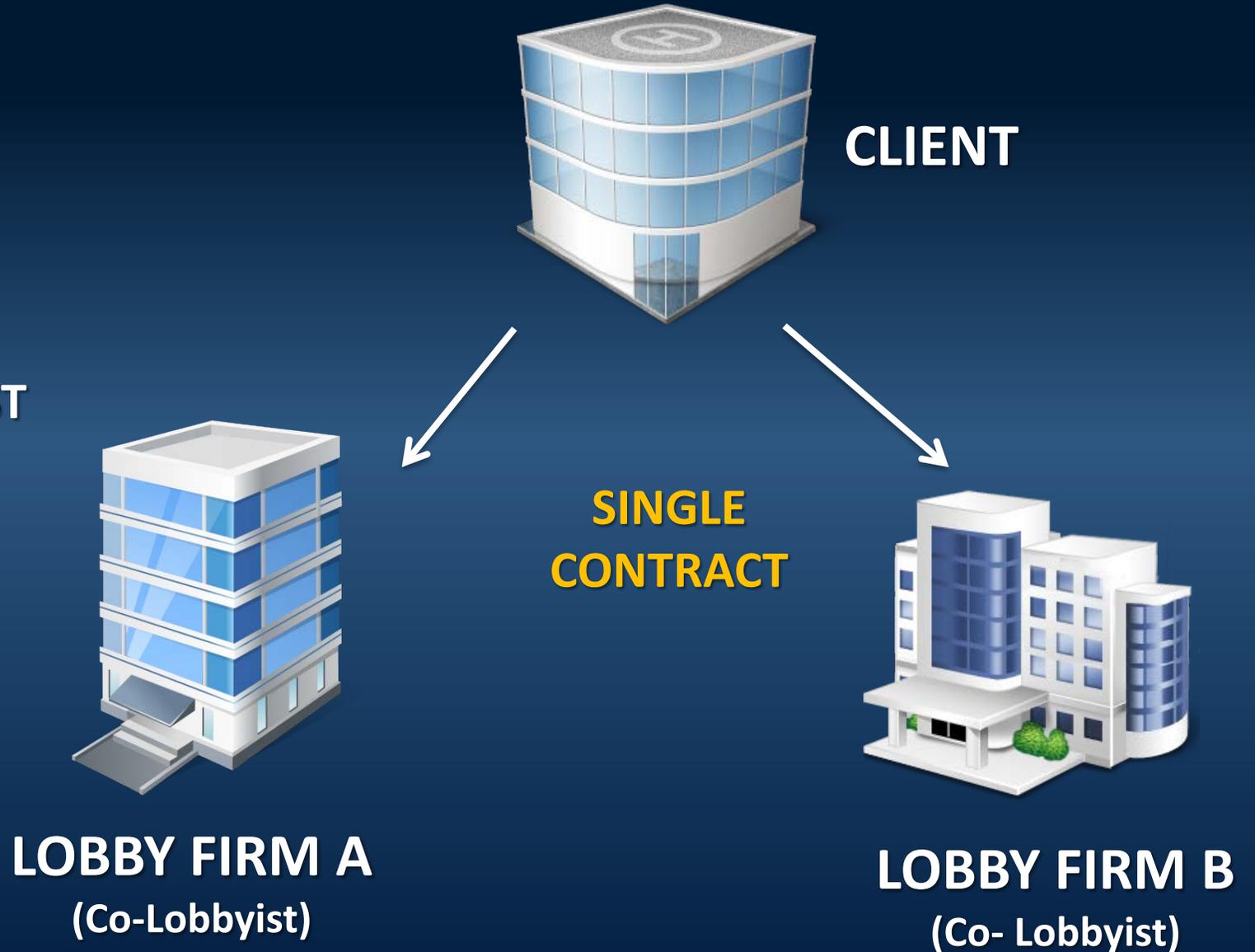


**DISCLOSES THE
CONTRACTUAL CLIENT
(= PRIME LOBBYIST)
AND BENEFICIAL CLIENT
(= ORIGINAL CLIENT/"TRUE"
CLIENT)**

**DESCRIBES THEIR OWN
LOBBYING ACTIVITY**

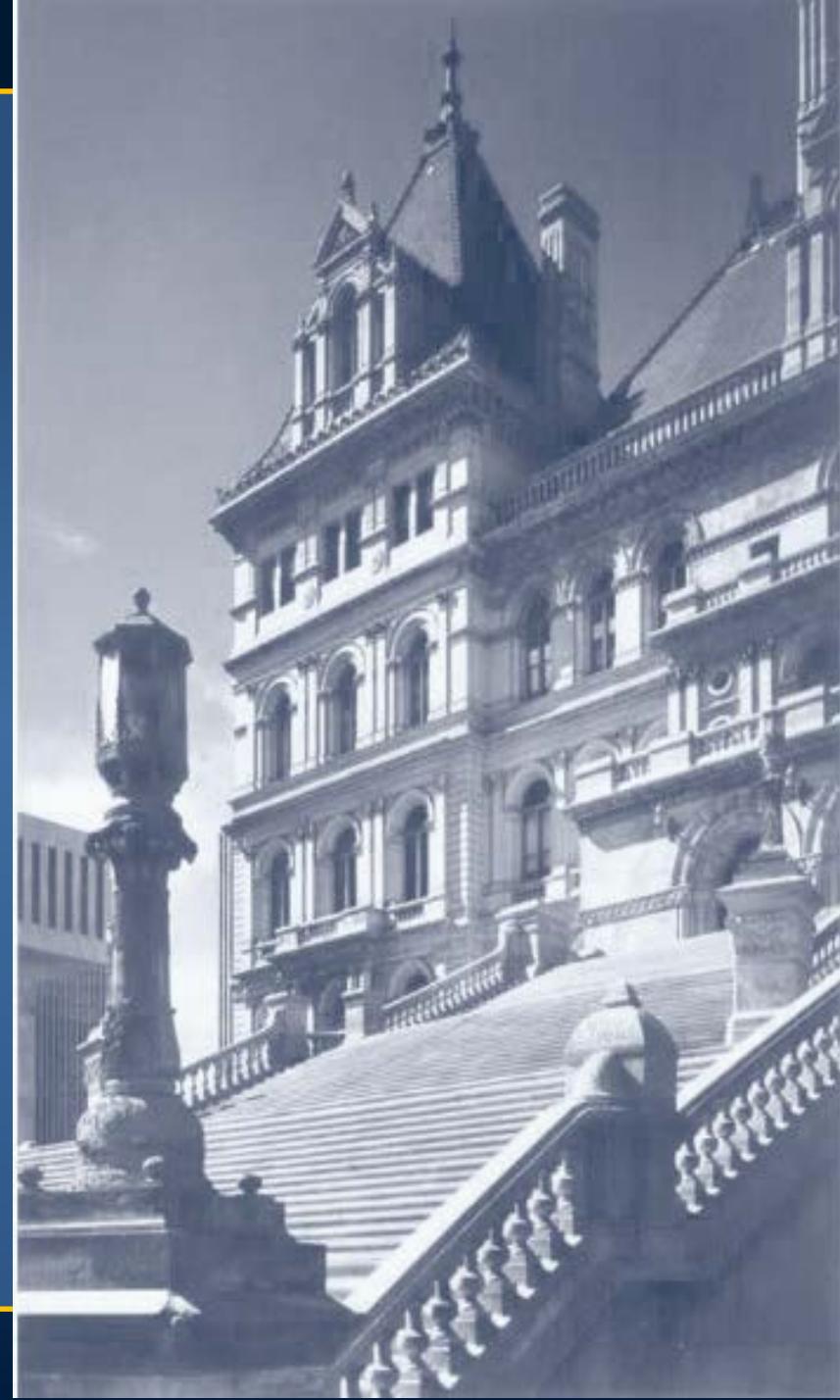
CO-LOBBYISTS

- EACH CO-LOBBYIST MUST FILE OWN REGISTRATION STATEMENT
- MUST IDENTIFY CO-LOBBYIST
- BUT ONLY LIST ITS OWN COMPENSATION AND EXPENSES



MULTI-PARTY RELATIONSHIPS – COALITIONS

**Striking a balance between improved
transparency surrounding who is behind
Coalitions without discouraging their formation**



WHAT IS A COALITION?

A group of otherwise-unaffiliated entities or members who pool funds for the primary purpose of engaging in lobbying activities on behalf of the members of the Coalition.



+

Lobbying Activities
and Pooled Funds

=

COALITION

FILING REQUIREMENTS FOR COALITIONS THAT EXCEED THE \$5,000 THRESHOLD

FILE A LOBBYING REPORT AS A LOBBYIST OR CLIENT

- Name a Responsible Party for the filings
- Maintain up-to-date record of all members who exceed \$5,000 in cumulative annual Lobbying Compensation and Expenses (Beneficial Clients)

OR

Each member who is required to file a Lobbying report (either through the Coalition activity and/or other Lobbying Activity engaged in by the member) must disclose in such report their own contribution to such Coalition, including the amount and the name of the Coalition to which it contributed

WHEN THE COALITION **FILES** ON ITS OWN BEHALF

If the Coalition identifies itself as a LOBBYIST and/or a CLIENT, then:

1. The Coalition must **FILE** a lobbying report on behalf of the Coalition and identify a Responsible Party for the filings.
2. The report must **DISCLOSE** all members who **EXCEED \$5,000** in annual lobbying compensation or expenses. Such members are considered **Beneficial Clients**.

WHEN THE COALITION **FILES** ITS OWN REPORT



MEMBER CONTRIBUTIONS TO COALITION

ARE NOT CONSIDERED

- Lobbying expenditures to determine if each member has met \$5k threshold

ARE CONSIDERED

- Lobbying expenditures to determine if each member has met the \$15k/3% Source of Funding threshold

WHEN THE COALITION **DOES NOT** FILE ITS OWN REPORT

**ARE
CONSIDERED**

LOBBYING EXPENDITURES TO
DETERMINE IF EACH MEMBER:

- Has met \$5k threshold
- Has met the \$15k / 3% Source of Funding Threshold



MEMBER CONTRIBUTIONS
TO COALITION

WHEN THE COALITION **DOES NOT FILE** A LOBBYING REPORT ON ITS OWN BEHALF

If the Coalition DOES NOT file as a LOBBYIST and/or a CLIENT, then:

Each member who is required to file a lobbying report (either through the Coalition activity and/or other lobbying activity engaged in by the member) must disclose in the report **their own member contribution** to such Coalition, including the **contribution amount and name of the Coalition to which it contributed.**

I AM A **COALITION MEMBER** (OF A NON-FILING COALITION) AND I **EXCEEDED THE \$5,000 THRESHOLD**

How and where do I report my contribution to the Coalition?

If *only* Lobbying Activity involves member's Contribution to Coalition

Register and file lobbying reports as a Lobbyist lobbying on its own behalf, identify the named Coalition, and list contribution as an expense

If member already files a CSA

In CSA list the contribution as an expense to the named Coalition.

If member is already a registered Lobbyist and submits Bi-Monthly Reports

In Bi-Monthly Report list the contribution as an expense to the named Coalition.

WHAT'S NEW?... WHAT KIND OF LOBBYING?

**Direct and Grassroots Lobbying and the
New Regulations**



DIRECT LOBBYING



CONTACT IS MADE BY: **DIRECT LOBBYING**

Direct lobbying involves direct contact between a Lobbyist and the individual you are attempting to influence, including but not limited to:

- face-to-face meetings
- telephone calls
- distribution of written materials
- e-mails
- social media interactions



Direct Lobbying:

DIRECT CONTACT and **PRELIMINARY CONTACT**

Direct Contact

Any communication or interaction directed to a Public Official, including:

- Verbal or written communications
- Electronic, social media and internet communications
- Attendance at a meeting with Public Official
- Presence on phone call if Public Official is aware of such presence

Preliminary Contact

When the Lobbyist knows or has reason to know that the Client will Attempt to Influence a Public Official

- Scheduling a meeting or phone call with a Public Official and a Client
- Introducing a Client to a Public Official
- Any other contact with the Public Official on behalf of a Client

DIRECT LOBBYING DOES **NOT** INCLUDE

ATTENDING A MEETING WITH A PUBLIC OFFICIAL ONLY TO:

- provide technical information or address technical questions
- provide clerical or administrative assistance (including audio/visual, translation or interpretation, and sign language)
- to observe for educational purposes
 - When the person plays no role in the strategy, planning, messaging or other substantive aspect of the overall lobbying effort

When a person schedules a meeting or places a call in a purely administrative capacity (even if lobbying is expected to occur at such meeting – such activity is attributable to the person who directed that the call be made or the meeting set up)

DIRECT LOBBYING: LOBBY DAYS



DIRECT LOBBYING

LOBBY DAYS: **REPORTABLE ACTIVITY**

An employee or Designated Lobbyist of an organization coordinating a Lobby Day is engaged in Direct Lobbying via the Lobby Day and must be identified as an **Individual Lobbyist on its filings** only if the employee or Designated Lobbyist:

- **makes Direct Contact** with a Public Official

and

- **speaks on behalf of the organization** at the Lobby Day.

DIRECT LOBBYING

LOBBY DAYS - REPORTING EXPENSES

Reportable expenses for a Lobby Day may include, but are not limited to:

- compensated staff time for attendance
- staff time spent planning
- expenses for advocacy paraphernalia
- expenses related to transportation

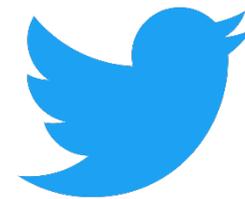


DIRECT LOBBYING: SOCIAL MEDIA



SOCIAL MEDIA COMMUNICATION = DIRECT LOBBYING IF:

1. It is **directly sent** to a social media account known to be owned or controlled by a Public Official; or
2. Creates a direct electronic link to any social media account known to be owned or controlled by a Public Official; or
3. It is targeted to a Public Official's staff with knowledge that the person is a member of the Public Official's staff.



EXAMPLES: SOCIAL MEDIA – DIRECT LOBBYING

LOBBYIST



SENDS LOBBYING
MESSAGE DIRECTLY TO OR LINKS TO

PUBLIC
OFFICIAL



LOBBYIST



TWEETS LOBBYING MESSAGE
WITH TAG TO PUBLIC OFFICIAL

PUBLIC
OFFICIAL



When must an organization identify its employee as an **INDIVIDUAL LOBBYIST** based on the employee's social media communication?



IDENTIFIED AS AN INDIVIDUAL LOBBYIST ONLY IF:

- **Direct contact via social media was made in the course of person's employment**

and

- **Such contact was not part of a coordinated, mass social media campaign conducted by the organization**

SOCIAL MEDIA – LOBBYING EXPENSES

The personal social media activities of an individual are attributable to a lobbying organization **only** when those activities are conducted in the course of such person's employment.

Reportable expenses attributable to an organization's social media activities that constitute direct lobbying may include, but are not limited to: consulting services, staff time allocated to planning and posting, search engine optimization and sponsoring, and advertising.

GRASSROOTS LOBBYING



CONTACT IS MADE BY: **GRASSROOTS LOBBYING**

A Grassroots Lobbyist is a person or organization who solicits another to deliver a message to a Public Official.

The audience or recipients of grassroots communications who voluntarily (and without compensation) subsequently deliver the message to the Public Official are not Grassroots Lobbyists.



WHAT IS A GRASSROOTS COMMUNICATION?



**TAKES A CLEAR
POSITION ON
THAT LOBBYING
ACTIVITY**



**COMMUNICATION REFERENCES
A LOBBYING ACTIVITY**

**INCLUDES A CALL
TO ACTION**

WHAT IS A **CALL TO ACTION**?

SOLICITATION TO THE PUBLIC/PERSON

1. To directly contact Public Official

OR

2. Have them solicit others to directly contact Public Official

Other examples of a Call to Action may include:

- Inclusion of Public Official contact info without specific solicitation to the public to make contact = call to action
- Inclusion of paper/electronic petition, text message, social media communication, or similar material for the recipient to use to communicate with Public Official even without specific solicitation to the public to use the material.

GRASSROOTS LOBBYING - BY THE ORGANIZATION

An organization engages in Grassroots Lobbying on its own behalf when a Grassroots Lobbying Communication is issued by the organization, including when an employee delivers a Grassroots Lobbying Communication at the direction of the organization.

Every Grassroots Lobbying Communication is attributable to a Lobbyist (which may be the organization as a whole) but not necessarily require the identification of any Individual Lobbyists.

WHEN DOES ORGANIZATION HAVE TO IDENTIFY **EMPLOYEES AS INDIVIDUAL LOBBYISTS** IN FILINGS?

- 1) Delivers a Grassroots Lobbying Communication;
- 2) Can be identified as the speaker; and:
- 3) Participates in shaping the message expressed in the communication in the course of such employee's employment.



WHEN DOES AN ORGANIZATION HAVE TO IDENTIFY A **RETAINED** LOBBYIST'S ACTIVITIES?

A retained individual or organization's activities on behalf of a Client constitute Grassroots Lobbying if the individual or organization delivers a Grassroots Lobbying Communication and can be identified as speaking for, representing, or endorsing the position of the Client.

THESE FUNCTIONS OR ROLES ALONE **ARE NOT** GRASSROOTS LOBBYING

- Owners of billboards or signs
- Copy editing
- Advertisement writers
- Storyboard artists
- Film crews
- Photographers
- Video editors
- Website managers, hosts, or internet service providers
- Media outlets or broadcasters
- Media buyers or placement agents
- Delivery services
- Secretaries, clerical, and ministerial staff

GRASSROOTS LOBBYING AND SOCIAL MEDIA EXPENSES

Personal social media communications are only attributable to the Organization when the activities are done **in the course of such person's employment**.

Reportable Expenses attributable to the Organization's Grassroots Lobbying may include:

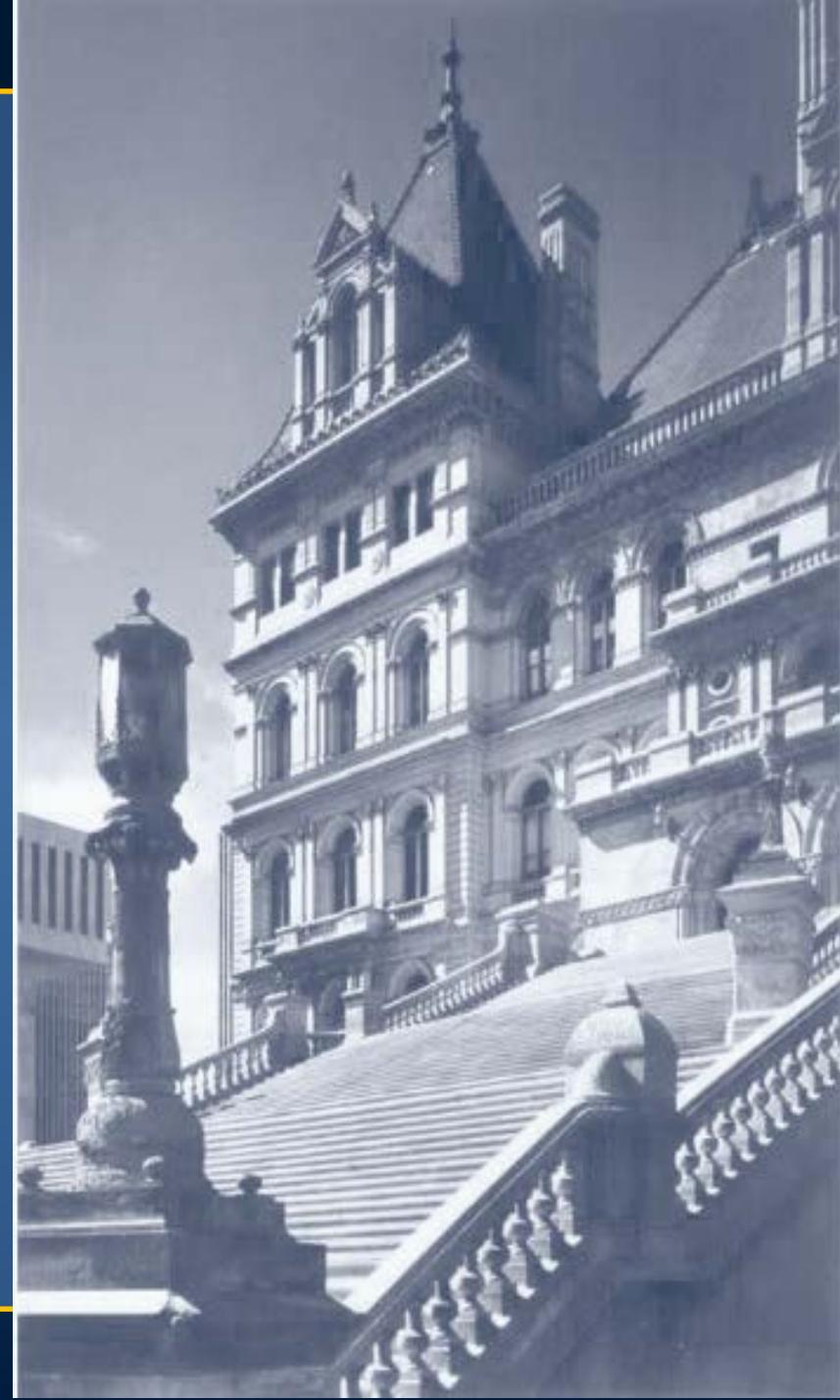
- consulting services
- sponsoring posts
- staff time allocated to planning and posting
- search engine optimization
- advertising

REVIEW OF TRAINING

- Who are you and how do you file lobbying reports?
- If Lobbying effort involves multi-party relationships, what role do you play and who is responsible for disclosing what activities?
- What kind of lobbying are you engaged in (**Direct or Grassroots**) and what requirements attach to each type?

WHAT'S NEW RELATING TO REPORTING REQUIREMENTS?

- **New Late Fee Schedule**
- **Streamlined Reporting**
- **Greater Specificity Required**



NEW REPORTING REQUIREMENTS

STATEMENT OF REGISTRATION – BI-MONTHLY REPORTS – CLIENT SEMI-ANNUAL REPORTS

- Identify all parties to the Lobbying (as described in 943.9(h)) including all Lobbyists, Clients, and Coalitions
- Greater specificity regarding “Subjects Lobbied” (this replaces old “Business Nature” categories)
- Disclosure of bill, rule, rate, Procurement, and Executive Order **numbers** lobbied or expected to be lobbied on, if available, or description of activity related to the intended introduction/issuance of legislation or lobbying related to tribal-state contacts
- Disclosure of the intended (in Registration) or actual (in Bi-Monthlies and CSAs) targets of the Lobbying, including the name of the person, organization, agency, municipality, office and/or specific legislative body lobbied.
- Indicate whether it is Direct Lobbying, Grassroots Lobbying, or both.

BIENNIAL STATEMENT OF REGISTRATION

NEW REQUIREMENTS

- Option to either include a copy of a Lobbying agreement or authorization OR, instead, a **Lobbying Agreement form** as provided by JCOPE
- Lobbyists and Clients will no longer be required to notify JCOPE of a **Termination** if the agreement/authorization terminates on the date specified in the agreement/authorization. Likewise, no need to notify JCOPE if it terminates at the end of a biennial registration cycle.

BI-MONTHLY AND CLIENT SEMI-ANNUAL REPORTS

NEW REQUIREMENTS

If a Lobbyist files Bi-Monthly Reports, only lobbies on its own behalf and does not retain outside Lobbyists, then it will not be required to also submit Client Semi-Annual Reports covering the same reporting period, other than Source of Funding disclosures prescribed by Part 938.

NEW LATE FEE SCHEDULE

- **Statement of Registration/Amendment**
- **Bi-Monthly Reports**
- **Client Semi-Annual Reports**
- **Disbursement of Public Monies Reports**
- **Reportable Business Relationships**
- **Source of Funding**

DAYS LATE	ACTION	
	First Time Filers	All Other Filers
1 – 7 days	Grace Period/No Late Fee	
8 – 14 days	\$75 flat late fee	\$150 flat late fee
15 – 30 days	\$150 flat late fee	\$300 flat late fee
31 – 90 days	\$300 flat late fee	\$500 flat late fee
91 – 180 days	\$500 flat late fee	\$1,000 flat late fee
181 days and more	\$1,000 flat late fee	\$2,000 flat late fee

OTHER TOPICS



ONLINE ETHICS TRAINING FOR LOBBYISTS

Section 1-d(h) of the Lobbying Act

ALL REGISTERED LOBBYISTS MUST COMPLETE AN ONLINE ETHICS TRAINING:

- Complete the training within 60 days of initial Registration
- Complete the training again within three years of the date the Lobbyist first or subsequently completed the training, if such Lobbyist is still registered to lobby as such time;

and/or

- If there is a lapse in a Lobbyist's Registration, complete the training again within 60 days of re-registration to lobby or three years from the date such Lobbyist last completed the training, whichever is later.

NEW LOBBYING APPLICATION

Beginning in the 2019-2020 biennial period, all new and existing filers required to register and file lobbying reports with JCOPE will file their online reports in the new JCOPE Lobbying Application (“LA”).

- Better interface
- User-friendly
- Streamlined
- Greatly improved Search Functions (Spring of 2019)

PREPARING FOR THE NEW LOBBYING APPLICATION

FIRST STEPS WILL BE TO:

- Create an NY.gov account to access the system
- Create User Profiles

JCOPE will provide FAQs, “how-to” videos and instructions to guide you through every step of the process:

- Check your email inbox and the JCOPE website (www.jcope.ny.gov) regularly for information and official announcements, including when filers may access the new Lobbying Application to create their User Profiles.

We anticipate having the **Profiles** available early **November 2018** and allowing 2019-2020 **Statement of Registrations** to start being filed on **December 1, 2018**.

JCOPE CONTACT INFORMATION

FOR GENERAL INQUIRIES

Call: 800-87-ETHICS or (518) 408-3976

FOR LEGAL GUIDANCE, contact the attorney of the day by phone at 1-800-87-ETHICS and press “2” or email them at: legal@jcope.ny.gov

FOR QUESTIONS ON TRAINING

Email us at: education@jcope.ny.gov