

Title 19 NYCRR Part 932 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF
NEW YORK

TITLE 19. DEPARTMENT OF STATE

CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 932 OUTSIDE ACTIVITY RESTRICTIONS AND APPROVAL PROCEDURES

932.1 Purpose of Regulations.

The purpose of these regulations is to effectuate the conflicts of interests provisions of the Public Officers Law and to provide an approval procedure for outside activities by Policy Makers, heads of State Agencies, and Statewide Elected Officials.

932.2 Definitions.

(a) *Approving Authority*, for a Policy Maker, shall mean (i) the head of a State Agency employing such Policy Maker; (ii) the appropriate designee of the head of such State Agency; (iii) the individual or body that has the authority to appoint such Policy Maker to a position; or (iv) the appropriate designee of such individual or body.

[The current regulations contain the term “Approving Authority” and “appointing authority,” but only define Approving Authority. The presence of these two terms has generated confusion. The proposed amendments seek to remedy this by utilizing only “Approving Authority,” the definition of which incorporates both concepts.]

(b) *Commission* shall mean the New York State Joint Commission on Public Ethics and, where applicable, its predecessor agencies.

(c) *Compensation* shall mean the economic consideration received in exchange for services rendered, e.g., wages, salaries, benefits, professional fees, royalties, bonuses, or commissions on sales. As applied to any business venture, whether or not incorporated, that is owned or controlled by an individual, Compensation shall also include income received from such venture. Notwithstanding the foregoing, income received from transactions involving an individual’s own securities, personal property, or real estate is not included in the term Compensation

[The language is intended to clarify the exiting definition.]

(d) *Outside Activity Approval Form* shall mean a form designated by the Commission as the Outside Activity Approval Form and available on the Commission’s website.

[The definition incorporates concepts contained in the current regulations.]

(e) *Party* shall mean (i) any organization which at the last preceding election for governor of the State of New York polled at least fifty thousand votes for its candidate for governor; or (ii) the national political entity affiliated with such organization.

[The current regulations use the term “political party” but do not define it.]

(f) *Party Committee* shall mean any State committee, county committee, and such other committee (including national committee) as the rules of the Party may allow.

[The current regulations use the term “party committee” but do not define it.]

(g) *Policy Maker* shall mean an officer, employee, director, commissioner, or member of a State Agency (other than a multi-state authority) who has been determined to hold a policy making position pursuant to Public Officers Law §73-a(1)(c).

[The current regulations define the term “Policy-making Position.” The definition of “Policy Maker” here incorporates the operative language from the “Policy-making Position” definition in the current regulations.

(h) *Political Organization* shall mean any organization that is affiliated with, or subsidiary to, a Party. The term does not include campaign or fundraising committees

[The language is intended to clarify the existing definition and not to alter its scope.]

(i) *State Agency* shall mean any State department, or division, board, commission, or bureau of any State department, any public benefit corporation, public authority, or commission at least one of whose members is appointed by the Governor. State Agency shall also include the State University of New York or the City University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

(j) *Statewide Elected Official* shall mean the Governor, Lieutenant Governor, Attorney General, or Comptroller of the State of New York.

[The definition incorporates language in the current regulations.]

932.3 General Standard for All Persons Subject to Public Officers Law §74.

No individual who is subject to Public Officers Law §74, shall engage in any outside activity which interferes or conflicts with the proper and effective discharge of such individual's official State duties or responsibilities.

932.4 Restrictions on Certain Political Activities.

(a) No head of a State Agency, Statewide Elected Official, or Policy Maker (regardless of whether the person serves on an unpaid or per diem basis), shall serve as an officer, director, or board member of any Party or Political Organization.

(b) No head of a State Agency, Statewide Elected Official, or Policy Maker (regardless of whether the person serves on an unpaid or per diem basis) shall serve as a member, officer, director, board member, or district leader of any Party Committee.

[The language is intended to clarify the existing prohibition and not to alter its scope.]

(c) Nothing in this section shall prohibit a head of a State Agency, Statewide Elected Official, or Policy Maker from serving as a delegate to a State or national Party convention.

[The language was included to reflect long-established guidance in applying the regulations.]

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932.5 Required Prior Approval for Salaried Policy Makers, Heads of State Agencies, and Statewide Elected Officials

(a) A Policy Maker who serves the State on other than a nonpaid or per diem basis, shall obtain the following approvals prior to engaging in the activities listed below:

[The current regulations do not list the requirements below in a chart. Rather, they are contained in 932.3(b)-(e). In terms of substance, any changes are noted in the chart below.]

Outside Activity	Required Approvals / Actions	
<p>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</p> <p>[The current regulations address public employment separate from private employment. The two categories are combined here to provide more clarity. Additionally, the threshold for JCOPE approval has been raised from \$4,000 to \$5,000. The revised threshold is consistent with Category C in the Financial Disclosure Statements.]</p>	<p>Approving Authority must approve</p>	
<p>A job, employment (including public employment), or business venture that generates, or is expected to generate, more than \$5,000 in Compensation annually</p> <p>[The current regulations address public employment separate from private employment. The two categories are combined here to provide more clarity. The threshold for JCOPE approval has also been raised from \$4,000 to \$5,000.]</p>	<p>Approving Authority and the Commission must approve</p>	
<p>Holding elected or appointed public office (regardless of Compensation) as an outside activity.</p> <p>[The language is intended to clarify the wording in the current regulations.]</p>	<p>Approving Authority and the Commission must approve</p>	
<p>Serving as a director or officer of a for-profit entity (regardless of Compensation)</p>	<p>Approving Authority and the Commission must approve</p>	
<p>Serving as a director or officer of a not-for-profit entity.</p>		
	<p>Compensation is \$0 - \$999 annually</p> <p>[This is a new requirement.]</p>	<p>Approval not required, but must notify Approving Authority in writing prior to commencing service</p>
	<p>Compensation is between \$1,000 and \$5,000 annually</p>	<p>Approving Authority must approve</p>
	<p>Compensation is more than \$5,000 annually</p>	<p>Approving Authority and the Commission must approve</p>

(b) A head of a State Agency or a Statewide Elected Official shall obtain approval from the Commission prior to engaging in the outside activities listed in Section 932.5(a).

932.6 Approval Procedures.

(a) A Policy Maker who requires approval pursuant to Part 932.5(a) from his Approving Authority only, shall submit to the Approving Authority a written approval request prior to commencing the outside activity.

(1) The Approving Authority shall make its determination based on its interpretation of whether the proposed outside activity is in accordance with the applicable provisions of the Public Officers Law, Commission Advisory Opinions, pertinent State Agency policies, procedures, or regulations governing employee conduct, and such other factors as the Approving Authority may deem appropriate.

(2) The interpretations of the Approving Authority of the Public Officers Law shall not be binding on the Commission.

(b) A Policy Maker who also requires Commission approval pursuant to Part 932.5(a) shall submit to the Commission a request on the Outside Activity Approval Form. The form must be completed in full, including signatures from the individual and the Approving Authority. The Commission will not consider requests without a completed Outside Activity Approval Form.

(c) A head of a State Agency or Statewide Elected Official who requires Commission approval pursuant to Part 932.5(b) shall submit to the Commission a request on the Outside Activity Approval Form. The Commission will not consider requests without a completed Outside Activity Approval Form.

(d) With respect to outside activity requests that require Commission approval, the Commission shall make its determination based on its interpretation of whether the proposed outside activity is in accordance with the applicable provisions of the Public Officers Law, Commission Advisory Opinions, regulations, and policies. The Commission may require additional information as it deems appropriate.

932.7 Previously Approved Outside Activity: Annual Disclosure and Material Changes

(a) Once an outside activity has been approved pursuant to Part 932.6 it shall remain effective unless and until there is a material change in the individual's State responsibilities or in the outside activity, at which point the individual must submit a new request for approval in accordance with Parts 932.5 and 932.6

[This language reflects long-established guidance and practice.]

(b) On an annual basis, an individual who has received approval for an outside activity pursuant to Part 932.6, or has otherwise disclosed the not-for-profit board service pursuant to Part 932.5, must inform, in writing, his Approving Authority (or, in the case of a head of a State Agency or a Statewide Elected Official, that State Agency's ethics officer or other designated individual) if the individual is still engaged in the outside activity for which approval was granted. The

Approving Authority (or, in the case of a head of a State Agency or a Statewide Elected Official, that State Agency's ethics officer or other designated individual) shall determine when such annual disclosure is to be made.

[This is a new requirement.]

932.8 Enforcement.

In addition to any penalty contained in any other provision of law, an individual's performance of an outside activity that is in violation of Public Officers Law §73 or §74 may subject him to a civil penalty or other Commission action. Nothing herein shall limit or prohibit the State Agency, Approving Authority, or other appropriate entity from taking disciplinary action with respect to violations of this Part or the Public Officers Law, including a fine, suspension without pay, or removal from office or employment in the manner provided by law, regulation, or collective bargaining agreement.

[The language is intended to clarify this provision in the current regulations.]

932.9 Codes of Ethics for Uncompensated and Per Diem Directors, Members and Officers.

The boards or councils whose officers or members are subject to §73-a of the Public Officers Law and are not subject to §73 of such law by virtue of their uncompensated or per diem compensation status and the commissions, public authorities and public benefit corporations whose member or directors are subject to §73-a of the Public Officers Law and are not subject to §73 by virtue of their uncompensated or per diem compensation status shall adopt a code of ethical conduct covering conflicts of interest and business and professional activities, including outside activities, of such directors, members or officers both during and after service with such boards, councils, commissions, public authorities and public benefit corporations. Such codes of ethical conduct shall be filed with the Commission.

932.10 Agencies Permitted More Restrictive Rules.

Nothing contained in this Part shall prohibit any State Agency from adopting or implementing its own rules, regulations, or procedures with regard to outside activities that are more restrictive than the requirements of this Part.