COMMENTS OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP FUND (NYPIRG)
ON DRAFT PROPOSED LOBBYING REGULATIONS IN PARTS 942 AND 943
DECEMBER 7, 2016, NEW YORK, NEW YORK

NYPIRG is pleased to provide these remarks on the proposed compilation of and revisions to the application of the Lobby Law in New York State. As a reform group and in our capacity as client and lobbyist, we welcome compiling the rules in one place, attempts to improve clarity and the opportunity to increase the amount of information furnished to the public about how interests attempt to influence government decisions.

Set forth below are our comments on the proposed compiled regulations and revisions.

■ Consolidation of client and lobbyist reports for organizational lobbyists is a welcome revision that will remove the duplicative reporting for lobbyists and JCOPE staff without any loss of information to the public.

■ Definition of "technical information" exception from "direct lobbying." [Proposed 942.6(b)(ii).] This proposed revision would except from the definition of lobbying activity individuals—even when paid by a client or lobbyist to assist in advocacy—from being deemed to be engaged in lobbying if attending a meeting with a public official "simply to provide technical information or address technical questions" if such person is not engaged in messaging or other aspects of the overall lobbying effort.
This seems to open a huge loophole and ignores the reality that lobby clients bring in highly paid lawyers, engineers, economists, actuaries and scientists to plead their case. These experts are brought in because they can advance their client's interests; they are not pure academics or scientists searching for objective truth. This proposed revision should be deleted or sharply curtailed to except only those who are uncompensated and are pre-cleared as having no direct or indirect financial interest in acting as a technical resource.

■ "Affiliated" [942.3(a)] is defined as "two or more entities that are related by common shareholders, officers or other means of ownership or control." This definition needs more detail to clarify what "other means of ownership or control" means and how it applies.

■ "Designated lobbyist" [942.3(f)] is defined to include someone "who lobbies on behalf of a client as an internal board member, volunteer, or by virtue of some other affiliated

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but non-employed status. . . ." This definition seems to be overly broad and will be problematic for community-based groups and others whose members and volunteer ranks participate in direct lobbying from time-to-time. For example, each participant in a lobby day arguably would have to be disclosed. This will affect the exercise of First Amendment protected activities. The line should be drawn at persons who are compensated for appearing on behalf of a client.

■ Disclosure of "Social Media Campaign" activities as "direct lobbying." [942.6(c).] The proposed revision would require disclosure of lobby spending on social media contacts directed at public officials. NYPIRG supports formal inclusion of this type of attempts to influence governmental decisions.

■ Grassroots lobbying [942.7]. This clarifies JCOPE's disclosure requirements for "grassroots" or indirect lobbying. However, the exception would benefit from additional detail: "A person must serve more than a clerical function but need not have full or final decision-making authority over the communication to qualify as a grassroots lobbyist." Nonprofit and for-profit groups often encourage employees or volunteers to encourage members of the public to take a particular action, including through the distribution of flyers, circulating emails or through social media. These individuals are passing along information and may respond to a limited range of questions pertaining to the position, but do not decide on the position, formulate the message or act as a spokesperson to the media, public officials or at public assemblies. The proposed revisions should clarify that such individuals do not need to be identified and are not engaging in "grassroots lobbying communications."

■ Disclosure of Individual's Social Media Activities. Proposed revision at 942.7(g)(2) would require disclosure by deeming the "personal social media activities of an individual member or employee of [an] organization . . . attributable to that organization" when the activity was "encouraged by the organization as part of a Social Media Campaign." This ignores or overlooks that organizations attract employees who share the organization's mission and goals. Moreover, the explosion of social media makes it very difficult if not impossible to track the personal social media habits of every employee—including workers whose work duties have no connection to advocacy. Finally it's noteworthy that private sector clients appear exempted from having their employees covered by a similar provision. This section, which does not appear to have a solid foundation in statute and will not provide meaningful information to the public, should be deleted.

■ Definition of procurement "restricted period." The proposed revision at 942.8 regarding procurement lobbying states that the "restricted period" is not "identical to the longer time frame of a Governmental Procurement as defined in this subpart." *See* 942.8(a)(ix). The restricted period should start at the earliest point in which it is clear government will be seeking goods or services from a vendor.

■ "Coalition disclosures" as reportable lobbying activity. The draft regulations at 942.10(h)(iii) would require that lobbyists identify coalitions they participate in, to disclose coalition members in lobby reports and require clients to identify coalitions that act as third parties for such clients.

Non-profit groups with limited resources assemble as coalitions to share information and get their voices heard. Typically these coalitions are unincorporated, do not share bank accounts, have a relatively informal structure and each group contributes based on its level of resources and the assessment of the issue's relative priority to the group. The existence of the coalition itself does not impose legal liability on any other coalition member or responsibility for another group or individual's actions. In practice, its representatives typically do not have the ability to bind other members of the coalition; it is rare that a particular member organization's lobbyist actually speaks for other members of the coalition in more than a general aspirational sense.

The ability to form these coalitions is critical to both the coalition members and the functioning of democracy. The New York Temporary State Commission on Lobbying (the "Lobby Commission") addressed this issue in Opinion No. 42 (00-1). The Lobby Commission recognized the informal structure and *ad hoc*-nature of the vast majority of coalitions and deemed informal coalitions "unincorporated associations." The Lobby Commission held coalitions must either "identify a responsible party or parties (i.e. president, treasurer, or named agent). Otherwise, members of a coalition may be required to file separately." The Lobby Commission also required that coalition materials list coalition members or provide a website address so lawmakers and the public could identify who was involved in a coalition effort. This approach has worked well, not unduly burdened the ability of groups to assemble as coalitions, and has provided the public with information about groups working in coalition to influence government in New York.

The proposed revision is unworkable and if approved will have an incredible chilling effect on First Amendment rights to speak, assembly and petition government.

NYPIRG sees neither a basis nor a need for the proposed revisions on coalitions and urges that it be deleted.

■ "Pass through coalitions" [942.9(h)(iii)(4)], defined as a coalition that spends greater than 90% of its expenditures on lobbying, would be required to treat such spending as attributable to the contributor for purposes of filing client reports. As discussed immediately above, the actions of coalitions are captured under current requirements and it is not clear how this new requirement would operate.

■ Identification of "beneficial clients." [942.3(c) and (d); 942.10(k)(i)(7)]. The definition and registration requirement need additional clarity. As written, a "beneficial client" could be any individual, group of individuals, organization or interest who may in theory benefit from a lobbyist's activities. Disclosure should be required when there is a clear lobbyist-client relationship.

■ Disclosure of additional services on lobby registration [942.10(k)(i)(D). This proposed revision would require lobbyists to disclose "any services to be provided in addition to Lobbying" to the client. This information would be useful to the public in understanding the myriad ways in which monies are spent—often without required disclosure—to help influence government.

RECOMMENDATIONS

■ Require that lobbyists and clients disclose their positions on bills, the most fundamental piece of information: Is this interest for or against the thing they're lobbying on?

■ Include a requirement that lobbyists and clients identify their political committees that make campaign donations to candidates, leadership and party committees.

■ Improve the JCOPE website by making it term searchable, similar to the user friendly Committee On Open Government site.

NYPIRG appreciates the opportunity to share our views on the proposed compilation of the lobby regulations.