This document tracks proposed changes to the
original proposed rule (JPE-33-12-00008-P, Aug. 14, 2013)

PROPOSED GIFT REGULATIONS – PART 933

Title 19 NYCRR Part 933 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

TITLE 19 NYCRR PART 933: GIFTS (Pursuant to Public Officers Law)

933.1 Purpose and Effect of Regulations.
(a) The purpose of these regulations is to effectuate the statutory provisions of Public Officers Law §73(5), which incorporates the provisions of Section 1-c(j) of A~~a~~rticle 1-A of the Legislative Law.

(b) The effect of these regulations is to supersede prior Advisory Opinions issued by predecessor agencies to the Joint Commission on Public Ethics, including Advisory Opinion Nos. 94-16, 96-28, 97-03, and 08-01 to the extent they are inconsistent with this Part.

933.2 Definitions.
(a) *Bona Fide Charitable Event* shall mean a function the primary purpose of which is to provide financial support to a Charitable Organization.

(b) *Bona Fide Political Event* shall mean a function the primary purpose of which is to support ~~a~~ Political Organization(s) or Political Candidate(s).

(c) *Charitable Organization* shall mean:

(1) an entity as defined in Executive Law §171-a(1) that is registered with the Office of the Attorney General, as required by Executive Law §172, unless otherwise exempted from filing pursuant to Executive Law §172-a; or

(2) an entity organized and operated exclusively for charitable purposes and qualified as an exempt organization by the United States Department of Treasury under section 501(c)(3) of the Internal Revenue Code; or

(3) a person who requests contributions for the relief of any individual, specified by name at the time of the solicitation, if all of the contributions collected, without any deductions whatsoever, are paid to or for the benefit of the named beneficiary, provided the individual has submitted a form entitled "Charitable Solicitation for the Relief of an Individual" with the Charities Bureau of the Office of Attorney General prior to the event.

(d) *Client* shall mean every person or organization as defined in §1-c(b) of article 1-A of the Legislative Law.

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

(f) *Complimentary Attendance* shall mean the waiver of all or part of a registration or admission fee, or waiver of all or part of a fee or charge for the provision of food, beverages, entertainment, instruction, or materials. "Complimentary Attendance" shall include the awarding of continuing education credits or certification for attendance at a program provided such credits or certification are offered to all attendees. ~~Complimentary Attendance" shall not include registration or admission without charge to an attendee to any entertainment, recreational activity, or reception that is not part of the regular agenda of the event.~~ "Complimentary Attendance" ~~also~~ shall not include travel, lodging, or items of more than Nominal Value. For a State Officer or Employee (as defined in subdivision (v) of this section), the acceptance of payment or reimbursement for travel or lodging is governed by 19 NYCRR Part 931.

(g) *Covered Person* shall mean:

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

(2) Legislative Employee as defined in subdivision (m) of this section; or

(3) Legislative Member as defined in subdivision (n) of this section.

(h) *Educational Program* shall mean formal instruction provided to attendees. Factors to be considered in assessing whether a program is educational include, but are not limited to: the curriculum; whether the entity providing the program, or the instructors, are accredited, certified, or otherwise qualified to provide the program; who the program is presented to; and where and how the program is presented.

(i) *Family Member* of any Covered Person shall have the same meaning as the term *Relative* set forth in Public Officers Law §73(1)(m).

(j) *Gift* shall mean anything of more than Nominal Value in any form including, but not limited to: money; service; loan; travel; lodging; meals; refreshments; entertainment; discount; or a forbearance of an obligation or a promise that has a monetary value. Notwithstanding the preceding sentence, the exclusions contained in section 933.4 are not Gifts and do not need to be analyzed under section 933.3.

(k) *Informational Event* shall mean an event or meeting the primary purpose of which is to provide information about a subject or subjects related to a Covered Person's official responsibilities.

(l) *Interested Source* shall mean any person or entity who on his or her own behalf, or on behalf of an entity, satisfies any one of the following:

(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 Legislative

Member, the Legislative Employee, or the State Officer or Employee, in his or her official capacity; (ii) the State Agency with which the State Officer or Employee is employed or affiliated; or (iii) any other State Agency when the State Officer or Employee's agency is to receive the benefits of the contract; or

(2) with respect to a Legislative Member ~~Employee~~ or a Legislative Employee~~Member~~, is required to be listed on a statement of registration pursuant to §1-e(a)(1) of article 1-A of the Legislative Law, or is the spouse or unemancipated child of any person required to be listed on a statement of registration pursuant to §1-e(a)(1) of article 1-A of the Legislative Law; or

(3) with respect to State Officers and Employees, 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 State Officer or Employee is employed or affiliated; or

(4) with respect to State Officers and Employees, is the spouse or unemancipated child of any individual satisfying the requirements of section 933.2(l)(3); or

(5) 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 State Officer or Employee in his or her official capacity; or (ii) the State Agency with which the State Officer or Employee is employed or affiliated; or

(6) 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 ~~item or service from either: (i) the Covered Person in his or her official capacity; or (ii) the State Agency with which the State Officer or Employee is employed or affiliated~~item or service of more than Nominal Value..

(m) *Legislative Employee* shall mean any officer or employee of the New York State Legislature but it shall not include any Legislature Member.

(n) *Legislative Member* shall mean any elected member of the New York State Legislature.

(o) *Lobbyist* shall mean every person or organization as defined in §1-c(a) of article 1-A of the Legislative Law.

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

(q) *Nominal Value* is not defined in the Public Officers Law or Legislative Law Article One-A. The Commission, however, generally deems ~~shall mean~~ an item or service with a fair market value of ~~ten~~ fifteen dollars or less as having a Nominal Value.

(r) *Political Candidate* shall mean any individual meeting any of the requirements in Public Officers Law §§73-a(2)(a)(iii)-(viii), including the current office holder.

(s) *Political Organization* shall mean any entity that is affiliated with or a subsidiary of a political party including, without limitation, a partisan political club or committee, or a campaign or fund-raising committee for a political party or Political Candidate.

(t) *Professional Program* shall mean a program that provides information, such as trends in an industry or discipline, which would benefit the administration or operation of the State and would enable a Covered Person to perform his or her duties more effectively. It shall not include a program, the primary purpose of which is the promotion or marketing of products or services for purchase or lease by the State.

(u) *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.

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

(1) Statewide elected officials (Governor, Lieutenant Governor, Comptroller, and Attorney General of the State of New York);

(2) Heads of civil departments and State departments and their respective 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;

(3) Officers and employees of statewide elected officials;

(4) 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;

(5) 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

(6) Members or directors of public authorities (other than multi-state authorities), public benefit corporations, and commissions identified in section 933.2(v)(5) who receive compensation other than on a per diem basis.

(w) *Widely Attended Event* shall mean an event as defined in Section 933.4(a)(7)(i).

933.3 Gifts.

(a) If the item or service solicited, received, or accepted by a Covered Person meets the definition of Gift and is from an Interested Source, it is presumptively impermissible. Such Gift is only permissible if, under the circumstances, ***all*** of the following criteria are met:

(1) it is not reasonable to infer that the Gift was intended to influence the Covered Person; and

(2) ~~it~~ the Gift could not reasonably be expected to influence the Covered Person in the performance of his or her official duties; and

(3) it is not reasonable to infer that the Gift was intended as a reward for any official action on the Covered Person's part.

(b) If the item or service solicited, received, or accepted by a Covered Person meets the definition of Gift and is not from an Interested Source, then the Gift is ~~presumptively~~ permissible unless, ~~. Such Gift is not permissible if~~, under the circumstances, any one of the following criteria is met:

(1) it could reasonably be inferred that the Gift was offered or given with the intent to influence the Covered Person, or

(2) ~~it~~ the Gift could reasonably be expected to influence the Covered Person in the performance of his or her official duties, or

(3) it could reasonably be inferred that the Gift was offered or given with the intent to reward the Covered Person for any official action on his or her part.

(c) Multiple Gifts. Nothing in this Part shall be construed as relieving a Covered Person's obligations under Public Officers Law §74 with respect to the solicitation, receipt, or acceptance of multiple items, services, or any other things of value that, individually, are permissible Gifts ~~. A Gift that is otherwise permissible~~ under sections 933.3(a) or (b). ~~may be prohibited if it is one of multiple Gifts from the same person or entity offered within any 12-month period. Such Gifts could create a reasonable basis for an inference that the Gift was intended to influence or reward the Covered Person in connection with the performance of his or her official duties~~.

(d) Directing Impermissible Gifts to Third Parties Prohibited. A Covered Person may not direct a Gift that is impermissible under sections 933.3(a) or~~,~~ (b)~~, or (c)~~ to any third party, including a Charitable Organization.

(e) A Gift that is permissible under sections 933.3(a) or~~,~~ (b)~~, or (c)~~ satisfies the Covered Person's obligations under Public Officers Law §§73 and 74 with respect to such Gift.

933.4 Exclusions.

(a) The following are not Gifts:

(1) Anything for which a Covered Person has paid fair market value.

(2) Anything for which the State has paid or secured by State contract.

(3) Rewards or prizes given to competitors in contests or events (including random drawings) offered to the general public or a segment of the general public defined on a basis other than status as a Covered Person.

(4) Contributions reportable under article fourteen of the Election Law, including contributions made in violation of that article of the Election Law.

(5) Food or beverage valued at fifteen dollars or less per occasion.

(6) Complimentary Attendance (including food and beverage) at a Bona Fide Charitable Event or a Bona Fide Political Event.

(7) Complimentary Attendance (including food and beverage) offered by the sponsor of a Widely Attended Event.

(i) Widely Attended Event shall mean an event:

(A) which at least twenty-five individuals other than members, officers, or employees from the governmental entity in which the Covered Person serves attend or were, in good faith, invited to attend in person;

and

(B) which is related to the attendee's duties or responsibilities or allows the Covered Person to perform a ceremonial function appropriate to his or her position. For the purposes of this exclusion, a Covered Person's duties or responsibilities shall include but not be limited to ~~either~~:

(1) For elected Covered Persons (or their staff attending with or on behalf of such elected officials) only, attending an event or a meeting at which more than one-half of the attendees, or persons invited in good faith to attend in person, are residents of the county, district, or jurisdiction from which the elected Covered Person was elected

or

(2) For all Covered Persons, attending an event or a meeting at which a speaker or attendee addresses an issue of public interest or concern as a significant activity at such event or meeting.

(I) For the purposes of Section 933.4(a)(7)(i)(B), Complimentary Attendance does not include registration or admission without charge to any entertainment, recreational, or sporting activity unless the presentation addressing the public interest or concern that is made by the speaker or attendee is delivered at such entertainment, recreational, or sporting activity.

(II) For the purposes of Section 933.4(a)(7)(i)(B), Complimentary Attendance does not include food and beverage unless such food or beverage are available to all participants as part of the Widely Attended Event.

(ii) Prior Written ~~Approval~~ Notification Required for State Officers or Employees. ~~(A)~~ A State Officer or Employee ~~must~~ shall, prior to the Widely Attended Event, notify in writing the ~~seek prior written approval from the~~ head of his or her State Agency (or such person's appropriate designee for the State Officer or Employee involved) of the State Officer's or Employee's intention to accept an invitation for Complimentary Attendance from the sponsor of a Widely Attended Event. The written notification shall contain pertinent details demonstrating that the criteria for a Widely Attended Event, contained in Section 933.4(a)(7)(i), are satisfied.~~before accepting Complimentary Attendance from the sponsor of a Widely Attended Event. Approval shall be based on an analysis of whether the event satisfies the requirements of a Widely Attended Event as set forth in Section 933.4(a)(7)(i).~~

~~(B) Approval of a State Officer or Employee's request for Complimentary Attendance at a Widely Attended Event does not extend to any other individual.~~

(8) Awards, Plaques, and Other Ceremonial Items.
Awards, plaques, and other ceremonial items must be publicly presented, or intended to be publicly presented, and in recognition of service related to a Covered Person's official duties and responsibilities. Additionally, such awards, plaques, and other ceremonial items must be of the type customarily bestowed at similar ceremonies and be otherwise reasonable under the circumstances.

(9) Honorary degrees bestowed upon a Covered Person by a public or private college or university.

(10) Promotional Items.
Items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an entity's name, logo, or message in a manner which promotes the entity's cause.

(11) Goods and Services and Discounts for Goods and Services.
(i) Goods and services, or discounts for goods and services, must be offered to the general public or a segment of the general public defined on a basis other than status as a Covered Person and offered on the same terms and conditions as the goods and services are offered to the general public or segment thereof.

(ii) Notwithstanding section 933.4(a)(11)(i), discounts made available to all Covered Persons fall within this exclusion.

(iii) Notwithstanding section 933.4(a)(11)(i), discounts made to a select group of Covered Persons may fall within this exclusion. The following non-exhaustive list of factors shall be considered when any discount is made available to a select group of Covered Persons to determine whether the discount would fall within this exclusion:

(A) the scope of the class of Covered Persons who are offered the discount;

(B) the amount and duration of the discount;

(C) whether the criterion for the offer is based on factors other than the Covered Person's official duties and responsibilities; and

(D) For State Officers and Employees, whether the offeror is an Interested Source.

(12) Gifts from Friends or Family Members.

(i) Gifts from a Family Member or a person with a personal relationship with a Covered Person when it is reasonable to infer that the Gift was primarily motivated by the family or personal relationship. Personal Gifts may include an invitation to attend a personal or family social event.

(ii) In determining whether the Gift was primarily motivated by a family or personal relationship, the factors to be considered include but are not limited to:

(A) the history and nature of the relationship between the individual offering the Gift and the recipient, including whether items have previously been exchanged;

(B) whether the item was purchased by the individual offering the Gift; and

(C) whether the individual offering the Gift at the same time gave similar items to other Covered Persons.

(iii) The Gift shall not be considered to be motivated by a family or personal relationship if the individual or entity seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client.

(13) Reimbursement of Expenses for Speakers at Informational Events.

Travel reimbursement or payment for transportation, meals, and accommodations for an attendee, panelist, or speaker at an Informational Event when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus, provided, however, that the Covered Person may only accept lodging from an institution of higher education: (a) at a location on or within close proximity to the host campus; and (b) for the night preceding and the nights of the days on which the attendee, panelist, or speaker actually attends the Informational Event.

(14) Provision of Local Transportation to Inspect Facilities.

(i) Provision of local transportation to inspect or tour facilities, operations, or property located in New York State, when such inspection or tour is related to the Covered Person's official duties or responsibilities.

(ii) The payment or reimbursement for expenses for lodging or travel expenses to and from the locality where such facilities, operations, or property are located is not covered by this exclusion. The acceptance of such payment or reimbursement is governed by Part 931.

(15) Meals for Participants at a Professional or Educational Program.

Receipt of food and beverages when participating in a Professional Program or Educational Program as a part of a Covered Person's official duties, provided the food or beverages are available to all participants.

(b) With respect to the solicitation, acceptance, or receipt of items and services identified in sections 933.4(a)(5)-(15), nothing in this Part shall be construed as relieving a Covered Person's obligations under Public Officers Law §74 with respect to such items or services.

933.5 Multiple Non-Gifts.

Nothing in this Part shall be construed as relieving a Covered Person's obligations under Public Officers Law §74 with respect to the solicitation, receipt, or acceptance of multiple items, services, or any other things of value that, individually, are not Gifts solely because each has less than Nominal Value.

933.6 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.

933.7 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.