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New Lobbying Law Regulations

Effective January 1, 2019, the Joint Commission on Public Ethics (JCOPE) will administer new regulations for lobbyists and their clients. These regulations, 19 NYCRR Part 943, are intended to provide guidance to those regulated by JCOPE regarding the Lobbying Act requirements and to codify JCOPE's and its predecessors' advisory opinions, guidelines, and practices. According to JCOPE:

Part 943 marks the first time that existing guidelines and decades of advisory opinions will be compiled in one place in New York. It will provide a "one-stop shop" for information about the rules and requirements associated with lobbying in New York. Designed to close loopholes that have evolved over time, the regulations will capture more and better information about the targets of lobbying activities and the real clients of lobbyists.

The regulations take into account the use of ever-changing technology in conducting lobbying campaigns. They also streamline reporting requirements, providing more clarity about the requirements related to consultants, grassroots lobbying, sources of funding, and the use of new media for lobbying purposes.¹

The new regulations will affect lobbyist and client reporting requirements. This memo highlights key changes, including new definitions and reporting requirements.

New Definitions

1. "**Lobbying**" and "**Lobbying Activity**" now are classified as either "**Direct Lobbying**" or "**Grassroots Lobbying**" and include attempts to influence activity listed in Section 1-c(c) of the Lobbying Act.
 - a. "**Direct Lobbying**" is when a person engaged in lobbying activity has direct contact with a public official or the public official's staff in an attempt to influence an action.² Direct contact can happen in a variety of ways including, but not limited to, verbal, written or electronic communication; social media; attendance at a meeting with the public official; and presence on a phone call with the public official when the official is aware of such presence.³ Communication aimed at a group which the public official

¹ <https://jcope.ny.gov/lobbying-laws-and-regulations>

² 19 NYCRR 943.6(b)(1)(i)-(ii)

³ 19 NYCRR 943.6(a)(1)

- is an incidental member of, or is intended for the public, is not considered direct lobbying.⁴ Examples of communication not generally considered direct lobbying include but are not limited to opinion pieces published in a newspaper; blog posts; and attendance at a speech or public meeting.⁵
- b. **“Grassroots Lobbying”** is an attempt to influence a public official indirectly through a “Grassroots Lobbying Communication” which is “a communication that references or otherwise implicates an action enumerated in section 1-c(c)(i)-(x) of the Lobbying Act; takes a clear position on that action; and includes a Call to Action.”⁶ Grassroots Lobbyists solicit others, who do so voluntarily and without compensation, to deliver a message to a public official.⁷ Every Grassroots Communication is attributable to a lobbyist, which may be an entire organization, and not necessarily an individual lobbyist.⁸ Examples of Grassroots Lobbying include, but are not limited to, rallies; billboards; print media advertisements; websites; social media communications; letter-writing campaigns; and personal requests by lobbyists for another person to contact a public official.⁹ Grassroots communications must reference the governmental action to be influenced, take a clear position on that action, and include a Call to Action.¹⁰
2. **“Attempt to Influence”** is any “activity intended to support, oppose, modify, expedite, or otherwise affect an action enumerated in Sections 1-c(c)(i)-(x) of the Lobbying Act.”¹¹ The term “attempt to influence” is used throughout the Lobbying Act (Legislative Law Article 1-a), including in the definition for lobbying and lobbying activities.¹² However, it was not independently defined. JCOPE defined the term in the new regulations for clarification. The term’s intent and meaning has not changed.
3. A **“Call to Action”** is a grassroots lobbying element, which asks or encourages the public, segment of the public, or an individual to directly contact a public official or ask others to contact a public official.¹³ A Call to Action does not need to specify which form the contact should/must take, but it must include contact information for the public official. This includes pre-written messages as suggested communications with the public official, but the communication to the public official does not need to use such messages to be considered a Call to Action.¹⁴

⁴ 19 NYCRR 943.6(a)(1)(ii)

⁵ 19 NYCRR 943.6(a)(iii)

⁶ 19 NYCRR 943.7(b)(2)

⁷ 19 NYCRR 943.7(a)(2)

⁸ 19 NYCRR 943.7(a)(3)

⁹ 19 NYCRR 943.7(e)(1)

¹⁰ 19 NYCRR 943.7(b)(2)

¹¹ 91 NYCRR 943.3(C)

¹² NY LEG §1-c(c)

¹³ 19 NYCRR 943.7(b)(3)

¹⁴ *Id.*

4. **“Social Media”** is defined as any internet-based or mobile platform designed to allow multiple users to communicate and share information.¹⁵ Social Media platforms include, but are not limited to, Facebook, Twitter, LinkedIn, Pinterest, Tumblr, Google+, YouTube, Instagram, WhatsApp, Snapchat, and Skype.
5. **“Social Media Campaign”** is a series of lobbying activities organized/coordinated to be conducted over one or more social media platforms.¹⁶
6. **“Lobby Day”** is defined as “select days used by organizations, often annual, when members of an organization meet with Public Officials at various levels to advocate on issues relevant to the organization.”¹⁷
7. The term **“Lobbyist”** is expanded to include three types of lobbyists: designated, employed, and retained.
 - a. **“Designated Lobbyists”** are persons who lobby on behalf of a client, compensated or uncompensated, as a board member, director or officer of the client.¹⁸ A designated lobbyist does not offer services to other clients as a retained lobbyist.
 - b. **“Employed Lobbyists”** are employees of an organization who lobby on behalf of the employing organization.¹⁹ Independent contractors who meet the criteria for employed lobbyist are considered employed lobbyists. Otherwise, they are considered retained lobbyists.²⁰ Independent contractors must not receive any lobbying compensation from any other source, activity must be supervised by the lobbying organization, and must not be otherwise identified as an Individual Lobbyist on any other Statement of Registration.
 - c. **“Retained Lobbyists”** are persons or organizations who lobby for unaffiliated clients.²¹
8. **“Individual Lobbyist”** means “one who personally engages in Direct or Grassroots Lobbying.”²² Individual Lobbyists may be a designated, employed, or retained lobbyist.
9. The term **“Client”** is expanded to include two types - **“Beneficial”** client and **“Contractual”** client.²³ A Beneficial client and a Contractual client are not necessarily, but usually are, the same party.

¹⁵ 19 NYCRR 943.3(v)

¹⁶ 19 NYCRR 943.3(w)

¹⁷ 19 NYCRR 943.3(j)

¹⁸ 19 NYCRR 943.3(g)

¹⁹ 19 NYCRR 943.3(h)

²⁰ 19 NYCRR 943.3(h)(1)

²¹ 19 NYCRR 943.3(u)

²² 19 NYCRR 943.3(i)

²³ 19 NYCRR 943.3(e)

- a. A “**Beneficial Client**” is “the specific individual or organization on whose behalf and at whose request or behest Lobbying Activity is conducted.”²⁴ Members of the general public or specific segments of the general public are not beneficial clients.
- b. A “**Contractual Client**” is the “individual or organization that retains the services of a Lobbyist for the benefit or itself or another.”²⁵

Example: A client retains a firm to lobby several issues. However, the firm does not have expertise on one of the issues. The firm lobbies all issues it can and hires a second, unaffiliated firm to lobby the other issue. In this situation, the client is both the beneficial and contractual client for the first firm, and the beneficial client for the second firm. The first firm is the contractual client to the second firm.²⁶

10. A “**Coalition**” is a group of otherwise unaffiliated entities who pool funds for lobbying activity on behalf of the coalition members.²⁷
11. The “**Responsible Party**” is the Lobbyist or Client’s chief administrative officer or designee, who is responsible for filing all required statements and reports.²⁸

Reporting Requirements

1. Lobbyist Bi-Monthly Report

Current law requires a lobbyist to file a biennial Statement of Registration when the individual incurs, expends or receives (or expects to incur, expend or receive) more than \$5,000 combined for reportable compensation and expenses for lobbying activity at the state or local level.²⁹ Lobbyists who are required to file the Statement of Registration must also file bi-monthly reports, which must include the following:

- name and contact information for the principal lobbyist;
- names of all individual lobbyists who engaged in lobbying activity during the reporting period;
- name and contact information for all contractual and beneficial clients;
- subject matters which were lobbied;
- governmental action that the lobbyist attempted to influence;
- name of person, organization or legislative body before which the lobbyist lobbied; and
- all reportable lobbying compensation and expenses.³⁰

²⁴ 19 NYCRR 943.3(d)

²⁵ 19 NYCRR 943.3(f)

²⁶ Joint Commission on Public Ethics, *Lobbying in New York State: An Overview of the Lobbying Act and JCOPE’s New Regulations* seminar presentation, September 20, 2018.

²⁷ 19 NYCRR 943.9(h)(3)

²⁸ 19 NYCRR 943.3(t)

²⁹ NY LEG §1-h

³⁰ NY LEG §1-h(b)

The new regulations require additional reporting to those listed above. In the instance of Direct Lobbying, the report must now also include the **name of the public official, or public official's office, or the legislative committee before which the lobbyist had direct contact.**³¹ In the instance of Grassroots Lobbying, **the intended target, which may be a person, state agency, municipality or legislative body, must also be included.**³²

2. Client Semi-Annual Report

Current law requires any client who retains, employs, or designates a lobbyist, regardless of whether the lobbyist is required to file a Statement of Registration or Bi-Monthly Reports, must file a Semi-Annual Report if the client exceeds, or reasonably expects to exceed, \$5,000 in annual combined Reportable Compensation and Expenses.³³ The Client Semi-Annual Report now will require additional disclosures. When the lobbying is considered Direct Lobbying, the report must include the **name of the public official, or public official's office, or the legislative committee before whom the client or the client's lobbyist had direct contact.**³⁴ When the lobbying is considered Grassroots Lobbying, the report must include **the intended target, which may be a person, state agency, municipality or legislative body.**³⁵

The filing deadlines have not changed. The report for the January 1 to June 30 period is due by July 15 of the same year, and the report for the July 1 to December 31 period is due January 15 of the following year.³⁶

A new late fee schedule has been adopted. Fees are now flat fees based on the number of days the report is late and have a different fee schedule for first-time filers. There is now a seven-day grace period. The new fee schedule is below.³⁷

Days Late	Action	
	First-Time Filer*	All Other Filers
1 – 7 days	Grace Period/No Late Fee	
8 – 14 days	\$75	\$150
15 – 30 days	\$150	\$300
31 – 90 days	\$300	\$500
91 – 180 days	\$500	\$1,000
181 days and more	\$1,000	\$2,000

**A Client is only considered a first-time filer for the reporting period when the Client is first required to file a Semi-Annual Report*

³¹ 19 NYCRR 943.11(f)(7)(i)

³² 19 NYCRR 943.11(f)(7)(ii)

³³ NY LEG §1-j(a)

³⁴ 19 NYCRR 943.12(f)(9)(i)

³⁵ 19 NYCRR 943.12(f)(9)(ii)

³⁶ 19 NYCRR 943.12(a)

³⁷ 19 NYCRR 943.12(b)

3. Lobby Day

Lobby Days are reportable direct contact lobbying activity.³⁸ If an employee of the organization coordinating the Lobbying Day makes direct contact with a public official and speaks on behalf of the organization on Lobby Day, then such employee must be identified as an Individual Lobbyist.³⁹ A designated lobbyist of a coordinating organization must be disclosed if the individual is involved in direct lobbying, makes direct contact, and speaks for the organization.⁴⁰ A coordinating organization is not required to list volunteers or members of such organization as individual lobbyists.⁴¹

Reportable expenses for lobbying days include but are not limited to: compensated employee time at lobbying day; staff time spent planning lobbying day; expenses related to advocacy materials (placards, t-shirts, etc.); and transportation to and from the lobby day.⁴²

4. Coalitions

Coalitions incurring more than \$5,000 in annual lobbying activity related compensation and expenses must either (a) file a lobbying report with JCOPE identifying the coalition as a lobbyist and/or a client or (b) have each member of the coalition file a lobbying report with JCOPE identifying their own contribution to the coalition.⁴³

If the coalition files a report, it must maintain up-to-date information with JCOPE, including identifying a Responsible Party and each member who exceeds \$5,000 in cumulative annual lobbying compensation and expenses.⁴⁴

Regardless of the type of reporting used, each coalition member that spends more than \$5,000 in compensation and expenses is considered a Beneficial Client.⁴⁵ Therefore, that member's contribution to the coalition is included when determining whether the member must file a Source of Funding Disclosure Report.⁴⁶

5. Social Media

The use of social media in certain instances is now classified as reportable lobbying activity and may include both direct⁴⁷ and grassroots lobbying.⁴⁸ Social media lobbying, both direct and grassroots, conducted during the course of a lobbyist's employment is now considered reportable lobbying activity.

³⁸ 19 NYCRR 943.6(b)(4)

³⁹ 19 NYCRR 943.6(b)(4)(i)(a)

⁴⁰ 19 NYCRR 943.6(b)(4)(i)(b)

⁴¹ 19 NYCRR 943.6(b)(4)(i)(c)

⁴² 19 NYCRR 943.6(b)(4)(ii)

⁴³ 19 NYCRR 943.9(h)(3)(ii)

⁴⁴ 19 NYCRR 943.9(h)(3)(iii)

⁴⁵ 19 NYCRR 943.9(h)(3)(v)

⁴⁶ See 19 NYCRR Part 938.3 for Source of Funding Disclosure requirements.

⁴⁷ 19 NYCRR 943.6(c)

⁴⁸ 19 NYCRR 943.7(f)

The following direct lobbying social media post or communication that attempts to influence an action are considered reportable lobbying activity:

- communication sent directly to a social media account known to belong to or be controlled by a public official;
- creates a direct link to a social media account known to belong to or be controlled by a public official; or
- targets and directed to members of a public official's staff, knowing that the persons are members of the public official's staff.⁴⁹

Examples of social media direct contact include, but are not limited to, direct messages sent to a public official through social media (Facebook Messenger, Twitter Direct Message, etc.); a post on a public official's social media page; and a post on a person's own social media page that tags a public official when done during the person's employment.⁵⁰ The following, when done alone, are not considered reportable lobbying activity: a social media post that references but does not tag a public official, even if the public official is a member of the person's social media friends or followers, and a post on a person's own social media page that takes a clear position on a governmental action that does not tag a public official, even if a public official is among the person's friends or followers.⁵¹

Grassroots lobbying over social media that meets the criteria for the definition of grassroots lobbying⁵² is considered reportable.⁵³ Calls to Action can include suggested social media messages for members of the public to send to public officials and/or social media contact information for public officials and their staff members. Members of the public do not need to use the suggested social media message or platform to contact the public official for the activity to be reportable lobbying activity. Simply including suggested social media messages or social media contact information for public officials in grassroots lobbying materials qualifies for reportable lobbying activity.⁵⁴

6. Procurement Lobbying

Procurement Lobbying is either direct or grassroots, but specifically means an attempt to influence a determination of a governmental procurement by a public official, and those working with a public official; or by an officer or employee of the Unified Court System, and those working with the Unified Court System.⁵⁵ Estimated annualized expenditures for the procurement in question remain at \$15,000 to qualify as procurement lobbying.⁵⁶

⁴⁹ 19 NYCRR 943.6(c)(1)

⁵⁰ 19 NYCRR 943.6(c)(5)(i)

⁵¹ 19 NYCRR 943.6(c)(5)(ii)

⁵² See *New Definitions 3(b)* of this memo for the "Grassroots Lobbying" definition.

⁵³ 19 NYCRR 943.7(f)(1)

⁵⁴ See *New Definitions 4* of this memo for the "Call to Action" definition.

⁵⁵ 19 NYCRR 943.8(a)(1)

⁵⁶ 19 NYCRR 943.8(a)(2)

Procurement lobbying is relatively unchanged in the new regulations. However, the regulations governing procurement lobbying have been compiled in one section (943.8) for clarification, particularly regarding commission salespersons.⁵⁷ “Determination of Need” is expanded to mean “any public communication of a decision by a governmental entity to procure an Article of Procurement.” This also includes a private communication, which will require the recipient of the private communication to adhere to lobbying regulation until a public announcement occurs.⁵⁸

Useful Links

The JCOPE website, www.jcope.ny.gov, has more information, including Legislative Law Article 1-a (the Lobbying Act) and Title 19 NYCRR Part 943 (new lobbying regulations taking effect January 1, 2019). The law, as well as other supporting documents, can be found here: <https://jcope.ny.gov/lobbying-laws-and-regulations>.

A video of a seminar held by JCOPE this fall, titled “Lobbying in New York State: An Overview of the Lobbying Act and JCOPE’s New Regulations.” can be found on JCOPE’s home page.

New York State Finance Law Article 9, Sections 139-J-K continue to govern procurement laws, which can be found at <https://www.nysenate.gov/legislation/laws/STF/139-J> and <https://www.nysenate.gov/legislation/laws/STF/139-K>.

As always, if you have any questions or concerns, please do not hesitate to contact us at (518) 533-2884.

⁵⁷ JCOPE, *Lobbying in New York State*, September 20, 2018.

⁵⁸ 19 NYCRR 943.8(a)(5)