



New Lobbying Disclosure Requirements

Reportable Business Relationships and Source of Funding

Presented By The JCOPE Education Resource Group

Objective

THIS TRAINING WILL:

- Review major definitions and concepts of Reportable Business Relationships (RBR)
- Evaluate examples of Reportable Business Relationships
- Identify potential RBR that should be disclosed
- Review major definitions and concepts of Source of Funding
- Evaluate examples of Source of Funding
- Identify potential Sources of Funding that should be disclosed



New Lobbying Disclosure Requirements

**Reportable Business
Relationships**

Reportable Business Relationships

SCOPE:

- The Public Integrity Reform Act of 2011 (“PIRA”) amended Legislative Law 1-A
- Lobbyists and clients are required to disclose publicly information about business relationships with certain state employees and officials
- Through increased transparency, this new disclosure will better inform New Yorkers about the links between state officials and individuals and entities engaged in substantial lobbying activities in New York

STATUTORY REFERENCES:

- Clients: Legislative Law 1-A §1-j(b)(6)(i)-(iii)
- Lobbyists: Legislative Law 1-A §1-e(c)(8)(i)-(iii)

Reportable Business Relationships

WHO THIS APPLIES TO:

A “State Person” is a...

- Statewide elected official
- State officer
- State employee
- Member of the Legislature
- Legislative Employee



REFERENCE:

Reportable Business Relationship Guidelines: Lobbyists pg. 1

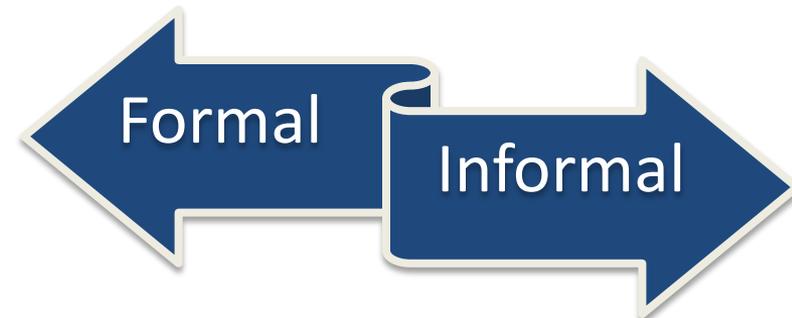
Reportable Business Relationships

RELATIONSHIP:

- Lobbyist or Client pays, gives, or promises compensation to a:
 - State Person
 - Non-governmental entity in which a State Person has the Requisite Involvement, or
 - Third party as directed by a State Person or entity, in which a 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

Need to know:

The agreement or understanding does not need to be in writing or enforceable under contract law to be considered a relationship



Reportable Business Relationships

EXEMPTIONS TO THE DEFINITION OF RELATIONSHIP:

- Treatments for medical, dental, and mental health services
- Legal services with respect to:
 - Investigation or prosecution by law enforcement
 - Bankruptcy
 - Domestic relations



Requisite Involvement in an Entity

ELEMENTS:

- Non- governmental entity
- State Person:
 - Proprietor, partner, director, officer or manager, or
 - Owns or controls 10% or more of stock, or
 - 1% in the case of a corporation whose stock is regularly traded on an established securities exchange

“Reason to Know”

REASONABLE PERSON TEST:

If a reasonable person looking at all the facts and circumstances would conclude that the filer should know that an individual is a State Person or has a Requisite Involvement with the relevant entity then the reason to know standard has been satisfied



FACTORS:

- Origin and length of relationship
- Type and actual value of goods and services or items provided
- Whether it is generally known that the individual is a State Person or has the Requisite Involvement with an entity
- Efforts of the filer to obtain information

Reporting Requirements

WHAT IS PUBLICLY DISCLOSED:

- Name and public office address of any State Person
- The description of the general subjects or transactions between a lobbyist and a State Person
- Compensation, actual or anticipated, including expenses, to be paid and paid by virtue of the business relationship

REFERENCES:

- Clients: Legislative Law Article 1-A §1-j(b)(6)(i)-(iii)
- Lobbyists: Legislative Law Article 1-A §1-e(c)(8)(i)-(iii)

Compensation

INCLUDES:

- Salary, fee, gift, payment, benefit, loan, advance or any other thing of value

DOES NOT INCLUDE:

- Commercially available consumer and business loans or lines of credit as available to the general public
- Goods and services and discounts for goods and services as available to the general public
- Dividends or payments related to stock purchases
- Contributions reportable under Article 14 of the NYS Election Law

REFERENCES:

Reportable Business Relationship Guidelines : Lobbyists pg. 2 and Clients pg. 6

“\$1,000 Rule”

TIMEFRAME:

- Consecutive 12 month period

Relationships with a State Person less than one year are reportable when:

- Value of compensation (goods, services, anything of value) is greater than a \$1,000

Relationships with a State Person for more than one year are reportable when:

- Compensation exceeds \$1,000 during **any** consecutive 12 months
- Value of goods, services, or anything of value performed or provided exceeds \$1,000
- Outstanding compensation for goods, services or anything of value already performed or provided exceeds \$1,000
- Value of the goods, services or anything of value to be performed or provided in exchange for compensation already received exceeds \$1,000

Examples

SITUATION 1:

- A lobbyist gives a State Senator a six-year-term loan for \$5,000 at prevailing market rates
- The loan offered to the State Senator is not commercially available
- The lobbyist knows the individual is a State Person

Lobbyist must disclose as a Reportable Business Relationship because the \$5,000 loan, while at prevailing rates, is not commercially available

SITUATION 2:

- A legislative employee purchases a new car at a dealership that is a Client Filer
- The legislative employee obtains financing from the car dealership on terms generally available to the public

This is not a Reportable Business Relationship. The terms of the loan are generally available to the public

Reporting Period

TIMEFRAME:

- If the relationship is in existence any time during the filing period

REPORTABLE BUSINESS RELATIONSHIP EXISTS WHEN:

- Compensation is paid or to be paid
- Goods, services or anything of value are performed or provided
- Relationship is in existence even if compensation has not yet been paid and goods, services and anything of value have not yet been performed or provided



Reporting Period Example

SITUATION 1:

- On December 13, 2012 a lobbyist enters into a contract with a State Senator for \$5,000 worth of services to be performed. The Senator will receive compensation for those services on January 10, 2015.

Answer for Lobbyist:

Reportable Business Relationship must be disclosed in the following filings:

- Duty to Amend 2011-2012 Biennial Lobbyist Statement of Registration
- 2013-2014 Biennial Lobbyist Statement of Registration and
- 2015-2016 Biennial Lobbyist Statement of Registration

Answer for Client Filer :

Reportable Business Relationship must be disclosed in the following filings:

- 2012 July/December Client Semi-Annual Report
- 2013 January /June and 2013 July/ December Client Semi-Annual Report
- 2014 January /June and 2014 July/December Client Semi-Annual Report
- 2015 January /June Client Semi-Annual Report

Reporting Period Example

SITUATION 2:

- On November 22, 2013, a Client Filer contracts with a State Senator for \$1,500 of services to be performed. The Senator will be compensated in October 2014.

Answer for Lobbyist:

Reportable Business Relationship must be disclosed in the 2013-2014 Biennial Lobbyist Statement of Registration

Answer for Client Filer:

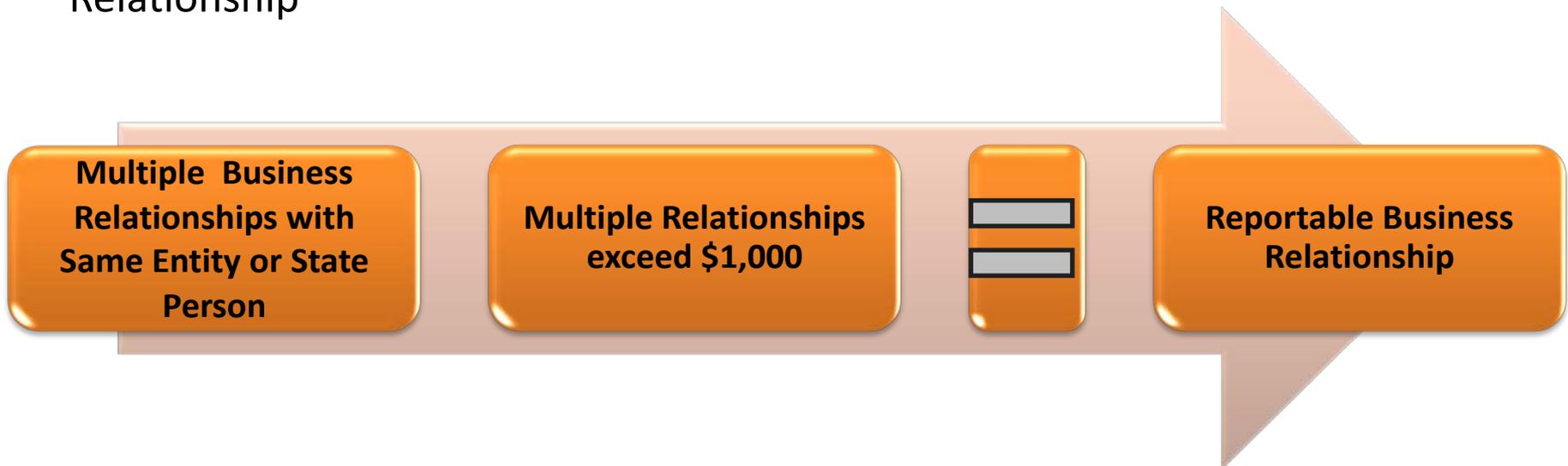
Reportable Business Relationship must be disclosed in the following filings:

- 2013 July/ December Client Semi-Annual Report
- 2014 January/June Client Semi-Annual Report
- 2014 July/December Client Semi-Annual Report

Aggregation

MULTIPLE BUSINESS RELATIONSHIPS WITH THE SAME ENTITY OR STATE PERSON:

- Value of goods, services, or anything of value of all such Relationships must be aggregated
- If the aggregated value of the relationship is more than \$1,000 for any 12-month period, each Relationship is a Reportable Business Relationship



Amendments

LOBBYISTS DUTY TO AMEND

Statement of Registration

- Within 10 days of a material change from the required information reported in the biennial registration an amended Reportable Business Relationship form must be completed
- Actual or anticipated amount of compensation in connection with Reportable Business Relationship materially varies from the anticipated amount previously reported
- Entering into a new Reportable Business Relationship
- Failure may result in possible late fees and/or civil penalty

Accuracy of Reported Information

CLIENT DUTY TO MAINTAIN ACCURATE, CURRENT AND COMPLETE INFORMATION

- Update and correct a Semi-Annual Report if a new Reportable Business Relationship arises
- Disclosure of Reportable Business Relationships not previously disclosed
- Actual or anticipated amount of compensation in connection with an Reportable Business Relationship materially varies from the anticipated amount previously reported
- Failure may result in possible late fees and/or civil penalty

Penalties

Failure to File

- Civil penalty of up to \$25,000 or amount failed to report
- Possible late fees

False Filings

- Civil penalty of up to \$50,000 or five times the amount failed to report



New Lobbying Disclosure Requirements

Source of Funding

Source of Funding

SCOPE:

- The Public Integrity Reform Act of 2011 (“PIRA”) amended Legislative Law 1-A
- Requires lobbyists who lobby on their own behalf and clients, who devote substantial resources to lobbying activity in New York State, to make publicly available, each source of funding over \$5,000 for such lobbying
- Source of Funding increases transparency by informing the public about efforts to influence government’s decision-making process
- The new disclosure requirements are first applicable in the 2012 July/December Client Semi-Annual Report due January 15, 2013

STATUTORY REFERENCE:

Legislative Law 1-A § 1-h(c)(4) and § 1-j(c)(4)

When is Disclosure Required?

\$50,000 – 3% Expenditure Threshold

TWO REQUIREMENTS TO MEET THE \$50,000 – 3% THRESHOLD:

- Client has spent in excess of \$50,000 in Reportable Compensation and/or Expenses for lobbying during the Expenditure Threshold Period

and

- Client expenditures on lobbying in New York constitute at least 3% of the Client Filer's Total Expenditures during the Expenditure Threshold Period

When the \$50,000 - 3% Expenditure Threshold is met, all Contributions over \$5,000 from a Single Source must be reported in the appropriate Client Semi-Annual Report

REFERENCE:

Source of Funding Regulations: Section 938.2

Reportable Compensation and Expenses

COMPENSATION:

- Any salary, fee, gift, payment, loan, advance or any other thing of value paid, owed, given or promised to a retained or employed lobbyist for the purpose of lobbying

EXPENSES :

LOBBYISTS WHO LOBBY ON THEIR OWN BEHALF:

- Any expenditures incurred by or reimbursed to the lobbyist (employed or designated) for lobbying

CLIENT FILER:

- Any expenditure reimbursed to the lobbyist for lobbying

Need to know:

Contributions and Expenses reportable under Article Fourteen of the Election Law are exempt

Total Expenditures

- The sum of any and all payments of cash or cash equivalents made in the ordinary course of business, or a charge against available funds in settlement of an obligation made in the ordinary course of business

Total expenditures also includes a promise to pay, or a promise of a payment or a transfer of anything of value made in the ordinary course of business for goods and services that have been provided or performed

REFERENCE:

Source of Funding Regulations: Section 938.2

Expenditure Threshold Period

For the Client Semi-Annual Report (CSA) due in January (July/December CSA)

- The Expenditure Threshold Period is the preceding calendar year (January 1 – December 31)

For the Client Semi-Annual Report due in July (January/June CSA) there are two potential Threshold Periods:

- 6 preceding months of the current calendar year (January 1st – June 30th)
- Preceding 12 months (July 1st of prior year – June 30th of current year)
 - Ex: For the CSA due on July 15, 2014, this Threshold Period runs from July 1, 2013 through June 30, 2014

Need to know:

For the CSA due in July, if the Expenditure Threshold is met during either Expenditure Threshold Period, then all Contributions from a Single Source over \$5,000 must be reported in the Client Semi-Annual Report

What to Report

CONTRIBUTIONS FROM A SINGLE SOURCE IN EXCESS OF \$5,000

Contribution

- Any payment to, or for the benefit of, the Client and which is intended to fund, in whole or in part, the Client Filer's activities or operations

Single Source

- Any person, corporation, partnership, organization or entity that makes a Contribution

Other Relationships that Constitute a Single Source:

- Two or more persons whom the Client knows live in the same household
- Two or more corporations, partnerships, organizations or entities that the Client knows or has reason to know are related
- A sole proprietorship and its sole proprietor if the Client knows or has reason to know of the relationship

Need to Know:

All Contributions from a Single Source are to be aggregated

Contribution Reporting Requirements

Client Semi-Annual Reporting Period

**Expenditure
Threshold
met**

**Aggregate all
Contributions
from a Single
Source**

**Sum of all
Contributions
Total >\$5,000**

**Disclose each
Contribution**



Information to be Reported

- Name of the Single Source
- Name and address of principal place of business, if any
- Date the Client Filer received the Contribution(s)
- Amount of the Contribution(s)

REFERENCE:

Source of Funding Regulations: Section 938.3

Amount of Contribution Formula

Dollar Amount of
Single Source
Contribution



Reportable
Compensation
and Expenses



Total
Expenditures



Amount of
Contribution
Specifically
Designated for
Lobbying



Amount of Contribution to be Reported

REFERENCE:

Source of Funding Regulations: Section 938.2

Amount of Contribution Example

TRADE ASSOCIATION EXAMPLE

- Acme Trade Association incurs \$5 million of Total Expenditures during the Expenditure Threshold Period
- Of that \$5 million, \$1 million is spent on Reportable Compensation and Expenses in New York
- XYZ Corp. is a member of the Trade Association, and pays \$25,000 in membership dues. XYZ Corp. also purchases various books and materials from the Trade Association, totaling an additional \$1,000
- During the Expenditure Threshold Period, Acme Trade Association requests that XYZ Corp. provide an additional \$4,000 to support the lobbying activities of the association

Amount of Contribution to be Reported
 $\$25,000 \times \$1M/\$5M + \$4,000 = \$9,000$

Amount of Contribution Example

ABC COMPANY

- \$100 million/year in Total Expenditures during the Expenditure Threshold period to run the organization
- \$5 million in reportable compensation and expenses during the Expenditure Threshold period
- John Doe Contributes \$10,000 to ABC Company in a 12-month period

Amount of Contribution to be Reported

$$\text{\$10,000} \times (\text{\$5,000,000} / \text{\$100,000,000}) = \text{\$500}$$

Reporting Requirements Key Points

- For the 2012 July/December Client Semi-Annual Report due January 15, 2013, Contributions received from any Single Source between January 1, 2012 and June 30, 2012 do not need to be reported or aggregated
- Lobbyists who lobby on their own behalf are only required to report Contributions from a Single Source on their Client Semi-Annual reports, additional reporting is not required on the Bi-monthly Report

Contribution Reporting Requirements

For Client Filers meeting the Expenditure Threshold for the July 1st - December 31st reporting period, Disclosure of Contributions depends on what happened in the previous reporting period (January 1 – June 30)

- Client Filer must report Contributions from a Single Source in excess of \$5,000 received during the July 1st through December 31st reporting period
- If the Client Filer reported a Contribution from a Single Source during the prior reporting period (January 1 – June 30), then it must disclose all Contributions, *regardless of amount*, during the July 1st through December 31st reporting period
- If the Client Filer met the Expenditure Threshold during the prior reporting period (January 1 – June 30), and received Contributions from a Single Source totaling \$5,000 or less during that period, the Client Filer must aggregate all Contributions, regardless of amount, received from the Single Source during the entire calendar year. If the sum of such Contributions exceeds \$5,000, the Client Filer must report each Contribution

Need to Know:

If the Expenditure Threshold is not met for the January 1- June 30 reporting period, NO Contributions for that period are reported or aggregated in the July 1- December 31 reporting period

Exemptions

Clear and convincing evidence that disclosure of the Single Source will cause harm, threats, harassment, or harm to the property or individuals associated with the Single Source

FACTORS:

- Specific evidence of present threats, harms or reprisals
- Severity, number of incidents and duration of past and present harm
- Pattern of threats
- Evidence of harm, threats or harassment against similar organizations or views
- The impact of disclosure on the ability of the Single Source(s) or Client Filer to maintain ordinary business operations and the extent of the resulting economic harm

STATUTORY EXEMPTION FOR:

- 501(c)(3) Entities
- Any governmental entity

Need to Know:

Exemption for a class of Single Sources may be available

501(c)(4) entities may apply for a blanket Exemption utilizing the above factors

Exemptions

KEY POINTS:

- Submit an Exemption form no later than two days prior to the due date of an applicable Client Semi- Annual Report
- Commission will inform the Client Filer of the decision in writing
- Denials of Exemptions can be appealed, if Client filer does not appeal, the Client Filer has 15 days to amend the Client Semi-Annual report and include information from the Single Source

REFERENCE:

Source of Funding Regulations: Sections 938.5 – 938.7

Duty to Correct

- As with any filing required to be submitted to the Commission, Client Filers have a duty to file accurate and complete reports. Client Filers therefore have a duty to correct any oversights or inaccuracies within 10 days of discovery

REFERENCE:

Source of Funding Regulations: Section 938.10

Penalties

Failure to File

- Possible late fees

False Filings

- Civil penalty of up to \$50,000 or five times the amount failed to report

STATUTORY REFERENCES:

- Legislative Law 1-A §1-j(c) and §1-o

Contact Information

**FOR SPECIFIC QUESTIONS REGARDING THE
APPLICATION OF REGULATIONS AND GUIDELINES,
PLEASE CONTACT LEGAL STAFF AT:**

jcope@jcope.ny.gov

518-408-3976

**FOR REPORT FILING QUESTIONS, PLEASE CONTACT
THE STATUTORY FILINGS UNIT AT:**

program@jcope.ny.gov

518-408-3976