



## Chapter 9: Reportable Business Relationships (RBR)

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**NOTE:** All references to Lobbyists and Clients include Public Corporations.

### 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.

**NOTE:** 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 considered High-Level Individuals.

#### 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 when such rates are 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.

#### \$1,000 Threshold

The total aggregated value of the Compensation paid to the State Person (or an entity in which the State Person has the Requisite Involvement) exceeds \$1,000 within a Calendar Year. 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 of Compensation

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 within a Calendar Year, then **each** Relationship is a Reportable Business Relationship (assuming all other criteria are satisfied).

## Intended to be performed or provided

The goods, services or anything of value have not yet been performed or provided by the State Person or the entity in which the State Person has the Requisite Involvement, 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

A Lobbyist or Client has **Reason to Know** that (i) an individual is a State Person, or (ii) that a State Person has the Requisite Involvement with an entity, because a reasonable person, based on the totality of the facts and circumstances, would conclude the Lobbyist or Client should know such fact.

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.

**The following factors may be considered to determine whether a Lobbyist or Client had Reason to Know:**

- 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:

- conclude that the individual was a State Person, or that a State Person had the Requisite Involvement, or,

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- 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

- statewide elected officials;
- members of the legislature or legislative employees;
- 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;
- officers and employees of statewide elected officials;
- officers and employees of State departments, boards, bureaus, divisions, commissions, councils, or other State agencies; and
- 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

#### What is a Reportable Business Relationship?

A Reportable Business Relationship exists and must be reported when all of the following criteria are met, regardless of when the relationship commenced during a Calendar Year:

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:
  - an individual whom the Lobbyist or Client knows or has **Reason to Know** is a State Person;
  - 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
  - a third-party as directed by the State Person or as directed by the entity in which the State Person has the Requisite Involvement;
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 within a Calendar Year. Such threshold is met once more than \$1,000 in Compensation is paid or owed to

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such State Person or entity for services Performed or Provided or Intended to be Performed or Provided.

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 a Lobbyist or Client of a Lobbyist pays, has paid or promises Compensation to a State Person (or entity in which a State Person has the Requisite Involvement); **not** when a State Person (or an entity in which a State Person has the Requisite Involvement) provides or promises Compensation to a Lobbyist or Client of a Lobbyist.

### Who must disclose a Reportable Business Relationship?

Lobbyists and Clients who meet the criteria described in “**What is a Reportable Business Relationship?**”.

**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 one Reportable Business Relationship Form to comply with the filing requirement.

### How do I disclose a Reportable Business Relationship?

A Lobbyist or Client is required to complete a separate Reportable Business Relationship Form **per Relationship Type, per Calendar Year**.

The *Type of Relationship* determines which of the **Business Relationship Form(s)** you are required to submit. Multiple RBR Forms can be submitted in a Calendar Year as long as each Form reflects a relationship with a different entity and/or State Person.

#### Form 1: Business Relationship with a State Person

This Form must be completed when the RBR is between a Lobbyist/Client and a State Person.

#### Form 2: Business Relationship with an Entity

This Form must be completed when the RBR is between the Lobbyist/Client and an entity in which the State Person has the Requisite Involvement. You may list multiple State Persons with Requisite Involvement with the *same* entity on this form.

When multiple Relationships exist with the same State Person (or 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 within a Calendar Year, then **each** relationship is an RBR (assuming all other criteria are satisfied) and must be disclosed on one RBR form. (*i.e.*, multiple relationships with the **same** State Person must be disclosed on one RBR form; multiple relationships with the **same** entity with State Person(s) with Requisite Involvement must be disclosed on another RBR

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form.)

RBR information will be appended to every active Statement of Registration and Client Semi-Annual Report for each Calendar Year the RBR is in existence (from the relationship start date through the termination (end) date).

### When disclosing an RBR, please note the following:

- Any changes/modifications to an existing relationship must be made by submitting an RBR Amendment.
- As applicable, description of the Relationship with each State Person should be as specific as possible, including the role each party plays in the arrangement.
- If the RBR Termination (End) Date is not known (or is ongoing), the Filer must select the 'End Date Unknown Indicator' on the RBR Form. The Termination (End) Date will automatically be reflected as the end of the current Calendar Year.

### When is a Reportable Business Relationship required to be disclosed?

Within 10 days of the RBR's 'start date', disclosing all Calendar Years in which the RBR is in existence.

For an ongoing Relationship, Lobbyists and Clients must recertify the information provided in the original RBR each Calendar Year the RBR is or will be in existence.

### Are Reportable Business Relationship form(s) considered part of a Filing?

**Yes.** In accordance with sections 1-e and 1-j of the Lobbying Act, which requires Lobbyists and Clients to disclose Reportable Business Relationships within their respective Filings, a Reportable Business Relationship 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 a Business Relationship Form with their Statement of Registration to comply with the filing requirement.

### Are Client Organizations required to disclose Reportable Business Relationships of its High-Level Individuals?

**Yes.** Client Organizations must disclose each Reportable Business Relationship of all High-Level Individuals of the Organization **if**:

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

## Reportable Business Relationship 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 of the organization (who operate out of the same geographic office as any person listed on the organization's Statement of Registration) or High-Level Individuals, as applicable, to determine whether such persons have business relationships that must be reported. (*The RBR Questionnaire* can be found in the '2019 Filing Information and Requirements' section of the JCOPE website. From the main navigation menu, select 'Lobbying' → *Filing Information and Requirements* → *2019 Filing Information and Requirements* → *Reportable Business Relationship Forms and Questionnaire (table of contents item)*).

## What information is required to be included in the RBR Form?

Every RBR Form must include the following:

- 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.

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

**Yes.** As long as the Relationship continues to exist, the RBR must be disclosed within your respective Filings: as part of the Lobbyist's Statement of Registration or the Client's Semi-Annual Report, as applicable. However, instead of re-submitting the same RBR information each Calendar Year the RBR is in existence, Filers will be able to certify that the information disclosed in the previous year's RBR continue for the current Calendar Year.

## Can an RBR Form be submitted after a Termination has been filed?

**Yes.** An RBR Form can be submitted for a terminated Lobbyist/Client relationship as long as the RBR was effective *before* the Termination **Effective Date**.

## RBR Amendment

### Can an RBR Form be amended after being submitted?

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

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### A material change may include, for example:

Changes in the actual or anticipated amount of Compensation, including reimbursable Expenses, to be paid to the State Person (or entity with which the State Person has the Requisite Involvement).

**NOTE:** If you subsequently enter into a new Reportable Business Relationship with a different State Person (or entity with which the State Person has the Requisite Involvement), you are required to submit a new RBR Form.

### Can an RBR Amendment be submitted after a Reportable Business Relationship has Terminated?

**Yes.** An Amended RBR Form can be submitted for a terminated Relationship as long as the **Effective Date of Change** is within the same period as the Relationship being amended.

### RBR Termination

Section 1-g of the Lobbying Act generally requires written notification of the terms of the termination from both the Lobbyist and the Client within 30 days of the termination date.

**NOTE:** JCOPE considers notice of terminations filed electronically as 'written notice'.

### RBR Exclusions

#### What types of Reportable Business Relationships are excluded from the reporting requirements?

Relationships between a Lobbyist or Client and 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 disclose 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-el(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. **An organization is a Client of a registered Lobbyist. Does the organization need to disclose the RBRs of its directors and executive managers?**

**Yes.** Reportable Business Relationships of High Level Individuals of Client Organizations must be disclosed when entered into in their personal capacity or when entered into by another entity at the direction or request of the High-Level Individual.

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

**No.** Because the company president was appointed to serve on a State commission in an uncompensated position, he/she is not a State Person for the purposes of RBR disclosure.

3. **An association is a Client of a registered Lobbyist. It has 100 members on its board of directors. Does it need to disclose RBRs for all board members?**

**Yes.** Reportable Business Relationships of High-Level Individuals of Client Organizations must be disclosed, though it may rely on the High-Level Individual's response to the JCOPE-provided questionnaire when determining whether RBRs exist

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

**Yes.** The salary paid to the board member by the organization would be considered Compensation, as that term is defined, and must be reported if it is over \$1,000 in a calendar year.

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

**No.** Goods and services purchased at a rate available to the general public are excluded.

6. **Does an RBR exist when a Lobbyist or Client organization'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, a Reportable Business Relationship has been created.

7. **To what extent is the board member of an organization required to investigate the business relationships the member 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 it has a business relationship with an individual who is a State Person or with an entity with Requisite Involvement.

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### 8. 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, as defined in Part 943.14 of the Commission's regulations, must be disclosed.

### 9. 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. However, such gifts are generally presumed to be impermissible. **See** Part 934 of the Commission's Regulations for rules relating to gifts given by Lobbyists or Clients to Public Officials.

### 10. Does a 501(c)(3) organization that is a Lobbyist or a Client need to report on the RBRs for certain 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 Reportable Business Relationships involving the organization's directors or executive management must be disclosed.

### 11. On the Lobbyist Registration Statement, there is one Principal Lobbyist listed and four Individual Lobbyists. Who is required to disclose RBRs?

**All persons** identified as a Lobbyist (whether as an Individual or Principal) on the Registration Form are required to disclose Reportable Business Relationships. In addition, if the Principal 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 Questionnaire

This questionnaire may be used, and relied upon in good faith, 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 ("RBR") that must be disclosed by the Lobbyist or Client Organization.

A Lobbyist may send this to every person listed on its Statement of Registration and any equity partners, officers, or directors of its lobbying firm or organization who operate out of the same geographic office as any person listed on such Statement of Registration.

A Client Organization may send this to its *High-Level Individuals*, which are defined as proprietors, partners, directors, trustees or persons within the executive management of the Client Organization. If the Client is a college, *High-Level Individuals* include members of the college's governing board, the President or Chief Executive, and the Provost or Chief Academic Officer.

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If the answers of the person filling out this questionnaire lead to an RBR that must be disclosed, the Lobbyist or Client should, for ease of filing, request such person to fill out Sections II – IV of the applicable RBR form and submit it to the Lobbyist or Client along with the completed questionnaire.

*The RBR Questionnaire and RBR Forms can be found in the ‘2019 Filing Information and Requirements’ section of the JCOPE website. From the main navigation menu, select ‘Lobbying’ → Filing Information and Requirements → 2019 Filing Information and Requirements → Reportable Business Relationship Forms and Questionnaire (table of contents item).*