

DRAFT PROPOSED RULE - REVISION FORMAT - 930

Title 19 NYCRR Part 930 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 930

HONORARIA: LIMITATIONS AND APPROVAL

930.1 Definitions.

(a) *Approving Authority* for a State Officer or Employee shall mean the head of a State agency or appointing authority, as appropriate, or his or her designee for a State Officer or Employee; and, in the case of a Statewide Elected Official, the Head of a Civil Department 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(s)* shall mean:

- (1) Head of a Civil Department as defined in subdivision (d) of this section;
- (2) State Officer or Employee as defined in subdivision (j) of this section;
- (3) Statewide Elected Official as defined in subdivision (k) of this section;

(d) *Head of a Civil Department* shall mean any head of the departments listed herein: Agriculture and Markets, Civil Service, Comptroller, Corrections and Community Services, Economic Development, Education, Environmental Conservation, Executive, Financial Services, Health, Labor, Law, Motor Vehicles, Office of Children and Family Services, Office of Mental Health, Office for People with Developmental Disabilities, Office of Temporary and Disability Assistance, Public Service, State, Taxation and Finance, and Transportation.

(e) *Honorarium(a)* shall mean:

- (1) Any payment, which may take the form of a fee or any other compensation, made to a Covered Person in consideration for a service performed that is not part of his or her official duties. Such service includes, but is not limited to, delivering a speech, writing, or publishing an article, or participating in any public or private conference, convention, meeting, or similar event. Honorarium shall also include expenses incurred for travel, lodging, and meals related to the service performed.

(2) *Honorarium* shall not mean a payment provided to a Covered Person who provides services for or acts on behalf of an employee organization certified or recognized under Article 14 of the Civil Service Law to represent such Covered Person.

(f) *Honorarium Approval* shall mean a record created by the Approving Authority in accordance with section 930.3(c) of this Part.

(g) *Interested Source* shall mean any person or entity, on his or her own behalf or on behalf of any entity, that:

(1) is regulated by, or negotiates with, appears before in other than a Ministerial Matter, seeks to contract with or has contracts in excess of \$500 with, or does other business with either: the Covered Person in his or her official capacity; or (ii) the State Agency with which a Covered Person is employed or affiliated;

(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, or is the spouse or unemancipated minor child of a person who is required to be listed on a statement of registration;

(3) 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;

(4) has received or applied for funds from the State Agency employing the Covered Person at any time during the previous calendar year up to and including the date of the proposed or actual receipt of Honorarium.

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

(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, or the State University of New York or the City University of New York, including all their constituent units except community colleges of the State University of New York and the independent institutions operating statutory or contract colleges on behalf of the State.

(j) *State Officer or Employee* shall mean:

(1) Heads of State departments and their 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 who are compensated on a per diem basis; and

(4) Members or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the Governor, who receive compensation on other than a per diem basis, and employees of such authorities, corporations and commissions.

(k) *Statewide Elected Official(s)* shall mean the Governor, Lieutenant Governor, Comptroller, or Attorney General.

#### 930.2 Certain Covered Persons Prohibited from Receiving Payment for Speeches.

(a) Pursuant to Public Officers Law §73(5-a)(b), no Statewide Elected Official or any Head of a Civil Department shall, directly or indirectly, solicit, accept, or receive any payment made in consideration for any speech given at a public or private conference, convention, meeting, social event, meal, or like gathering.

#### 930.3 Approval Procedures.

(a) An Honorarium, other than any payment made in consideration for any speech by a Statewide Elected Official or any Head of a Civil Department as set forth in section 930.2(a), must be approved by the Covered Person's Approving Authority in accordance with this Part.

(b) Within a reasonable period of time prior to the performance of the service for which an Honorarium is offered, or to the receipt of the Honorarium, a Covered Person shall submit to his or her Approving Authority a written request for approval to accept the Honorarium.

(c) The Approving Authority shall review and approve a request to accept an Honorarium in accordance with the procedures and conditions set forth in sections 930.3 and 930.4 of this Part. The Honoraria Approval shall contain the information set forth in (1) through (5) of this subdivision:

(1) The name of the Covered Person accepting the Honorarium;

(2) Identify of the offeror and nature of the offeror's business;

(3) A detailed description of the service for which the Honorarium is offered, including the date and location where the service will be performed;

(4) The amount of the Honorarium and, where applicable, and itemization of amounts paid for the service, attendance, registration, travel, lodging, and meals; and

(5) A statement that the Approving Authority has approved the Honorarium in accordance with the conditions set forth in section 930.4 of this Part.

(d) The Approving Authority shall retain all completed and signed Honorarium Approvals for a period of three years from the receipt date of the Honorarium and shall be made available to the Commission upon its request.

(e) The Approving Authority shall provide the Covered Person with a copy of the Honorarium Approval.

#### 930.4 Conditions for Approval.

(a) An Approving Authority may approve a request to accept an Honorarium, other than any payment made in consideration for any speech by a Statewide Elected Official or any Head of a Civil Department as set forth in section 930.2(a), provided the following conditions are met:

(1) State personnel, equipment, and time are not used in preparing the service for which an Honorarium is offered;

(2) No State or public funds are used to pay the Covered Person's attendance, registration, travel, lodging, or meal expenses related to the service for which an Honorarium is offered;

(3) If the service is to be performed during the Covered Person's official work day, he or she must charge accrued leave (other than sick leave) to perform such service;

(4) The Honorarium is not offered by or on behalf of a Interested Source, unless under circumstances in which it could not be reasonably inferred that such Honorarium:

(i) is intended to influence the Covered Person in the performance of his or her official duties; or

(ii) could reasonably be expected to influence the Covered Person in the performance of his or her official duties; or

(iii) is intended as a reward for any official action on his or her part;

(5) After reasonable due diligence, the Approving Authority determines that the offeror is not being used to conceal that the Honorarium is actually offered or paid by an Interested Source; and

(6) Performing the service for which the Honorarium is offered and accepting the Honorarium and does not violate Public Officers Law §74.

#### 930.5 Minimum Requirements.

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

#### 930.6 Exemption.

A member of the faculty at the State University of New York and the City University of New York, including all their constituent units except community college of the State University of New York and the independent institutions operating statutory or contract colleges on behalf of the State, and a State Officer or Employee serving in the title of *Research Scientist, Cancer Research Scientist, Research Physician, Research Psychiatrist or Psychiatrist*, is exempt from the limitations on the receipt of Honoraria provided the service performed by such State Officer or Employee is within the subject matter of his or her official academic or research discipline.

#### 930.7 Enforcement.

This Part will apply to an Honorarium for a service that is performed after the effective date of these regulations. 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.

#### 930.8 Reporting.

Any Covered Person who is required to file a financial disclosure statement pursuant to §73-a of the Public Officers Law, including those persons who are exempt from the limitations on the receipt of Honorarium pursuant to section 930.6 of this Part, shall report any Honorarium in excess of \$1,000, or any Honoraria the aggregate total of which exceed \$1,000, received from each offeror in his or her financial disclosure statement for the applicable year.