

June 5, 2020

Carol Quinn
Deputy Director of Lobbying Guidance
New York State Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

Dear Ms. Quinn,

As counsel to numerous registered lobbyists and lobbyist employers in New York, we write to provide informal comments to the Proposed Revisions to the Comprehensive Lobbying Regulations (Part 943).

The comments we have included in this letter seek to provide clarity and consistency to the newly proposed regulations. While we may provide additional input during the formal comment period, our preliminary comments on the current proposed regulations are:

1. **Individual Lobbyist Listing.** Our primary concern with the newly proposed regulations is that they appear to interpret the \$5,000 lobby registration trigger found in Lobbying Act § 1-e(a)(1) as requiring Individual Lobbyists to be listed on a Lobbying Organization's registration *regardless of the amount of lobbying* that the Individual Lobbyist has performed. In other words, if a Lobbying Organization has triggered registration as an entity by reaching the \$5,000 compensation or expenditure threshold, the new regulations appear to require that any Individual Lobbyist who lobbies on behalf of that Lobbying Organization must be listed on the Lobbying Organization's registration, even if that Individual Lobbyist engaged in mere incidental lobbying and did not themselves reach the \$5,000 threshold.

Specifically, in § 943.6(c)(1), pertaining to Direct Lobbying, the proposed regulations provide (new text in blue):

- (1) A person is engaged in Direct Lobbying and must be listed as an Individual Lobbyist on a lobbying filing when the person:
 - i. Has Direct Contact with a Public Official to Attempt to Influence an action enumerated in section 1-c(c)(i)-(x) of the Lobbying Act; or
 - ii. Has Direct or Preliminary Contact with a Public Official to enable or facilitate an Attempt to Influence.

Similarly, the newly proposed § 943.6(c)(5) states, “[Any Individual Lobbyist who engages in Direct Lobbying must be listed on lobbying filings. This would not include volunteers or members of a Lobbying Organization unless they are acting as Designated Lobbyists of such Lobbying Organization.](#)”

The proposed requirement that Individual Lobbyists be listed on a Lobbying Organization’s filings anytime they engage in any amount of Direct Lobbying, however miniscule, appears to conflict with the statute’s registration requirement. Again, the statute only requires lobbyists to register if they individually “expend, incur or receive an amount in excess of” \$5,000 in a calendar year. (Lobbying Act § 1-e(a)(1).)

Not only will adding this requirement render the regulations at odds with the applicable statute, it will also pose great administrative challenges for the regulated community. For example, companies with large public policy teams will be forced to track in real time any employee who encounters a covered official. They would then be required to add to their registration any employee who engages in a brief—even five minute—lobby-related conversation with an official, even if that employee never lobbies in New York again.

This new requirement also adds confusion to an already complex set of regulations by creating new questions: By when do Individual Lobbyists need to be listed once they make a Direct Contact? Are these amendments to the Statement of Registration subject to the 10-day registration requirement? If so, Lobbying Organizations would, again, need to constantly track their employees’ contacts and update their Statements of Registration in real time. When can the Individual Lobbyist be removed from the registration? The regulations appear silent on the termination date.

Our current understanding of the statute is that it permits employees to perform a *de minimis* amount of lobbying before they must be listed on the registration. Specifically, individuals are only required to be listed if they expend, incur, or receive more than \$5,000 in reportable compensation or expenses. Accordingly, we respectfully request that these proposed additions be removed from the final regulation. In their place, we recommend that the new regulations recognize that the \$5,000 registration trigger applies to each Individual Lobbyist, consistent with the plain language of the Lobbying Act.

2. **Training.** Relatedly, the proposed changes to § 943.5(b) require “All [Individual Lobbyists listed on a Statement of Registration](#)” to complete an online ethics training. This requirement places a significant burden on those who engage in only nominal lobbying. If, as proposed, any lobbyist who engages in even a small amount of lobbying is required to be listed on a Statement of Registration, then the proposed change to § 943.5(b) means that such individuals must also complete an online ethics training.

If the regulations maintained the requirement that the \$5,000 registration threshold applies to each individual, rather than an entity as a whole, then the Individual Lobbyists who are required to take the ethics course would be bona fide lobbyists who engage in enough lobbying to warrant taking such a course. Alternatively, if the proposed changes to the \$5,000 trigger remain, we suggest amending § 943.5(b) to require only one representative from each Lobbying Organization to take the ethics course.

3. **Lobbying Expenses.** Is “Lobbying Expenses” intended to be a defined term? It is capitalized in § 943.3(l), but not elsewhere.

Thank you very much for your consideration of our comments. If you have any questions, please do not hesitate to contact Joel Aurora at jaurora@nmgovlaw.com.

Sincerely,



Joel Aurora
Associate



Evann Whitelam
Associate



Jay Carson
Associate

cc: Jason Kaune; Partner
James Gravin; Director, Political Reporting Unit
Tyler Kleinman; Manager, Political Reporting Unit