

REPORTABLE BUSINESS RELATIONSHIP GUIDELINES: LOBBYISTS

The Public Integrity Reform Act of 2011 (“PIRA”) (Chapter 399, Laws of 2011) amended Legislative Law article one-A by enacting requirements, effective August 15, 2011, that lobbyists and clients of lobbyists make publicly available information about business relationships with certain state employees and officials. The requirements to disclose these “Reportable Business Relationships” are found in Legislative Law §§ 1-c(w), 1-e(c)(8)(i)-(iii) and 1-j(b)(6)(i)-(iii). These guidelines clarify the Reportable Business Relationship reporting requirements.

Relationship: A relationship means either a formal or informal agreement or understanding in which

a lobbyist pays, gives or promises Compensation to: (a) an individual whom the lobbyist knows or has reason to know is a State Person; (b) a non-governmental entity for which the lobbyist knows or has reason to know that a State Person is a proprietor, partner, director, officer or manager, or owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange) (These roles and positions are referred to as the “**Requisite Involvement.**”); or (c) a third-party as directed by the State Person or as directed by an entity in which the State Person has the **Requisite Involvement and**

such Compensation is 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.

The agreement or understanding need not be express or in writing and need not be enforceable under contract law to be considered a Relationship.

Notwithstanding the foregoing, medical, dental and mental health services and treatment are excluded from the definition of Relationship. Additionally, legal services with respect to investigation or prosecution by law enforcement authorities, bankruptcy or domestic relations matters are excluded from the definition of Relationship.

State Person: State Person means an individual who is a statewide elected official, state officer, state employee, member of the legislature or legislative employee.

For purposes of these Guidelines, “state officer” and “state employee” shall mean:

(i) 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;

(ii) officers and employees of statewide elected officials;

(iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and

(iv) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

“Reason to know”: Whether a lobbyist has “reason to know” that (i) an individual is a State Person, or (ii) a State Person has the Requisite Involvement with an entity, is based on an examination of the totality of the facts and circumstances.

If a reasonable person, looking at all the facts and circumstances, would conclude that a lobbyist 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. Some, but not all, factors that *may* be considered in this analysis are:

- Origins of the relationship;
- Length of the relationship;
- The type and actual value of the goods, services or items provided;
- 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; or

A lobbyist 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 (i) conclude that the individual was a State Person, or that a State Person had the Requisite Involvement, or (ii) undertake further research to determine whether either fact exists. The fact that potentially relevant information can be obtained by requesting a Financial Disclosure Statement or submitting a FOIL request does not alone establish that a lobbyist had reason to know the information.

Compensation: “Compensation” means any salary, fee, gift, payment, benefit, loan, advance or any other thing of value. For the purposes of these guidelines, Compensation does not include:

- commercially available consumer and business loans or lines of credit made on substantially the same terms (including interest rates and collateral) as, and following credit underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the lender with other persons or entities that are not covered by these guidelines and does not involve more than the normal risk of repayment or present other unfavorable features;

- goods and services, or discounts for goods and services, offered to the general public or a segment of the general public defined on a basis other than status as a State Person, or an entity in which a State Person has the Requisite Involvement, and offered on the same terms and conditions as the goods or services are offered to the general public or segment thereof;

N.B. The purpose of the bulleted paragraph immediately above is solely to ensure that the Guidelines only require disclosure of business relationships in which Compensation is *provided to* – and not *from* – a State Person or an entity in which a State Person has the Requisite Involvement.

- dividends or payments related to stock repurchases, insurance payments, interest payments or any other similar payments offered to the general public or a segment of the general public defined on a basis other than status as a State Person, or an entity in which a State Person has the Requisite Involvement, and offered on the same terms and conditions as the payments are offered to the general public or segment thereof; or
- contributions reportable pursuant to article 14 of the election law.

Consequently, relationships involving transactions of the type identified above do not need to be reported.

Example: Lobbyist Smith gives State Person Jones a six-year-term loan for \$5,000 at prevailing market rates. Lobbyist Smith’s loan is not commercially available, and therefore constitutes Compensation. Lobbyist Smith knows State Person Jones is a legislative employee. This is a Reportable Business Relationship that Lobbyist Smith must disclose.

Reporting Period: Any Reportable Business Relationship, regardless of when the relationship commenced, must be reported if that relationship is, or will be, in existence during the biennial cycle covered by the lobbyist registration statement. A Reportable Business Relationship exists during the reporting period if any of the following is present during that period: (i) Compensation is paid; (ii) goods, services or anything of value are performed or provided; or (iii) the Relationship is in existence, even if Compensation has not yet been paid and goods, services or anything of value have not yet been performed or provided.

Example: On December 13, 2012, Lobbyist Smith entered into a contract with Senator Doe that calls for \$5,000 worth of services to be performed. The contract calls for Compensation for those services to be paid on January 10, 2015. Lobbyist Smith must disclose this Reportable Business Relationship in the biennial registration statements that are to be made no later than January 1, 2013 and January 1, 2015.

“Intended to be performed or provided”: “Intended” here means the goods, services or anything of value have not yet been performed or provided, but the lobbyist reasonably anticipates such goods, services or anything of value to be performed or provided in the future.

“Performed or provided”: Performed or provided means that a State Person or 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.

“\$1,000 annually”: The annual period is any 12 consecutive months in which more than \$1,000 in goods, services or anything of value is performed or provided by a State Person or an entity in which a State Person has the Requisite Involvement.

- a. Relationships of one year or less: If the value of goods, services or anything of value is more than \$1,000, the threshold is met.
- b. Relationship of more than one year: Relationships of more than one year will be reportable if:
 - i. the Compensation received exceeds \$1,000 during any consecutive 12 months;
 - ii. the value of the goods, services or anything of value performed or provided exceeds \$1,000 during any consecutive 12 months;
 - iii. outstanding Compensation for goods, services or anything of value already performed or provided exceeds \$1,000; or
 - iv. the value of the goods, services or anything of value to be performed or provided in exchange for Compensation already received exceeds \$1,000.

Aggregation: If a lobbyist has multiple Relationships with the same State Person or the same entity in which a State Person has the Requisite Involvement, the value of goods, services or anything of value of all such Relationships should be aggregated. If the aggregated value of the Relationships is more than \$1,000 for any 12-month period, then *each* such relationship is a Reportable Business Relationship (assuming the other criteria have been satisfied).

Example: Lobbyist Smith has a Relationship with Legislator Doe for which he paid Legislator Doe \$750 on November 12, 2013. He then enters into a different Relationship with Legislator Doe on October 25, 2014, the value of which is \$300. Because the two Relationships occurred within 12 months of each other, they must be aggregated. When aggregated, the total value exceeds \$1,000. Consequently, the two relationships taken together constitute a Reportable Business Relationship, and each of the relationships must be disclosed.

Reporting Requirements: For each Reportable Business Relationship, the lobbyist shall disclose the information contained in Legislative Law §1-e(c)(8)(i)-(iii). For the information required in subsection (iii), the lobbyist shall disclose either the actual or anticipated amount of

Compensation, including reimbursable expenses, to be paid and paid by virtue of the Relationship.

Duty to Amend: A lobbyist has a duty to amend its biennial registration statement within 10 days of an event that necessitates a material change in any of the required information set forth in Legislative Law §1-e(d). For example, if, after having filed a biennial registration statement, a Reportable Business Relationship arises, or a lobbyist learns of a Reportable Business Relationship that was not previously disclosed, a lobbyist shall file an amendment to the biennial registration statement pursuant to Legislative Law §1-e(d).

Similarly, a lobbyist has a duty to amend its biennial registration statement when it discovers that the actual or anticipated amount of Compensation in connection with the Reportable Business Relationship materially varies from the anticipated amount that was previously reported.

Failure to timely amend a biennial registration statement could subject a lobbyist to a late fee and/or a civil penalty as set forth, respectively, in Legislative Law §1-e(e)(iii) and §1-o.

Penalties: Failure to file in a timely manner subjects a lobbyist to (i) a civil penalty, as prescribed in Legislative Law §1-o(b)(i), in an amount not to exceed the greater of \$25,000 or the amount it failed to report; and/or (ii) late fees as prescribed in Legislative Law §1-e(e)(iii). In the case of a false filing, the lobbyist will be subject to a civil penalty, as prescribed in Legislative Law §1-o(b)(ii), in an amount not to exceed the greater of \$50,000 or five times the amount it failed to report.

REPORTABLE BUSINESS RELATIONSHIP GUIDELINES: CLIENTS

The Public Integrity Reform Act of 2011 (“PIRA”) (Chapter 399, Laws of 2011) amended Legislative Law article one-A by enacting requirements, effective August 15, 2011, that lobbyists and clients of lobbyists make publicly available information about business relationships with certain state employees and officials. The requirements to disclose these “Reportable Business Relationships” are found in Legislative Law §§ 1-c(w), 1-e(c)(8)(i)-(iii) and 1-j(b)(6)(i)-(iii). These guidelines clarify the Reportable Business Relationship reporting requirements.

Client: The term “Client,” pursuant to Legislative Law § 1-c(b), includes every person or organization who 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 proprietors, partners, directors, or executive management of the organization

Relationship: A relationship means either a formal or informal agreement or understanding in which

a Client pays, gives or promises Compensation to: (a) an individual whom the Client knows or has reason to know is a State Person; (b) a non-governmental entity for which the Client knows or has reason to know that a State Person is a proprietor, partner, director, officer or manager, or owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange) (These roles and positions are referred to as the “**Requisite Involvement.**”); or (c) a third-party as directed by the State Person or as directed by an entity in which the State Person has the Requisite Involvement **and**

such Compensation is 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.

The agreement or understanding need not be express or in writing and need not be enforceable under contract law to be considered a Relationship.

Notwithstanding the foregoing, medical, dental and mental health services and treatment are excluded from the definition of Relationship. Additionally, legal services with respect to investigation or prosecution by law enforcement authorities, bankruptcy or domestic relations matters are excluded from the definition of Relationship.

State Person: State Person means an individual who is a statewide elected official, state officer, state employee, member of the legislature or legislative employee.

For purposes of these Guidelines, “state officer” and “state employee” shall mean:

(i) 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;

(ii) officers and employees of statewide elected officials;

(iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and

(iv) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

“Reason to know”: Whether a Client has “reason to know” that (i) an individual is a State Person, or (ii) a State Person has the Requisite Involvement with an entity, is based on an examination of the totality of the facts and circumstances.

If a reasonable person, looking at all the facts and circumstances, would conclude that a 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. Some, but not all, factors that *may* be considered in this analysis are:

- Origins of the relationship;
- Length of the relationship;
- The type and actual value of the goods, services or items provided;
- 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; or

A Client will be deemed to have had reason to know if its lack of knowledge results from willfully ignoring information that would lead a reasonable person to (i) conclude that the individual was a State Person, or that a State Person had the Requisite Involvement, or (ii) undertake further research to determine whether either fact exists. The fact that potentially relevant information can be obtained by requesting a Financial Disclosure Statement or submitting a FOIL request is not alone sufficient to establish that a Client had reason to know the information.

Compensation: “Compensation” means any salary, fee, gift, payment, benefit, loan, advance or any other thing of value. For the purposes of these guidelines, Compensation does not include:

- commercially available consumer and business loans or lines of credit made on substantially the same terms (including interest rates and collateral) as, and following credit underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the lender with other persons or entities that are not covered by these guidelines and does not involve more than the normal risk of repayment or present other unfavorable features;
- goods and services, or discounts for goods and services, offered to the general public or a segment of the general public defined on a basis other than status as a State Person, or an entity in which a State Person has the Requisite Involvement, and offered on the same terms and conditions as the goods or services are offered to the general public or segment thereof;

N.B. The purpose of the bulleted paragraph immediately above is solely to ensure that the Guidelines only require disclosure of business relationships in which Compensation is *provided to* – and not *from* – a State Person or an entity in which a State Person has the Requisite Involvement.

- dividends or payments related to stock repurchases, insurance payments, interest payments or any other similar payments offered to the general public or a segment of the general public defined on a basis other than status as a State Person, or an entity in which a State Person has the Requisite Involvement, and offered on the same terms and conditions as the payments are offered to the general public or segment thereof; or
- contributions reportable pursuant to article 14 of the election law.

Consequently, relationships involving transactions of the type identified above do not need to be reported.

Example: Legislative Employee Jones purchases a new car from Car Dealership Y, which is a Client. Jones obtains financing from Car Dealership Y on terms that are generally available to the public. Car Dealership Y does not need to report this relationship.

Example: Cable Company X is a Client. State Senator Doe’s yearly cable bill totals \$1,200 for a package of services that is available to the general public at the same rate. Because Cable Company X is providing a service that is generally offered, it does not qualify as Compensation, and Cable Company X need not report its agreement with Senator Doe as a Reportable Business Relationship.

Reporting Period: Any Reportable Business Relationship, regardless of when the relationship commenced, must be reported if that relationship is, or will, be in existence during the semi-annual reporting period covered by the filing. A Reportable Business Relationship exists during the reporting period if any of the following is present during that period: (i) Compensation is paid; (ii) goods, services or anything of value are performed or provided; or (iii) the Relationship

is in existence, even if Compensation has not yet been paid and goods, services or anything of value have not yet been performed or provided.

Example: In the July 1, 2013 to December 31, 2013 semi-annual period, Client Smith entered into a contract with Senator Doe that calls for \$1,500 of services to be performed and Compensation to be paid in October 2014. Client Smith must disclose this Reportable Business Relationship in the Client Semi-Annual Reports that are to be made by January 15, 2014, July 15, 2014, and January 15, 2015.

Should a Client also be required to file a biennial registration statement, such requirement does not relieve the Client from its obligation to disclose Reportable Business Relationships in its semi-annual reports.

“Intended to be performed or provided”: “Intended” here means the goods, services or anything of value have not yet been performed or provided, but the Client reasonably anticipates such goods, services or anything of value to be performed or provided in the future.

“Performed or provided”: Performed or provided means that a State Person or 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.

“\$1,000 annually”: The annual period is any 12 consecutive months in which more than \$1,000 in goods, services or anything of value is performed or provided by a State Person or an entity in which a State Person has the Requisite Involvement.

a. Relationships of one year or less: If the value of goods, services or anything of value is more than \$1,000, the threshold is met.

b. Relationship of more than one year: Relationships of more than one year will be reportable if:

i. the Compensation received exceeds \$1,000 during any consecutive 12 months;

ii. the value of the goods, services or anything of value performed or provided exceeds \$1,000 during any consecutive 12 months;

iii. outstanding Compensation for goods, services or anything of value already performed or provided exceeds \$1,000; or

iv. the value of the goods, services or anything of value to be performed or provided in exchange for Compensation already received exceeds \$1,000.

Aggregation

If the Client has multiple Relationships with the same State Person or the same entity in which a State Person has the Requisite Involvement, the value of goods, services or anything of value of all such Relationships should be aggregated. If the aggregated value of the Relationships is more than \$1,000 for any 12-month period, then *each* such relationship is a Reportable Business Relationship (assuming the other criteria have been satisfied).

Example: Client Smith has a Relationship with Legislator Doe for which he paid Legislator Doe \$750 on November 12, 2013. He then enters into a different relationship with Legislator Doe on October 25, 2014, the value of which is \$300. Client Smith need not disclose the first relationship on either the January 15, 2014 or July 15, 2014 Client Semi-Annual Reports. But Client Smith must disclose the two relationships on its January 15, 2015 Client Semi-Annual Report. Because the two relationships occurred within 12 months of each other, they must be aggregated. When aggregated, the total value exceeds \$1,000 and consequently the two relationships must be disclosed.

Reporting Requirements: For each Reportable Business Relationship, the Client shall disclose the information contained in Legislative Law §1-j(a)(6)(i)-(iii). For the information required in subsection iii, the Client shall disclose either the actual or anticipated amount of Compensation, including reimbursable expenses, to be paid and paid by virtue of the Relationship.

Accuracy of Reported Information: The Client has a duty to ensure that the information it has provided is accurate, current and complete. For example, if, after having filed a Client Semi-Annual Report, a Reportable Business Relationship arises, or a Client learns of a Reportable Business Relationship that was not previously disclosed, a Client shall update and correct its Client Semi-Annual Report.

For the purposes of determining if any proprietor, partner, director, or member of the executive management of an entity has a business relationship that must be disclosed as a Reportable Business Relationship, the entity that is responsible for making the filing may reasonably rely on the information provided by a proprietor, partner, director, or member of the executive management in response to a general questionnaire or form that is designed to elicit the information necessary to make such a determination.

Similarly, a Client shall update and correct its Client Semi-Annual Report when it discovers that the actual or anticipated amount of compensation in connection with the Reportable Business Relationship materially varies from the anticipated amount that was previously reported.

Failure to update and correct a Client Semi-Annual Report after a Reportable Business Relationship has been discovered could subject a Client to a late fee and/or civil penalty as set forth, respectively, in Legislative Law §1-j(c)(3) and §1-o.

Penalties: Failure to file in a timely manner subjects a Client to (i) a civil penalty, as prescribed in Legislative Law §1-o(b)(i), in an amount not to exceed the greater of \$25,000 or the amount it failed to report; and/or (ii) late fees as prescribed in Legislative Law §1-j(c)(iii). In the case of a false filing, the Client will be subject to a civil penalty, as prescribed in Legislative Law §1-o(b)(ii), in an amount not to exceed the greater of \$50,000 or five times the amount it failed to report.