

PROPOSED RULE - PART 931

Title 19 NYCRR Part 931 is added 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 931: OFFICIAL ACTIVITY PAYMENTS AND SERVICE PAYMENTS TO THE
STATE: LIMITATIONS AND APPROVAL

931.1 Purpose and Effect of Regulations.

(a) The purpose of these regulations is to establish the procedures and conditions for approval and acceptance of payments related to the attendance, registration, travel, lodging, and food for specified New York State officials and employees when such persons are engaged in activities, or are providing services, that are part of their official duties.

(b) The effect of these regulations is to supersede prior regulations and any Advisory Opinions or other guidance issued by predecessor agencies to the Joint Commission on Public Ethics to the extent such Advisory Opinions and guidance are inconsistent with this Part.

931.2 Definitions.

(a) *Approving Authority* for a State Officer or Employee shall mean the head of a State Agency or appointing authority or his or her appropriate designee. In the case of a Statewide Elected Official and the head of a State Agency, it shall mean the New York State Joint Commission on Public Ethics.

(b) *Commission* shall mean the New York State Joint Commission on Public Ethics.

(c) *Covered Person* shall mean:

(1) A State Officer or Employee as defined in subdivision (l) of this section;

(2) A Statewide Elected Officials as defined in subdivision (m) of this section.

(d) *Interested Source*. The term Interested Source shall mean any person or entity, on his or her own behalf or on behalf of an entity, that:

(1) is regulated by, negotiates with, appears before in other than a Ministerial Matter, seeks to contract with or has contracts with, or does other business with: (i) the Covered Person, in his or her official capacity; (ii) the State Agency with which the Covered Person is employed or affiliated; or (iii) any other State Agency when the Covered Person's agency is to receive the benefits of the contract; or

- (2) is required to be listed on a statement of registration pursuant to §1-e(a)(1) of article 1-A of the Legislative Law and lobbies or attempts to influence actions, decisions, or policies of the State Agency with which the Covered Person is employed or affiliated; or
- (3) is the spouse or unemancipated child of any individual satisfying the requirements of section 931.2(d)(2); or
- (4) is involved in any action or proceeding, in which administrative and judicial remedies thereto have not been exhausted, and which is adverse to either: (i) the Covered Person in his or her official capacity; or (ii) the State Agency with which the Covered Person is employed or affiliated; or
- (5) has received or applied for funds from the State Agency with which the Covered Person is employed or affiliated at any time during the previous 12 months up to and including the date of the proposed or actual receipt of the Official Activity Payment and/or Service Payment

(e) *Ministerial Matter* shall mean an administrative act carried out in a prescribed manner not allowing for substantial personal discretion.

(f) *Official Activity* shall mean a Covered Person's attendance at a meeting, conference, seminar, convention, or professional program that is part of his or her official duties and benefits the Covered Person's State Agency.

(g) *Official Activity Payment* shall mean a payment or reimbursement, made by an individual or entity other than the Covered Person's State Agency, for the cost of attendance, registration, travel, food, or lodging related to a Covered Person's Official Activity as defined in subdivision (f) of this section. Official Activity Payment does not include any payment or reimbursement for such costs when they have been bargained for by a State Agency.

(h) *Official Activity Payment Approval Record* shall mean, for any Official Activity Payment that has been approved by an Approving Authority, a completed and signed record created by the Approving Authority in accordance with section 931.5 of this Part.

(i) *Service* shall mean any action or service performed by a Covered Person that is part of his or her official duties and benefits the Covered Person's State Agency. Such action may include, but is not limited to, delivering a speech, writing or publishing an article, or making a presentation.

(j) *Service Payment* shall mean any payment of money made in consideration for a Service provided.

(k) *Service Payment Approval Record* shall mean, for any Service Payment that has been approved by an Approving Authority, a completed and signed record created by the Approving Authority in accordance with section 931.5 of this Part.

(l) *State Agency* shall mean any civil department; State department; or division, board, commission, or bureau of any State department or civil 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.

(m) *State Officer(s) or Employee(s)* shall mean:

(1) Heads of civil departments and State departments and their respective deputies and assistants other than members of the board of regents of the State University of New York who receive no compensation or are compensated on a per diem basis;

(2) Officers and employees of statewide elected officials;

(3) 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;

(4) Employees of public authorities (other than multi-state authorities), public benefit corporations, and commissions at least one of whose members of such public authorities, public benefit corporations, and commissions is appointed by the governor; and

(5) Members or directors of public authorities (other than multi-state authorities), public benefit corporations, and commissions identified in section 931.2(1)(5) who receive compensation other than on a per diem basis.

(n) *Statewide Elected Officials* shall mean the Governor, Lieutenant Governor, Comptroller, or Attorney General.

931.3 Procedures for Approval of an Official Activity Payment or Service Payment.

Within a reasonable period of time prior to engaging in the Official Activity, a Covered Person shall submit to his or her Approving Authority a written request to approve an Official Activity Payment or Service Payment. No Official Activity Payment or Service Payment shall be accepted unless the Approving Authority has, pursuant to this Part, approved the request.

931.4 Conditions for Approval of an Official Activity Payment or Service Payment.

(a) An Approving Authority may approve a request for an Official Activity Payment or Service Payment provided the following conditions are met:

(1) The Official Activity Payment or Service Payment covers only the period of time that the Covered Person is reasonably required to be present for such Official Activity.

(2) If the Official Activity Payment or Service Payment is offered by or on behalf of an Interested Source, all of the following criteria must be met:

- (i) It is not reasonable, under the circumstances, to infer that the Official Activity Payment or Service Payment was intended to influence the Covered Person in the performance of his or her official duties.
 - (ii) The Official Activity Payment or Service Payment could not, under the circumstances, reasonably be expected to influence the Covered Person in the performance of his or her official duties.
 - (iii) The Official Activity Payment or Service Payment is not, under the circumstances, intended as a reward for any official action on his or her part.
- (3) The Official Activity Payment, if not made by the offeror, could be lawfully paid by the State Agency in accordance with its travel policy.
 - (4) The Official Activity Payment is made on behalf of the Covered Person at a rate not greater than the rate at which the State Agency would pay or reimburse the Covered Person under its travel policy.
 - (5) The Approving Authority determines that the offeror is not being used to conceal that the Official Activity Payment or Service Payment is actually offered or paid by an Interested Source.
 - (6) The Official Activity or Service and the corresponding Official Activity Payment or Service Payment is consistent with Public Officers §74.

(b) If a Covered Person's Official Activity includes a Service and an offer for a Service Payment, in connection with such Official Activity, the Approving Authority may approve the Service Payment provided such Official Activity comports with the conditions set forth in section 931.4 of this Part. The Approving Authority shall direct that such Service Payment be made directly to the general fund of the State or to such fund as is appropriate for a public authority, public benefit corporation, or commission not funded through State general fund appropriation.

931.5 Official Activity Payment Approval Record and Service Payment Approval Record.

- (a) For each approved Official Activity Payment or Service Payment, the Approving Authority shall create a record containing:
- (1) The name of the Covered Person to whom, or on behalf of whom, the Official Activity Payment or Service Payment is offered;
 - (2) Identity of the offeror and nature of the offeror's business;
 - (3) A detailed description of the Official Activity or Service, including date and location;
 - (4) The amount of the Official Activity Payment and, where applicable, an itemization of costs for the attendance, registration, travel, lodging, and meals, and the amount of a Service Payment, if any; and

(5) A statement that the Approving Authority has approved the Official Activity Payment or Service Payment, if any, in accordance with the conditions set forth in section 931.4 of this Part.

(b) The Approving Authority shall retain all completed and signed Official Activity Payment Approval Records and Service Payment Records for a period of three years from the date of the Official Activity for which an Official Activity Payment or Service Payment, if any, is offered and shall be made available to the Commission upon its request.

(c) The Approving Authority shall provide the Covered Person with a copy of the Official Activity Payment Approval Record.

931.6 Minimum Requirements.

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

931.7 Enforcement.

The Commission is authorized pursuant to Executive Law §94 to investigate possible violations of Public Officers Law §73 and §74 and their corresponding regulations and take appropriate action as authorized in these statutes.

931.8 Reporting.

Any Covered Person who is required to file a financial disclosure statement pursuant to §73-a of the Public Officers Law shall report any Official Activity Payment that constitutes a reimbursement in excess of \$1,000 (or all Official Activity Payments constituting reimbursements the aggregate total of which exceed \$1,000 received from a single offeror) in his or her statement of financial disclosure for the applicable year.