



PLAIN LANGUAGE GUIDE TO THE PUBLIC OFFICERS LAW AND OTHER RELATED ETHICS LAWS

August 2019

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS * 540 BROADWAY * ALBANY, NEW YORK 12207

www.jcope.ny.gov

THE JOINT COMMISSION ON PUBLIC ETHICS



The Joint Commission on Public Ethics (JCOPE) was established by the Public Integrity Reform Act of 2011 (PIRA) to oversee and regulate ethics and lobbying in New York State and began operation on December 14, 2011.

The Commission has broad regulatory authority and oversight over officers and employees at State agencies and departments including commissions, boards, State public benefit corporations, public authorities, SUNY, CUNY, and the statutory closely-affiliated corporations; the four statewide elected officials and members of the Legislature (and candidates for those offices); employees of the Legislature; certain political party chairpersons; and registered lobbyists and their clients.

JCOPE provides information, education, and advice regarding current ethics and lobbying laws and promotes compliance through audits, investigations and enforcement proceedings. It also issues advisory opinions and promulgates regulations on the applicable laws and how they affect the persons and entities subject to its jurisdiction.

Finally, JCOPE promotes transparency by making publicly available required disclosures filed by those persons and entities subject to its jurisdiction. These disclosures include, but are not limited to, the annual financial disclosure statements filed by thousands of individuals subject to JCOPE jurisdiction and the activity and expense reports filed by thousands of lobbyists and their clients.

★ **Disclaimer:** The information included in this publication is for educational purposes only and not intended to replace legal advice. You should contact your Ethics Officer or JCOPE legal staff to obtain advice related to a particular issue or problem.

For your information, all applicable ethics laws, regulations, advisory opinions, policies, and guidance documents within JCOPE jurisdiction are set forth in their entirety on the agency's website at www.jcope.ny.gov.

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What is a statement of financial disclosure?

An annual Statement of Financial Disclosure (FDS) is a publicly available record containing financial and professional information about the FDS filer and his or her spouse.

The purpose of the FDS is to provide transparency in order to prevent conflicts of interest between a person's professional duties and his or her private financial interests and affiliations.



Who is required to file?

- The four statewide elected officials (Governor, Lieutenant Governor, Comptroller, and Attorney General), Legislators, and candidates for those offices; and
- Officers, members, directors, and employees of any State agency, public authority, public benefit corporation, commission, or legislative employees who are:
 - ➔ Designated as “Policymakers” by their State agency, or
 - ➔ Threshold Filers: those who have an annual salary rate (known as the filing rate) in excess of a CSEA salary grade 24 (\$99,394 as of April 1, 2019; \$101,379 as of April 1, 2020); and
- Political Party Chairpersons as defined in Public Officers Law § 73(k)

What is disclosed?

- Offices or any positions of authority held in a business entity or organization, political party, or political organization
- Ownership in, or professional affiliation with, any business entity
 - ➔ If the business entity renders services related to certain State work, such as procurement contracts, legislative lobbying, grants, or other matters before State agencies, additional disclosures may be required.
- Ownership in, and income from, financial interests, investments, securities, real property, and other assets
- Debts, liens, mortgages, and other financial obligations
- Certain gifts, honoraria, and other payments

Privacy concerns

- FDSs for the four statewide elected officials and Legislators are posted on JCOPE's website.
- Copies of FDSs for all other State officers and employees are made publicly available upon request. You will not be notified if there has been a request to view your FDS filing.
- JCOPE automatically redacts the name of any minor child from the copy of the FDS that is made publicly available.
- The FDS form asks for a business address only. Please ensure that you do not inadvertently provide the address of your primary residence.
- For other FDS questions related to real property, you may disclose the general location of your primary residence in lieu of the physical address.



When are the filing due dates?

→ New Filers

New State employees or officials whose wages exceed the salary threshold or who are deemed policymakers after May 15 must file within 30 days of the change in salary or policymaker designation.

Members of the Legislature, legislative employees, and candidates for the Legislature should refer to the Legislative Ethics Commission for filing deadlines and procedures.

→ Existing Filers

May 15th

- Statewide elected officials, State officers, political party chairs, policymakers, as well as State employees with an annual salary rate in excess of the job rate of a CSEA equivalent SG-24.

November 15th

- Academic employees at SUNY and CUNY who meet the filing threshold requirements.

EXEMPTION AND EXTENSION REQUESTS

Exemptions

If you are **not a policymaker**, JCOPE has the discretion to grant an exemption from filing an FDS in its entirety if:

1. public interest does not require the filer's FDS to be disclosed; and
2. the filer's duties **do not** involve the negotiation, authorization, or approval of:
 - contracts, leases, franchises, revocable consents, concessions, variances, permits, or licenses;
 - the purchase, sale, rental, or lease of real property, goods or services, or a contract therefor;
 - the obtaining of grants of money or loans; or
 - the adoption or repeal of any rule or regulation having the force and effect of law;

An exemption from filing an FDS may be requested by an individual or by an agency on behalf of a class of individuals in the same position.

- ★ The procedure for requesting an exemption from filing an FDS is found in the regulation - [19 NYCRR Part 935](#).

Extensions

You may request an extension of time to file an FDS on the basis of justifiable cause or undue hardship.

- ★ Procedures for requesting an extension are found in the regulation - [19 NYCRR Part 936](#).

Exemption and Extension due dates:



What if I don't file on time?

- If you fail to file your FDS, or if you file a deficient FDS by either not answering a question or failing to answer a question with the required specificity, JCOPE will notify you.
- If you fail to comply, JCOPE will send you and your agency a Notice of Delinquency that advises you of fees and penalties.
- Notices of Delinquency are made publicly available on JCOPE's website.
- If you still fail to file your FDS, you may be subject to a civil penalty up to \$40,000 after a hearing.
- In lieu of a civil penalty or in addition to such penalty, JCOPE may refer a violation to the appropriate prosecutor for criminal prosecution as a misdemeanor offense.



TRAINING AND EDUCATION

Executive Law § 94(10) provides that individuals required to file an FDS must complete regular ethics training when they become subject to the FDS filing requirement.

The mandatory ethics training requirements include the Online Ethics Orientation, the Comprehensive Ethics Training Course (CETC), and the Ethics Seminar.

Online Ethics Orientation (OEO)

Individuals newly subject to the FDS filing requirement must complete the Online Ethics Orientation within **3 months** of the date they commenced employment in a policymaking position or in a position with an annual salary in excess of the "filing rate."

Instructions for completing the Online Ethics Orientation Course are available on the JCOPE website.

Individuals who complete the CETC within 3 months of becoming an FDS filer are not required to complete the Online Ethics Orientation Course. However, the Online Ethics Orientation Course is not a substitute for the CETC.



Comprehensive Ethics Training Course (CETC)

The CETC is a two-hour, live, instructor-led training that covers the Public Officers Law and other related ethics laws and regulations. FDS filers are required to complete the CETC within two years from the date they became required to file.

Please contact your agency Ethics Officer for course availability at your work location.

Ethics Seminar

After the completion date of the CETC, FDS filers are required to complete an Ethics Seminar or retake the CETC every three years. The Ethics Seminar is an update on any changes in the applicable laws, regulations, and policies.

Please contact your agency Ethics Officer for course availability at your work location.



PUBLIC OFFICERS LAW § 74 - THE CODE OF ETHICS

The Code of Ethics is intended to prevent you from using your State job and official position to benefit yourself or someone else.

The Code of Ethics not only addresses actual conflicts of interest, but also the appearance of such conflicts when performing your State job.



THE GENERAL RULE: PUBLIC OFFICERS LAW § 74(2)

New York State officers and employees and Legislative members and employees shall not...

“have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her) duties in the public interest.”

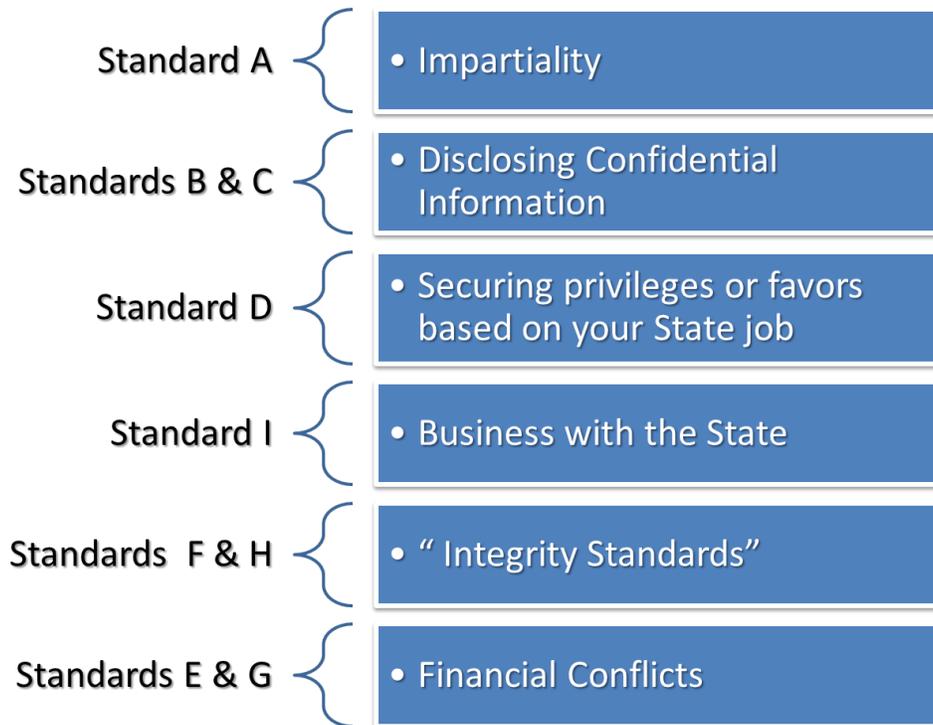
WHO DOES THE CODE OF ETHICS APPLY TO?

The Code of Ethics applies to all officers and employees of New York State including:

- Statewide elected officials
- Legislative members and employees
- Officers and employees of any State agency, department, division, board, commission, or any public benefit corporation or public authority at least one of whose members is appointed by the Governor, **including unpaid and per diem officers and members of such entities.**
- Officers and employees of the following specific “closely affiliated corporations:” Youth Research Inc., The Research Foundation for Mental Hygiene, Inc., Health Research Inc., The Research Foundation of the State University of New York, and Welfare Research Inc.

STANDARDS OF CONDUCT

The Code of Ethics contains nine standards of conduct. Each standard examines the types of conflicts that State officers and employees are prohibited from engaging in while in State service.



- **Impartiality:** maintaining independent judgement with respect to your State job. (Standard A)
- **Confidentiality:** understanding the types of information that may be shared with colleagues and members of the public, as well as not disclosing sensitive information to benefit yourself or someone else. (Standards B and C)
- **Stewardship of State resources:** preventing you from securing unwarranted privileges or favors for yourself or others based on your State job and not utilizing the resources of the State for your own personal use. (Standard D)
- **Financial conflicts:** abstaining from personal investments that conflict with your official duties, and avoiding transactions with any entity in which you may have a direct or indirect financial interest. (Standards E and G)
- **Integrity standards:** avoiding situations in which it may appear you could be influenced or would attempt to influence someone else, and conducting yourself in

a manner that does not raise suspicion among the public that you're personally benefitting from your official position. (Standards F and H)

- **Business with the State:** as a State officer or employee, you are restricted from contracting for work and/or providing goods and services to entities that are licensed or regulated by your agency. Circumstances do exist that may allow you to concurrently work for both. (Standard I)

CIVIL PENALTIES ASSOCIATED WITH VIOLATIONS OF THE STANDARDS OF CONDUCT ARE:

Public Officers Law § 74(3) (a), (b), (c), (d), (e), (g), and (i):

Civil penalty of up to \$10,000 and the value of any gift, compensation, or benefit received as a result of such violation.

- ★ Violations of §§ 74(3)(f) and (h) carry no monetary civil penalty under the Public Officers Law; however, violators are still subject to disciplinary action by their agency, which may include a fine, garnishment, or termination from State employment.

OTHER APPLICATIONS OF PUBLIC OFFICERS LAW § 74

REVERSE TWO-YEAR BAR

If you are entering State service from the private sector, the “reverse two-year bar” may, depending on the circumstances, require you to recuse from matters directly involving your former private sector employer for a two-year “cooling off” period.

The Commission interpreted Public Officers Law § 74 to contain this “reverse two-year bar” in Advisory Opinion Nos. 98-09 and 07-04.

In practice, the “reverse two-year bar” prevents the appearance that you, in performing your State duties, may give preferential treatment to, or be unduly influenced by, your former private sector employer.

If your Ethics Officer or JCOPE determines that recusal is appropriate, it runs for two years from the date that you terminated employment with the private sector employer.



NEGOTIATION OF FUTURE EMPLOYMENT: SOLICITED AND UNSOLICITED JOB OFFERS

As a State officer or employee, there are restrictions on when and if you may negotiate future employment with an entity or individual that has a specific matter pending before you.

If you receive an unsolicited job offer from an entity or individual that has a specific matter pending before you, or if you are interested in soliciting an employment opportunity with such an entity or individual, you may pursue an employment opportunity only after waiting 30 days from:

1. The date the matter before you closed; or
2. The date on which you notified your supervisor and Ethics Officer of your intent to pursue a job offer and recused yourself from the matter and any further contact with the entity or individual.

You have a duty to promptly notify your supervisor and Ethics Officer if you receive an unsolicited job offer or if you intend to solicit a job offer from an entity or individual that has a specific matter pending before you.

Depending on the circumstances, failure to follow these requirements could result in a violation of Public Officers Law § 74 of the Code of Ethics and/or the gift restrictions found in Public Officers Law § 73(5), since the promise of future employment can be seen as a gift.



PUBLIC OFFICERS LAW § 73

Public Officers Law § 73 defines the rules involving business or professional activities by State officers and employees and political party officers. Public Officers Law § 73 establishes broad guidelines and applications to the subject matter below. Additionally, JCOPE issues regulations that provide additional information, procedures, and restrictions.

PUBLIC OFFICERS LAW § 73 SUBJECT MATTER	CORRESPONDING REGULATION
Outside Employment and Professional Activities	19 NYCRR Part 932
Restrictions on Political Activities	19 NYCRR Part 932
Gifts	19 NYCRR Part 933
Honoraria	19 NYCRR Part 930
Official Activity Expense Payments (Travel)	19 NYCRR Part 931
Post-employment Restrictions	N/A
Nepotism	N/A

Who does Public Officers Law § 73 apply to?

- Statewide elected officials
- Legislative members and employees
- Officers and employees of NYS departments, boards, bureaus, divisions, commissions, councils, or other State agencies (***other than unpaid and per diem officers of such boards, commissions, or councils**)
- Members, directors, and employees of NYS public authorities and public benefit corporations (***other than unpaid and per diem members and directors of such entities**)
 - ★ Unpaid and per diem officers are excluded from Public Officers Law § 73; however, they are still bound by the conflict of interest rules found in Public Officers Law § 74.

OUTSIDE ACTIVITIES

What is an outside activity?

An outside activity is any interest or activity not related to your State employment. An activity may be an occupation, whether paid or unpaid, membership on a board, or volunteer work, etc. An outside activity occurs outside of your regular work hours and without utilizing any government resources.



All covered individuals – **both policymakers and non-policymakers** – should evaluate whether the intended outside activity is appropriate under the rules of Public Officers Law § 73 and is not a conflict of interest under the rules of Public Officers Law § 74.

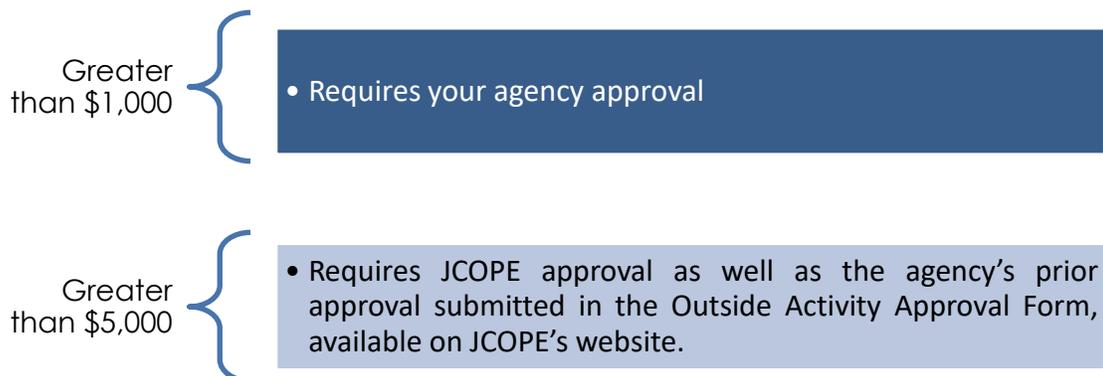
Prior to engaging in any outside activities, all covered individuals should seek advice from their agency Ethics Officer or JCOPE concerning the appropriateness of such activities under the applicable laws and regulation [19 NYCRR Part 932](#).

“Covered Person” or “Covered Individual” – a term used to describe the individuals who are subject to the rules of Public Officers Law § 73 and any applicable regulations.

APPROVAL PROCEDURES FOR POLICY MAKERS ON OUTSIDE ACTIVITIES –19 NYCRR PART 932

Policymakers may require approval from their agency, JCOPE, or both before pursuing an outside activity. In general, the approval process is based on how much you anticipate earning through your intended outside activity.

Annual Compensation Threshold Amounts



Who approves my outside activity?

- For policymakers (other than unpaid or per diem officers), the approving authority is the agency or appointing authority you work for.
- For statewide elected officials and State agency heads, the approving authority is JCOPE.

For paid policymakers, heads of State agencies, and statewide elected officials, certain outside activities may require your agency's approval and/or JCOPE's approval. Please refer to the following chart when determining the required approvals for outside activities.

Outside Activity	Required Approvals / Actions
A job, employment (including public employment), or business venture that generates, or is expected to generate, between \$1,000 and \$5,000 in compensation annually	Approving Authority must approve
A job, employment (including public employment), or business venture that generates, or is expected to generate, more than \$5,000 in compensation annually	Approving Authority <u>and</u> JCOPE must approve
Holding elected or appointed public office (regardless of compensation) as an outside activity	Approving Authority <u>and</u> JCOPE must approve
Serving as a director or officer of a for-profit entity (regardless of compensation)	Approving Authority <u>and</u> JCOPE must approve
Serving as a director or officer of a not-for-profit entity	
→ Compensation is \$0 - \$999 annually	Approval not required, but must notify Approving Authority in writing prior to commencing service
→ Compensation is between \$1,000 and \$5,000 annually	Approving Authority must approve
→ Compensation is more than \$5,000 annually	Approving Authority <u>and</u> JCOPE must approve

RESTRICTIONS ON POLITICAL ACTIVITIES

19 NYCRR Part 932.4(a)

Policymakers, **including those in an unpaid or per diem position**, are prohibited from serving as an officer of any political party or political organization. (A political organization does not include campaign or fundraising committees.)

19 NYCRR Part 932.4(b)

Policymakers, **including those in an unpaid or per diem position**, are prohibited from serving as a member of any political party committee. This prohibition covers, for example, serving as a political party district leader or a member of the national committee of a political party.

PUBLIC OFFICERS LAW § 73(4) - RESTRICTIONS FOR STATE EMPLOYEES WHO OWN THEIR OWN PRIVATE BUSINESS

No State officer or employee shall sell any goods or services having a value in excess of \$25 to **any** State agency unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding.

Example: You are a Department of Labor employee. You also have a seasonal snow plowing business. You would be allowed to provide snow plowing services to a State entity as an outside activity if you had been awarded the contract through the State's competitive bidding process.

PUBLIC OFFICERS LAW § 73(7) – RESTRICTIONS ON RENDERING SERVICES FOR STATE AGENCIES

You **may not be paid or receive compensation** in any form if you are interested in pursuing an outside activity before any State agency that includes any of the following:

- The purchase, sale, rental, or lease of real property, or goods or services;
- Any proceeding relating to rate making;
- The adoption or repeal of any rule or regulation having the force and effect of law;
- The obtaining of grants of money or loans;
- Licensing or permitting; or
- Any proceeding relating to a franchise provided for in the Public Service Law.

PUBLIC OFFICERS LAW § 73(7-a) – RESTRICTIONS ON INFLUENCING LEGISLATION

Covered persons are prohibited from receiving any compensation, in whatever form, for the rendering of consulting, representation, advisory, or other services in connection with any proposed or pending bill or resolution in the Senate or Assembly.

NEPOTISM

Giving preferential treatment to a relative in the workplace may be considered nepotism.

§ 73(14)

State employees are **banned** from participating in any decision to hire, promote, discipline, or discharge a **relative**.



§ 73(15)

State employees are prohibited from awarding contracts to a relative or investing public funds in any security in which a **relative** has a financial interest.

Definition of “Relative” in § 73(1)(m):

Any person living in the same household as the covered individual or any person who is a direct descendant of that covered individual's grandparents or the spouse of such descendant.



JCOPE Recommended Best Practice: Recuse yourself from any personnel decisions that involve a family member or close personal friend.

GIFTS

Generally, you may accept anything valued at \$15 or less. If a gift is offered by an “Interested Source,” the acceptance of the gift is generally prohibited.

What is a “Gift?”

Anything of more than “nominal value.”

- “Nominal Value” is not specifically defined. The Commission will generally consider something that has **a fair market value of \$15 or less** to be of nominal value.

A Gift includes, but is not limited to, money, services, loans, travel, lodging, meals, refreshments, entertainment, forbearance, or a promise having a monetary value.

An “Interested Source” is a person or entity that:

- Is regulated by or appears before you or your agency
- Has contracts with, or seeks contracts with, you or your agency
- Is a registered lobbyist or client of a lobbyist that lobbies your agency
- Is the spouse or the minor child of a registered lobbyist or client of a lobbyist that lobbies your agency
- Is involved in ongoing litigation that is adverse to you or your agency
- Has received or applied for funds from your agency at any time during the previous year up to and including the date of the proposed or actual receipt of the gift
- Attempts to influence you or your agency in an official action

Allowable “gifts”

- The following items are not considered “Gifts” under the regulations. You may accept these items provided that your acceptance does not violate Public Officers Law § 74. In other words, you may accept these items or services from anyone (including an Interested Source) as long as the acceptance does not create an actual or apparent conflict of interest or give the impression of improper influence.



→ **Gift Exclusions:**

- Awards or plaques in recognition of public service
- Honorary degrees
- Promotional items with no resale value
- Discounts available to the general public, or a broad segment thereof, e.g., wireless providers offer discounts to all government employees
- Gifts from those with whom there is a demonstrated familial or personal relationship such that it is clear that the relationship is not being used as a pretext to give an otherwise impermissible gift
- Contributions reportable under the Election Law
- Meals and beverages provided to participants at professional and educational programs
- Local travel payments for tours related to one's official activity
- Food or beverage valued at \$15 or less per event

Allowable Events and Professional Functions

Travel, food, and lodging expenses for speakers at informational events is allowed when a governmental entity or in-state accredited institution of higher learning is paying the expenses or reimbursing the speaker, who is a Covered Person.

Complimentary attendance, including food and beverage, at a Bona Fide Charitable Event or a Bona Fide Political Event

- **Bona Fide Charitable Event** – event's primary purpose must be to provide financial support to an organization that is either registered as a charity with the Attorney General's Office (unless exempt) or qualified under section 501(c)(3) of the Internal Revenue Code.
- **Bona Fide Political Event** – event's primary purpose must be to provide financial support to a political organization or a candidate for public office (as defined in the Public Officers Law).

Complimentary Attendance at a Widely Attended Event

The following four conditions must be satisfied to qualify for the “Widely Attended Event” exclusion:



1. Complimentary admission must be offered by the sponsor of the event; **and**
2. 25 individuals who are not from your agency attend or are in good faith invited to attend; **and**
3. (a) The event is related to your official duties or responsibilities (*this can be satisfied if there is a speaker at the event who addresses an issue of public interest or concern*) **or**
(b) The event allows you to perform a ceremonial function appropriate to your position; **and**
4. You inform your Ethics Officer in writing of the Widely Attended Event **before** the event takes place.

Things you should know

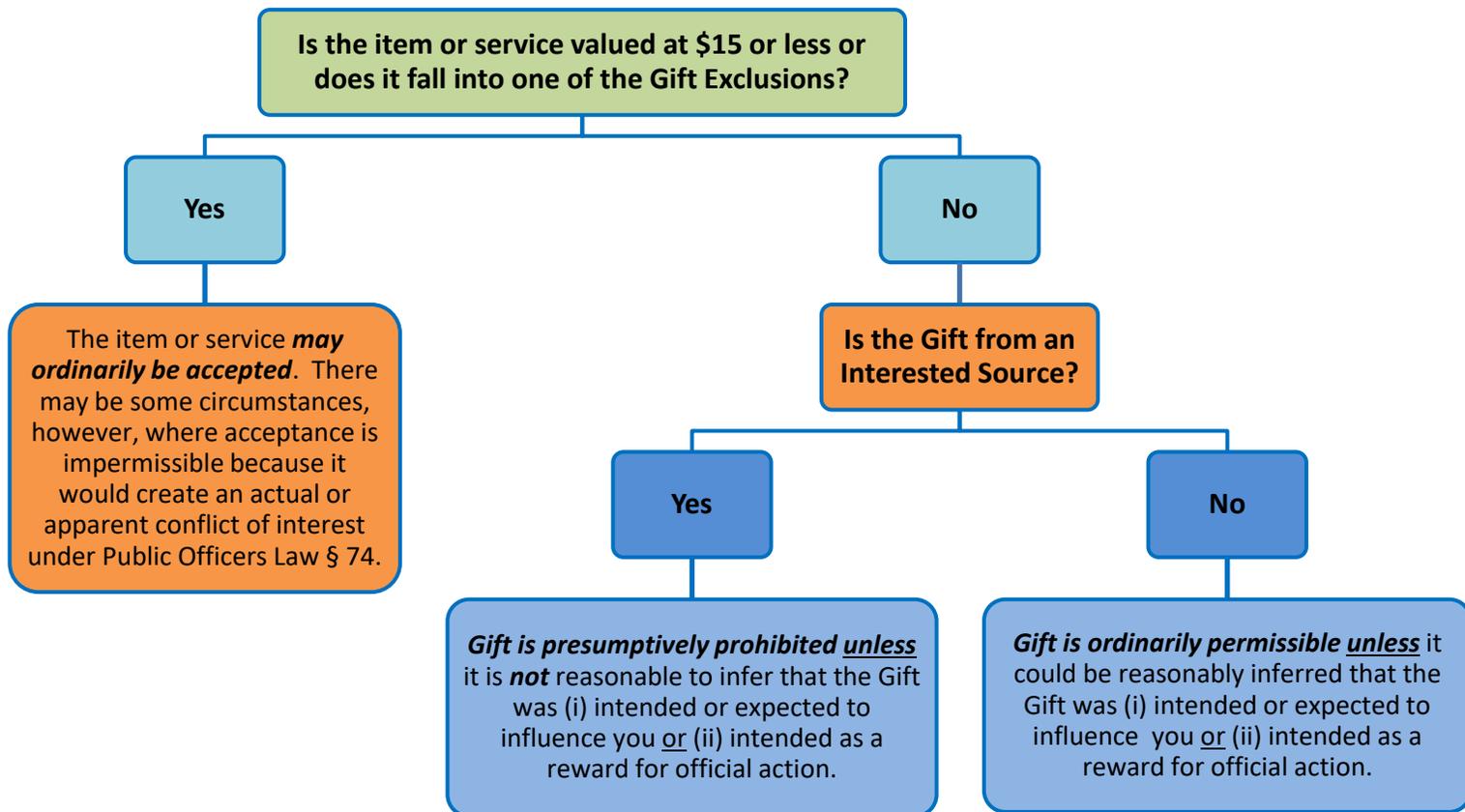
- ➔ Food and beverage is only permissible if offered to all participants
- ➔ The exclusion does not cover entertainment, recreational, or sporting activity unless the presentation addressing the public interest or concern is delivered during the entertainment, recreational, or sporting activity

Gifts to Third Parties

You cannot redirect an impermissible gift to a third party, including your spouse or child or a charitable organization.

Step By Step Gift Analysis

The Commission has developed the following analysis to assist you in determining if the acceptance of a gift may be allowed.



Multiple Gifts from same source

If you accept multiple **permissible** Gifts from the same source, you could, depending on the circumstances, violate Public Officers Law § 74 by creating an actual or an apparent conflict of interest or an appearance of improper influence.

The Code of Ethics and the Gift Analysis

The conflict of interest rules found in Public Officers Law § 74 apply to all State officers and employees, including those in unpaid and per diem positions. Please seek guidance from your agency Ethics Officer or JCOPE to determine whether the acceptance of a gift is a violation of the standards of conduct.

HONORARIA

What is an honorarium?

Honoraria are payments or other forms of compensation offered in exchange for professional service or activity that is **not part** of your official duties. Examples include: giving a speech, writing an article, or serving on a panel at a seminar or conference.

An honorarium may include expenses incurred for travel, lodging, and meals related to the service performed.



Request for approval must be submitted in writing to your agency Ethics Officer or other designated person **before** performing the service or activity. Statewide elected officials and State agency heads (including Civil Department Heads) must submit an approval request to JCOPE.

Restrictions on honoraria

- State personnel, equipment, and time are not used in preparing the service for which an honorarium is offered.
- No State funds are used to pay the Covered Person's attendance, registration, travel, lodging, or meal expenses.
- If the service is to be performed during the Covered Person's official work day, he or she must charge accrued leave (other than sick leave) to perform such service.
- If the honorarium is offered by or on behalf of an Interested Source, it may only be accepted if it is unreasonable to infer that the honorarium was intended or expected to influence the covered person, or intended as a reward.
- The Ethics Officer/approving authority determines that the offeror is not being used to conceal that the honorarium is actually offered or paid by an Interested Source; and
- Neither performing the service or activity for which the honorarium is offered nor accepting the honorarium violates Public Officers Law § 74.

Exemptions

Faculty members of SUNY and CUNY, and State officers and employees with the following titles, are exempt from the honoraria approval procedures (including the conditions for approval) provided that the service performed is within the subject matter of their official academic or research discipline:



- Research Scientist
- Cancer Research Scientist
- Research Physician
- Research Psychiatrist
- Psychiatrist

FDS and honoraria reporting

All State officers and employees even those who are exempt from the honoraria approval procedures shall report any honorarium in excess of \$1,000 (or all honoraria the aggregate total of which exceed \$1,000 received from a single offeror) in his or her FDS for the applicable year.

Special ban on paid speeches

Statewide elected officials and Civil Department Heads* **cannot** accept an honorarium for any speech.

- * Please note that not all State agencies are considered Civil Departments. See Article 5, Section 2 of the New York State Constitution.

OFFICIAL ACTIVITY EXPENSE PAYMENTS

The rules for the acceptance of a travel expense or reimbursement is found in the regulation – [19 NYCRR Part 931](#)

A Covered Person may accept payment or reimbursement from third parties for travel and other expenses for an activity that **is part of, and related to**, his or her State job duties, provided certain conditions are met.

Payments/reimbursements for official activity expenses must be approved by the approving authority

- For a State officer or employee, submit a request for approval in writing to the agency's Ethics Officer or other designated person.
- For statewide elected officials and State agency heads, submit request to JCOPE.

Requests for approval must be made within a reasonable period of time prior to engaging in the official activity.

Summary of 19 NYCRR Part 931 Requirements

- Mode of travel and related expenses must be in accordance with your agency's travel policy.
- Payment or reimbursement from an "Interested Source" is ordinarily impermissible.
- Must report travel reimbursement on FDS.
- The agency/approving authority is required to maintain an Official Activity Approval for each approved request, and it must contain the information specified in Part 931.



POST-EMPLOYMENT RESTRICTIONS

Post-employment restrictions, also known as the “revolving door” restrictions, apply to **all** State officers and employees subject to Public Officers Law § 73.

Please note that the post-employment restrictions also apply to part-time and seasonal employees. These restrictions apply equally to a one-day or thirty-year hire.



- **Types of Restrictions** – Two-Year Bar and the Lifetime Bar

TWO-YEAR BAR: § 73(8)(a)(i)

The two-year bar creates a “cooling off” period to prevent the appearance that you could inappropriately influence your former agency. The two-year bar contains two restrictions, both of which apply for two years immediately following your separation from State service. These restrictions are aimed at preventing a former State employee from influencing a decision of, or action by, their former agency, or gaining information from the agency that is generally not available to the public.

1. Appearance/Practice Prohibition

You may not appear or practice before your former agency. This prohibition applies to both paid and unpaid work. Some examples of prohibited appearances or practices are:

- negotiating a contract with a former agency;
- submitting a grant proposal or application to a former agency; and
- representing a client in an audit before a former agency.

2. Backroom Services Prohibition

You are prohibited from being paid to perform certain services on behalf of a client that are in relation to a matter before your former agency, that

advances its mission, even if those activities do not involve appearing or practicing before your former agency. This prohibition applies only to paid work. There is no prohibition on performing backroom services for no compensation. Some examples of prohibited services are:

- preparing documents for a private firm when it is reasonably foreseeable that the documents will be reviewed by your former agency;
- assisting another person in the creation or development of an application to be submitted to your former agency; and
- assisting another person in the creation or development of a plan or strategy for influencing a decision of your former agency.

Special Two-Year Bar for Executive Chamber Employees:

Public Officers Law § 73(8)(a)(iv)

- Former Executive Chamber employees are prohibited from appearing or practicing, regardless of compensation before **all** State agencies, not just the Executive Chamber.
- They may, however, perform backroom services for compensation to State agencies other than the Executive Chamber.



THE LIFETIME BAR - § 73(8)(a)(ii)

“No person who has served as a State officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any State agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any **case, proceeding, application or transaction** with respect to which such person was **directly concerned** and in which he or she **personally participated** during the period of his or her service or employment, or which was under his or her **active consideration**.”

What you need to know - The Lifetime Bar

If you participated in a specific case, proceeding, application, or transaction while in State service:

- If the same matter is before any New York State agency, you cannot ever participate regardless of compensation.
- If the same matter is not before a New York State agency, you may perform services on the same matter provided you receive no compensation.
- In accordance with Advisory Opinion 18-01, JCOPE will consider on a case-by-case basis whether a large, extensive project is a single transaction for lifetime bar purposes. The Commission will consider a list of factors to determine whether the lifetime bar applies.

Not sure if you are lifetime-barred from a matter?

Prior to accepting any new employment, please contact JCOPE for guidance.

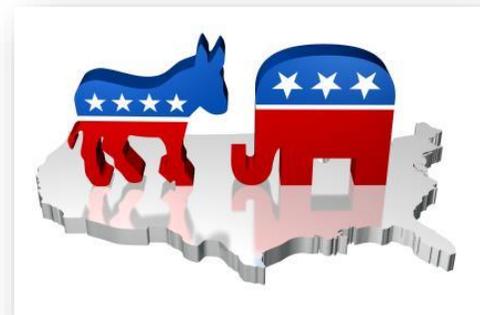
THREE COMMON EXCEPTIONS TO THE POST-EMPLOYMENT RESTRICTIONS

Government to Government	<ul style="list-style-type: none">• Accepting a position as an employee of a Federal, State, or local government entity. Exception does not apply to independent contractors retained by such government entities, or employees of corporations closely affiliated with any such entity.
Continuity of Care for Health Care Professionals	<ul style="list-style-type: none">• Former State-employed health care professionals may continue to treat former patients and clients at the State facility which formerly employed the health care professional. They may not treat new patients at such facility.
Public Officers Law § 73(8-b) Certificate of Exemption	<ul style="list-style-type: none">• JCOPE is authorized to grant exemptions to both revolving door provisions of the Public Officers Law to permit an agency to contract with a former employee for services.• JCOPE can issue a Certificate of Exemption where the agency head certifies in writing to the Commission that a former State employee has expertise, knowledge or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost.

CIVIL SERVICE LAW § 107 AND PUBLIC OFFICERS LAW § 73(17)

Political activity in the workplace

The term "political activity" means doing something in active support of or opposition to a political party, a candidate for partisan political office (e.g., President, senator, representative, State or local legislature or office), or a partisan political group.



Prohibitions

- State officers and employees may not be questioned, directly or indirectly, about their political affiliation as a condition of employment.
- A potential employee cannot be asked about his or her political party affiliation, whether or not that applicant made any political contributions, or how that applicant voted.

- No person can use his or her official State position to coerce, intimidate, or influence other State officers or employees for any political purpose, action, or contribution, or interfere with any election.
- State offices may not be used for soliciting or collecting any political contributions.
- No State officer or employee shall corruptly use or promise to use any official authority or influence in exchange for political action on another's part.

Examples of political activity that would violate Public Officers Law § 74 if done while on duty or using State property include:

- circulating a candidate's nominating petition within your office;
- using the computer in your office after work to produce a brochure in support of a candidate's campaign;
- sending e-mail invitations to campaign events to friends within the agency; and
- using New York State Internet connections to forward e-mail messages received from a partisan campaign or someone supporting a partisan candidate.

VIOLATIONS OF PUBLIC OFFICERS LAW § 73 AND CIVIL SERVICE LAW § 107

Violations of the following sections of law provide for a civil penalty of up to \$40,000 plus the value of any gift, compensation, or benefit received:

- § 73(4) Selling goods or services to State agencies
- § 73(5) Gifts
- § 73(7) Rendering services before State agencies
- § 73(8)(a) Post-employment Restrictions
- § 73(14) and § 73(15) Nepotism
- Civil Service Law § 107



INVESTIGATION AND ENFORCEMENT

Executive Law § 94 grants JCOPE the authority to investigate potential violations of the State's ethics laws (Public Officers Law §§ 73, 73-a, and 74), the "Little Hatch Act" (Civil Service Law § 107), and the Lobbying Act (Legislative Law Article 1-a) as they apply to State legislators, candidates for the Legislature and legislative employees, as well as the four statewide elected officials, candidates for those offices, executive branch employees, certain political party chairs, and lobbyists and their clients.

Investigations may be commenced by:

- The Commission's own initiative, which may occur through information or allegations obtained by the Commission, tips from the public, media coverage, or any other method in which information indicating a potential violation may be obtained.
- A sworn complaint, which may be filed in written form by any person and must allege facts constituting a violation of the laws under the JCOPE's jurisdiction, and must be sworn to under oath before an attesting officer (*i.e.*, a notary public).
- A formal referral from a government entity containing information or allegations that may constitute a violation of the laws under the JCOPE's jurisdiction.

All communications and records related to an investigation are **confidential** unless and until JCOPE issues a Substantial Basis Investigation Report.

ADVICE AND GUIDANCE

JCOPE legal staff is available to address your questions and concerns about how ethics laws and regulations apply to your circumstances. Written guidance is provided as either a formal or informal advisory opinion.

A formal advisory opinion

Formal advisory opinions are issued in cases in which the Commission interprets law. These opinions are public documents from which identifying information is removed. Every formal advisory opinion is posted on the JCOPE website. These opinions address more broad issues in ethics laws.



An informal advisory opinion

An informal opinion provides written guidance on your specific question or set of circumstances. The purpose of an informal advisory opinion is to determine whether a potential conflict of interest exists. An informal advisory opinion is confidential, and issued by JCOPE staff attorneys. Answers are based on precedent and previous formal opinions.

JCOPE also provides confidential advice and guidance by phone and email.

NEED ETHICS ADVICE OR GUIDANCE?

Call: 1-800-87-ETHICS

(800-873-8442)

- **Press “2”** to speak to the Attorney of the Day

Agency Ethics Officers

Most State agencies have a designated Ethics Officer. Your agency's Ethics Officer is the first point of contact for ethics-related questions or concerns. Your human resources department or counsel's office can provide you with the contact information for your agency Ethics Officer.

CONTACT INFORMATION



TO REPORT MISCONDUCT

Call the tip line at 800-87-ETHICS (800-873-8442) and press “4” to speak to a member of the investigative team, or visit <http://reportmisconduct.ny.gov/>

FOR LEGAL ADVICE

Call 800-87-ETHICS (800-873-8442) and press “2” to speak to the Attorney of the Day, or email legal@jcope.ny.gov.

FOR FDS FILING QUESTIONS

Call the FDS Unit at 800-87-ETHICS (800-873-8442) and press “3” to speak to an FDS filing specialist, or email ethel@jcope.ny.gov.

FOR TRAINING QUESTIONS

Call our main line at 518-408-3976 or email the education team at education@jcope.ny.gov.

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS * 540 BROADWAY * ALBANY, NEW YORK 12207

www.jcope.ny.gov