

August 2017

## NY JCOPE Approves Comprehensive Lobbying Regulations

At the August 2017 meeting of the New York State Joint Commission on Public Ethics (JCOPE or the Commission), the Commission approved proposed “Comprehensive Lobbying Regulations that implement the provisions of the Lobbying Act” for formal publication, pursuant to the State Administrative Procedure Act. The details were included in the August 23 State Register, marking the start of the formal 45-day public comment period. This proposal is the product of more than a year of work by the Commission, including holding public hearings and collecting written comments. Commission staff worked to address many of the points raised during the informal comment period and, in many cases, incorporated the regulated community’s suggested revisions into the version of the regulations now out for formal comment. At the same time, JCOPE promulgated proposed regulations governing Source of Funding disclosures and access to Commission records.

As we have highlighted over the past 12 months, the comprehensive regulations represent the first time that JCOPE – or its predecessor agencies – has embarked in an effort to compile the relevant rules implementing the New York State Lobbying Act. This includes culling together, and, where appropriate, updating information that has been disseminated through Advisory Opinions and less formal guidance documents issued between 1978 and 2016. Many of the rules set forth in the more than 90 pages of proposed comprehensive regulations are restatements and clarifications of these historical policies. There are, however, certain key topics that are either wholly new or a departure from prior practice that are important to highlight:

- > *Contingency fees and stock/equity payments for lobbying services.* The Lobbying Act expressly outlaws compensation tied to the outcome of a lobbying effort. Historically, JCOPE and its predecessor commissions held that all payments for lobbying in the form of stock or other equity were a form of contingency fee, and therefore barred. The proposed regulations will establish a process to determine if compensation for lobbying that consists in whole or in part of stock or equity of the client is permissible (19 NYCRR § 943.5(b)(3));

- > *Direct contact.* For the first time, the regulations will clarify when contact with a public official will constitute a lobbying contact (19 NYCRR § 943.6), including through the use of social media platforms;
- > *Indirect contact.* The regulations also clarify rules pertaining to Grassroots Lobbying, particularly the actions that trigger registration and who must be identified in documents filed with the Commission when engaging in Grassroots Lobbying, and how the use of social media would play into those registration and disclosure requirements(19 NYCRR§ 943.6(c), 943.7);
- > *Commission salesperson exemption.* Clarification of who meets the “Commission Salesperson” exemption, and establishment of a 50 percent of annual compensation requirement to qualify for the exception from the lobbying rules(19 NYCRR § 943.8(c));
- > *Coalitions.* The Commission establishes a new, but potentially voluntary, process for registration and reporting by coalitions (19 NYCRR § 943.9(g)(3), §943.(10)(j)(9)); and
- > *Disclosure of specific contacts.* JCOPE will require registrants to now list on their bi-monthly reports “[t]he name of the person, organization, or legislative body before which the Lobbyist has lobbied:” which may require identification of “the Public Official or Public Official’s office or the legislative committee . . . with whom the Lobbyist engaged in direct communication; [and] [i]n the case of Grassroots Lobbying, the intended target of the Lobbying Activity, which may be a person, State Agency, Municipality or legislative body.”

In many ways, the publication of the Comprehensive Lobbying Regulations is anti-climactic in that most, if not all, of the proposal has been discussed at public meetings of the Commission. It is worth noting, however, that by promulgating these regulations, the Commission has, for the first time in its existence, as well as the existence of all of its predecessor bodies, provided the public with formal notice of how it will interpret the extensive requirements of the Lobbying Act. As lobbyists, and as counselors who routinely advise clients on how to comply with the Lobbying Act, JCOPE’s proposed regulations are a welcome development.

The comment period, which will conclude on Oct. 16, 2017, as well as the yet to be scheduled public hearing, provides lobbyists and the public with an opportunity to let JCOPE know what it did right, where it may have over (or under) reached, and of any other concerns regarding the proposed regulations. All organizations that currently engage in lobbying activity and are registered with the Commission, or otherwise have other interactions with New York State or local government that could be interpreted to amount to lobbying activity, can read through the regulations on the [JCOPE website](#). If you have any questions or are interested in submitting comments on the regulations, please contact us.

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