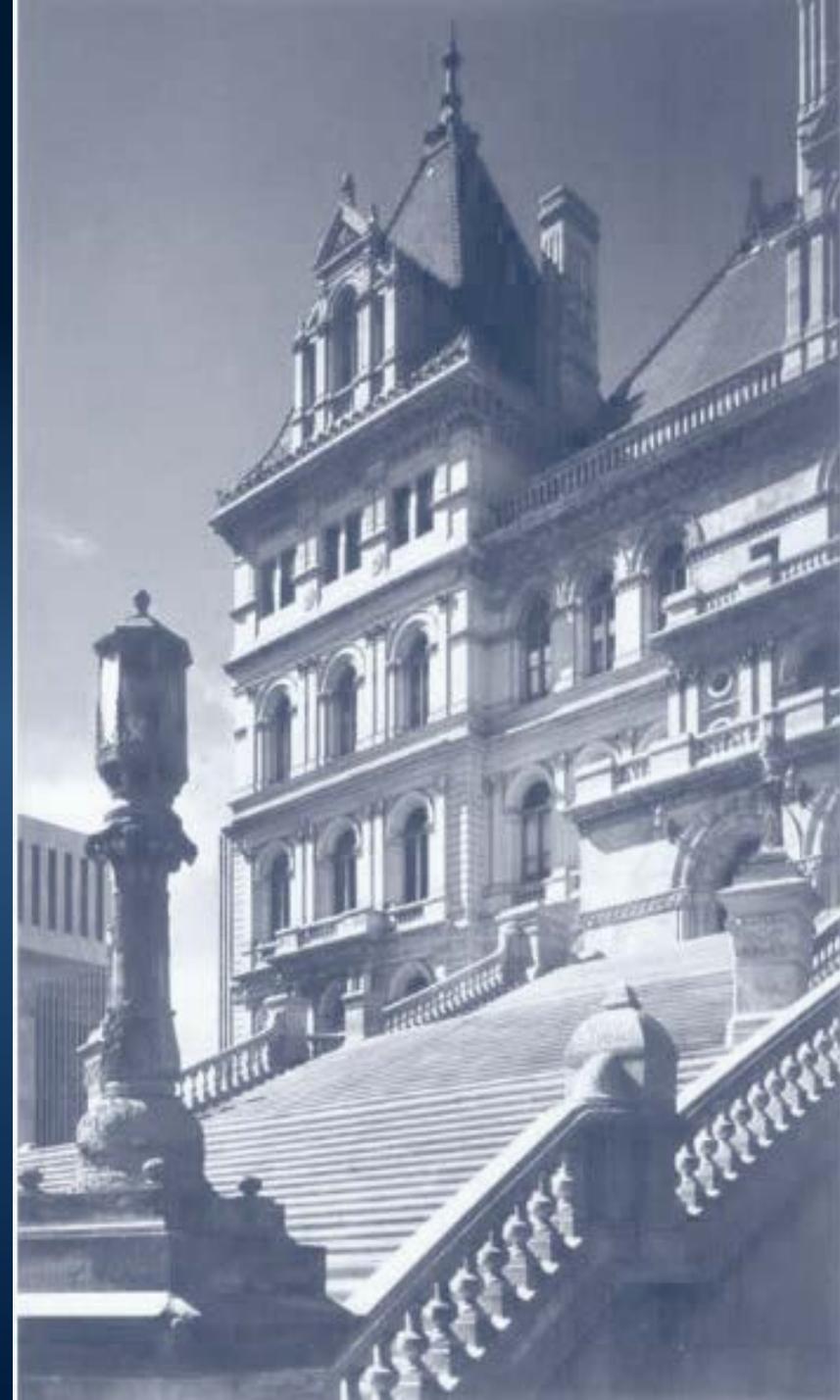




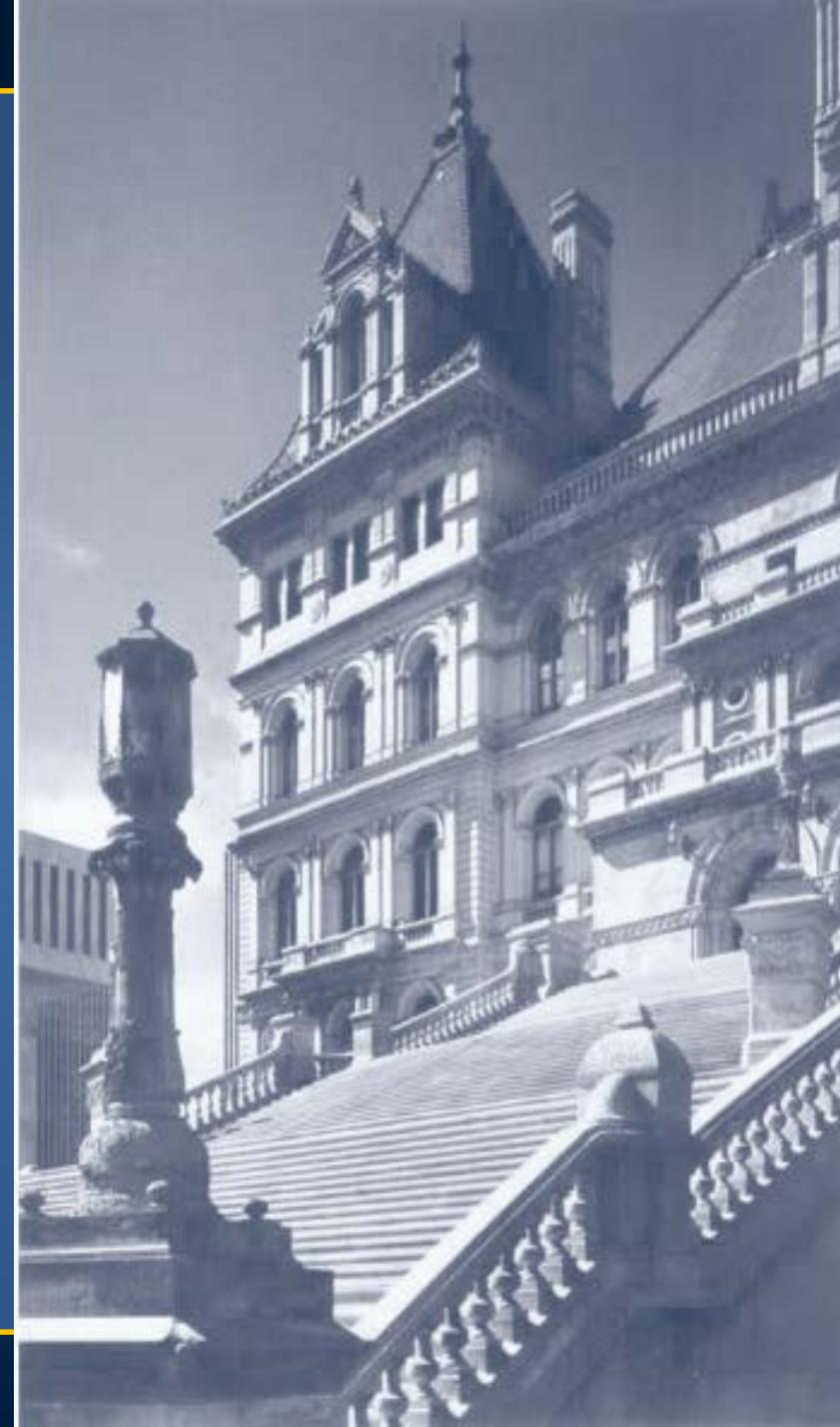
# LOBBYING IN NEW YORK STATE

LOBBYING REGULATIONS AND APPLICATION  
A YEAR IN REVIEW

**February 5, 2020**



# 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”**

# 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.

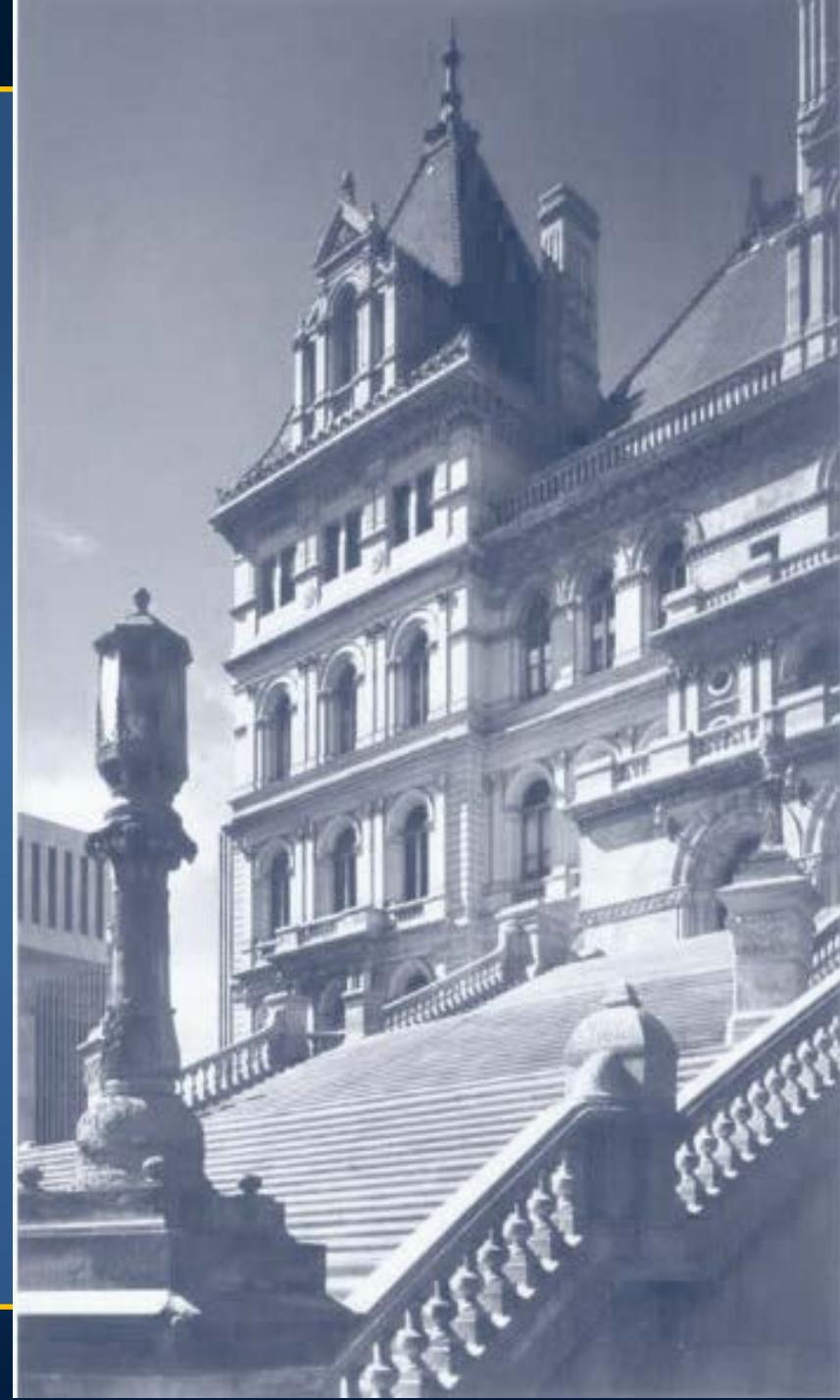
# CALCULATING THE \$5,000 LOBBYING THRESHOLD

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).
- **Reportable expenses** include things like advertising, social events, and bill tracking.

# WHAT'S NEW?

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



# KEY FEATURES OF THE NEW REGULATIONS

- Every Registration and Report must include a **Contractual Client** and a **Beneficial Client** (even if the same). We require the “true client” to be disclosed.
- Greater specificity on **Lobbying targets** – who you lobbied.
- **Direct Lobbying** includes “door opening” and certain activity conducted at Lobby Days.
- **Grassroots Lobbying** is defined and reportable.
- Lobbying using **Social Media** is reportable.
- **Coalitions** are defined and filing options and associated filing requirements are provided.
- Filing requirements are **streamlined** wherever possible, including the use of Auto-Generated Client Semi-Annual Reports.

# 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

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## 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 typically compensates the Lobbyist (internal or external), although sometimes the Beneficial Client pays all or a portion of the compensation and expenses
- 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

# **Beneficial Client and the Corporate Parent-Subsidiary Scenario:**

**When should Subsidiary Companies be listed as Beneficial Clients of a lobbying arrangement between the Corporate Parent and a Lobbyist? Factors to consider:**

- Will the Subsidiary benefit from the lobbying?
- Is the Subsidiary paying for part or all of the lobbying?
- What type of Subsidiary is paying for the lobbying – is it a Subsidiary that only provides administrative services to the Parent Company (i.e. a management company)?

# 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

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

**DESIGNATED  
LOBBYIST**



**Lobbies on behalf  
of an Organization  
as a Board Member,  
Director or Officer**

**DESIGNATED  
LOBBYIST**



**Lobbies on  
behalf of  
themselves**

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**

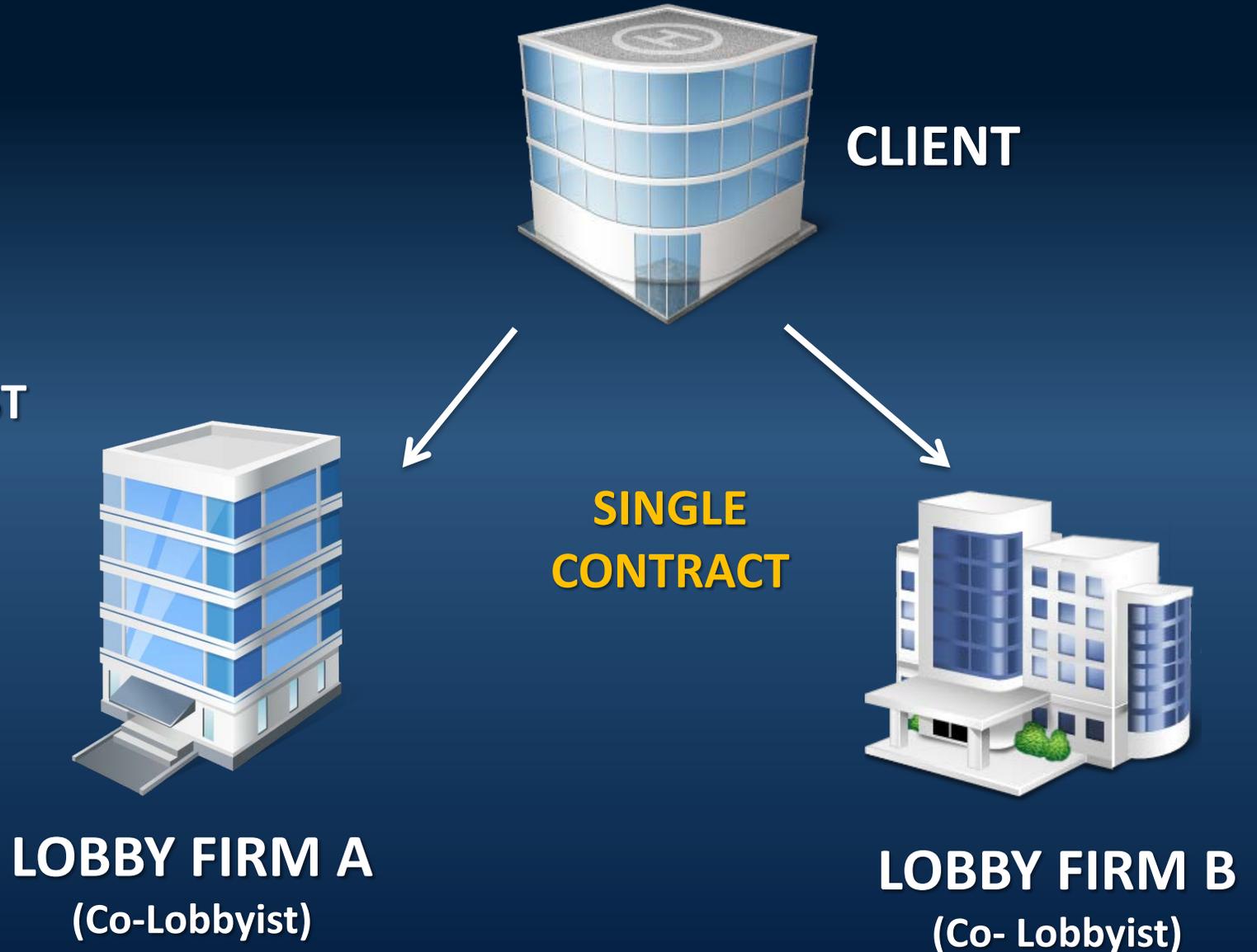


**DISCLOSES THE  
CONTRACTUAL CLIENT  
(= PRIME LOBBYIST)  
AND BENEFICIAL CLIENT  
(= ORIGINAL CLIENT/"TRUE"  
CLIENT)**

**DESCRIBES THEIR OWN  
LOBBYING ACTIVITY**

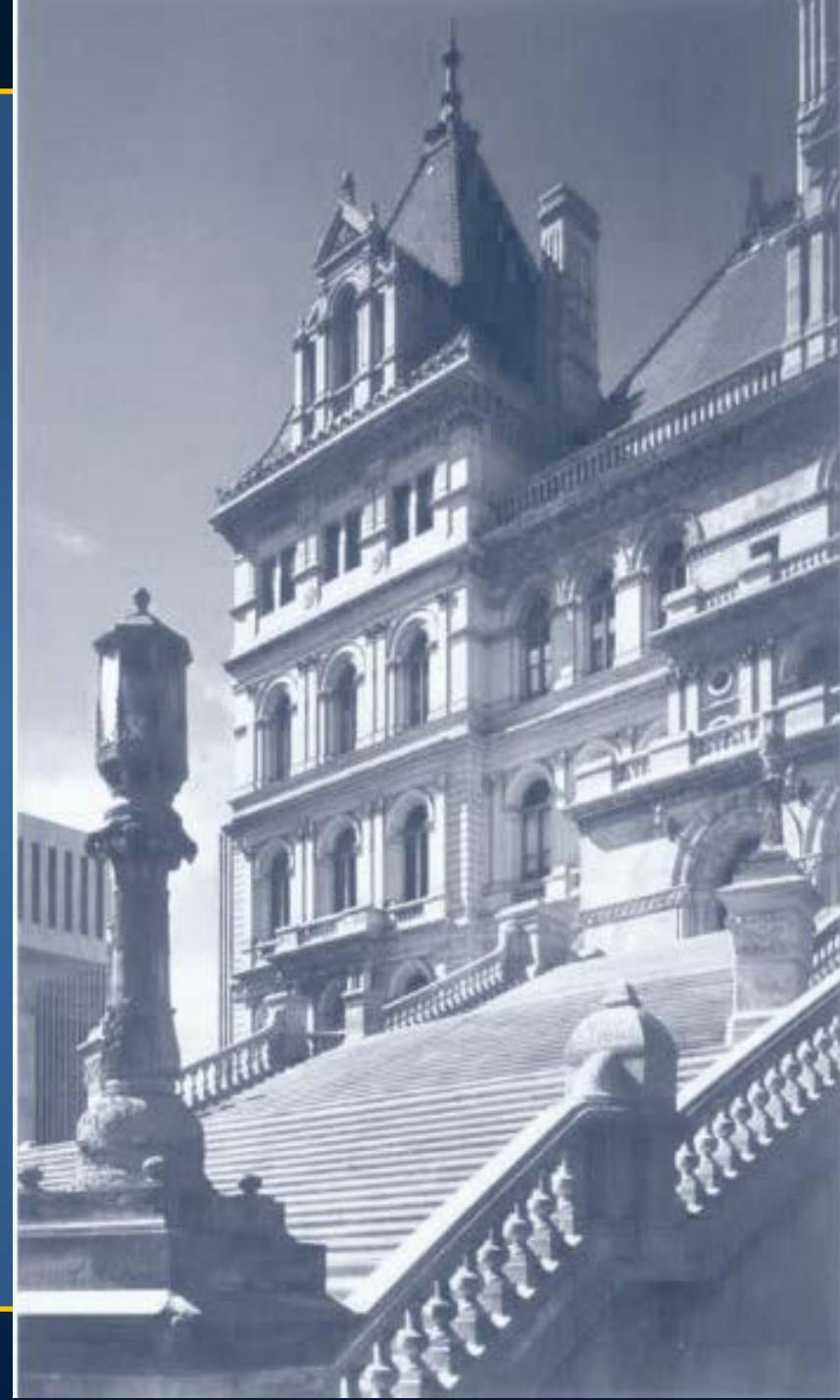
# CO-LOBBYISTS

- 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
- List as Beneficial Clients all members who exceed \$5,000 in cumulative annual Lobbying Compensation and Expenses

**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 by the member to determine if the member must file its own lobbying report

### **ARE CONSIDERED**

- Lobbying expenditures by the member to determine if (1) the member must be listed as a BC on the Coalition's filing and (2) the 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 **EXCEED 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

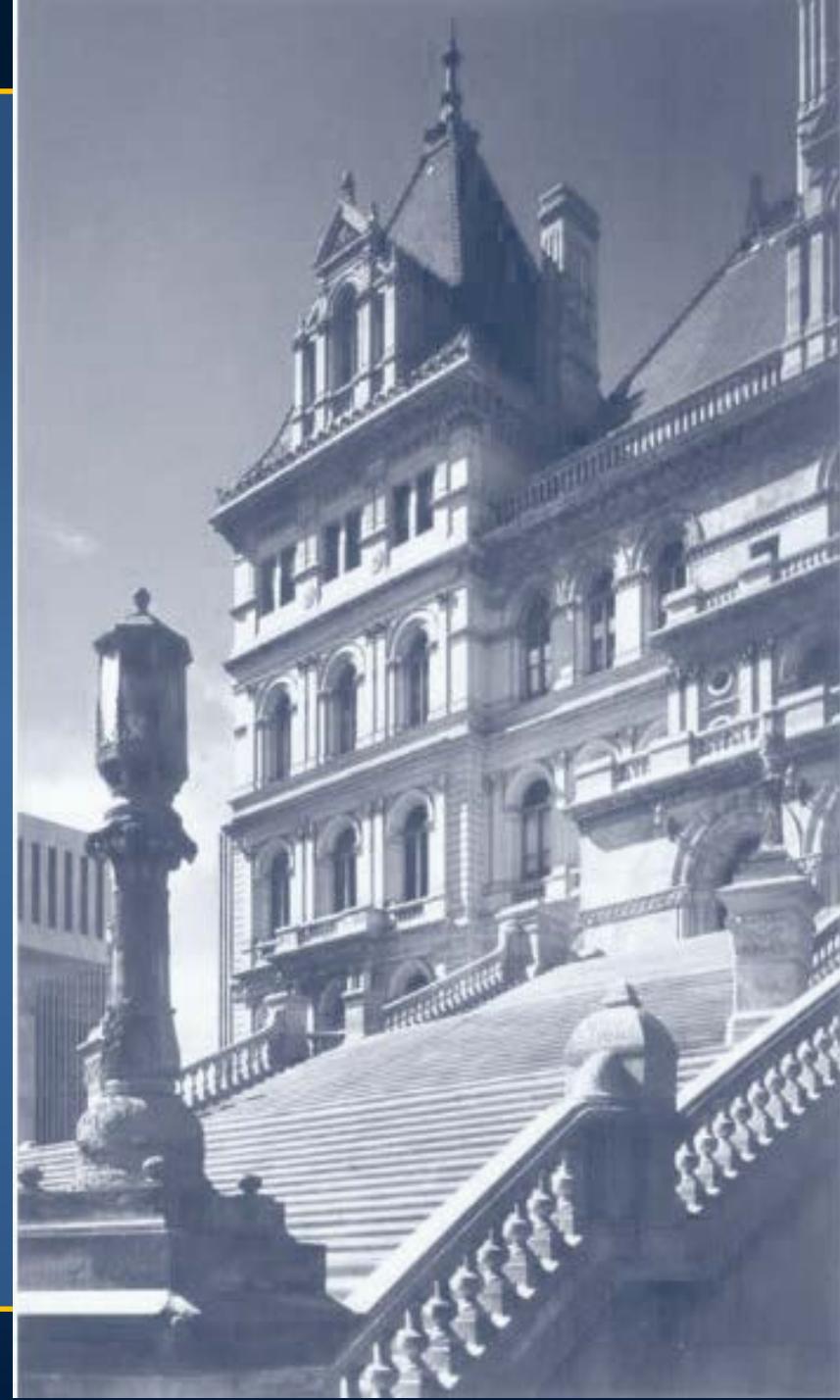
In CSA list the contribution as an expense to the named Coalition.

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

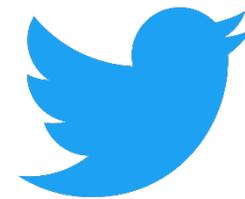


# DIRECT LOBBYING: SOCIAL MEDIA



# 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

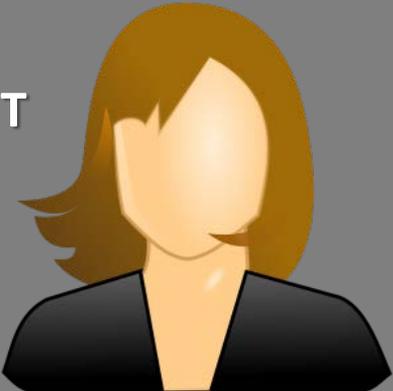


SENDS LOBBYING MESSAGE DIRECTLY TO OR LINKS TO

PUBLIC OFFICIAL



LOBBYIST



TWEETS LOBBYING MESSAGE WITH TAG TO PUBLIC OFFICIAL

PUBLIC OFFICIAL



# SOCIAL MEDIA – LOBBYING EXPENSES

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 EXAMPLES INCLUDE:



# 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.

# GRASSROOTS LOBBYING AND SOCIAL MEDIA EXPENSES

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

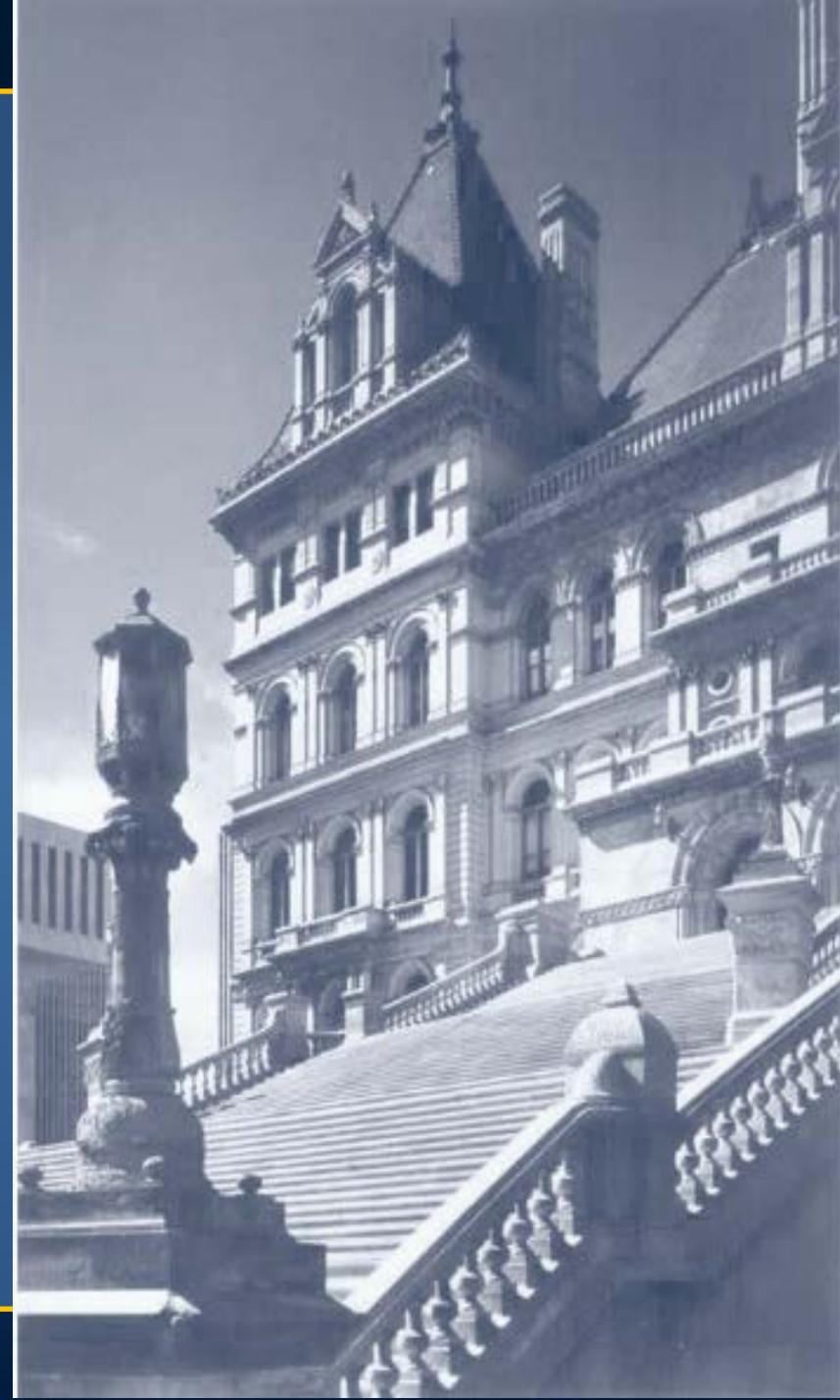
- consulting services
- sponsoring posts
- staff time allocated to planning and posting
- search engine optimization
- advertising

# 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 and any Reportable Business Relationships as prescribed by Section 943.14.

The CSA will be **Auto-Generated**.

# 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

# NEW LOBBYING APPLICATION

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

- Better interface
- User-friendly
- Streamlined
- Greatly improved Search Functions

# JCOPE CONTACT INFORMATION

## **For Filing Assistance – Contact the JCOPE Helpdesk**

- Hotline – Dial 1-800-87-ETHICS (873-8442) and Press ‘1’ to speak to the Lobbying Unit
- Email – [Helpdesk@jcope.ny.gov](mailto:Helpdesk@jcope.ny.gov)

## **For Legal Advice – Contact the JCOPE Attorney of the Day**

- Hotline – Dial 1-800-87-ETHICS (873-8442) and Press ‘2’
- Email – [legal@jcope.ny.gov](mailto:legal@jcope.ny.gov)