



**NEW YORK STATE  
JOINT COMMISSION ON PUBLIC ETHICS**



**COMPREHENSIVE  
ETHICS TRAINING  
COURSE**

**REVISED JUNE 18, 2014**

# ETHICS IN GOVERNMENT

*“No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior by those who conduct the public business. There can be no dissent from the principle that all officials must act with unwavering integrity, absolute impartiality and complete devotion to the public interest. This principle must be followed not only in reality but in appearance. For the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.”*

*John F. Kennedy*

Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government.

April 27, 1961

# PURPOSE OF ETHICS TRAINING

Ethics laws were enacted to prevent both actual and apparent conflicts of interest between official duties and private interests. The purpose of this ethics training is to educate New York State Officers and Employees about the ethics laws, regulations and policies they are obligated to uphold.

In this way, this training seeks to prevent ethics violations before they occur.

# COURSE OBJECTIVE



A word cloud of public ethics terms on a black background. The words are arranged in a roughly rectangular shape and include: Advice, Disclosure, Ethics, Gifts, Guidance, Financial, Nepotism, Post-Employment, Transparency, and Honoraria. The words are in various shades of blue and white, with some appearing larger than others.

**Advice**  
**Disclosure**  
**Ethics**  
**Gifts**  
**Guidance**  
**Financial**  
**Nepotism**  
**Post-Employment**  
**Transparency**  
**Honoraria**

# TOPIC OVERVIEW



- **JCOPE Overview**
- **Advice and Guidance**
- **Investigation and Enforcement**
- **Financial Disclosure**
- **The Code of Ethics**
- **Negotiation of Future Employment**
- **Outside Activities**
- **Restrictions on Political Activities**
- **Nepotism Restrictions**
- **Gifts**
- **Honorarium**
- **Official Activity Expense Payments**
- **Post-employment Restrictions**
- **Civil Service Law §107**



# JCOPE OVERVIEW

# PUBLIC INTEGRITY REFORM ACT OF 2011

- The Public Integrity Reform Act of 2011 (“**PIRA**”) became effective on August 15, 2011 (Chapter 399 of the Laws of 2011).
- PIRA established the Joint Commission on Public Ethics (“**JCOPE**”) which expanded the existing functions and jurisdiction of the former Commission on Public Integrity.

# JCOPE JURISDICTION

- Executive Branch officers and employees
- Four Statewide Elected Officials
- Members and employees of the Legislature
- Candidates for statewide elected office and for the Legislature, and political party chairs as defined in Public Officers Law §73
- Employees of SUNY & CUNY
- Lobbyists, Clients and Public Corporations as defined in Article 1-A of the Legislative Law (the “Lobbying Act”)





# CORE FUNCTIONS OF JCOPE

- Ethics oversight through financial disclosure for Executive and Legislative Branch Officers and Employees
- Lobbying oversight through Lobbyist and Client reporting
- Training and Education
- Advice and Guidance
- Investigating possible violations of:
  - i. the Lobbying Act by lobbyists and clients,
  - ii. the Public Officers Law by Executive and Legislative Branch employees and
  - iii. violations of Civil Service Law §107 (“Little Hatch Act”) by Executive Branch employees
- Enforcement, including adjudication, of applicable violations by Executive Branch employees and Lobbyists and Clients

# APPLICABLE ETHICS LAWS AND REGULATIONS

- **Public Officers Law §73-a: Financial Disclosure Statements (“FDSs”)**
  - Title 19 NYCRR Part 935: FDS Exemption
  - Title 19 NYCRR Part 936: FDS Extension
  - Title 19 NYCRR Part 937: Access to Publicly Available Records
  - Title 19 NYCRR Part 941.19: Appeals from denials for FDS redactions and exemptions
- **Public Officers Law §74: The Code of Ethics**
- **Public Officers Law §73: Outside employment and professional activities, restriction on political activities, nepotism, gifts, honorarium, travel, negotiations on future employment, and post employment restrictions.**
  - Title 19 NYCRR Part 930: Honoraria and Travel
  - Title 19 NYCRR Part 932: Outside Activities
  - Title 19 NYCRR Part 933: Gift Regulations
  - Title 19 NYCRR Part 941: Adjudicatory Proceeding Regulations
- **Civil Service Law §107: Political Activity**

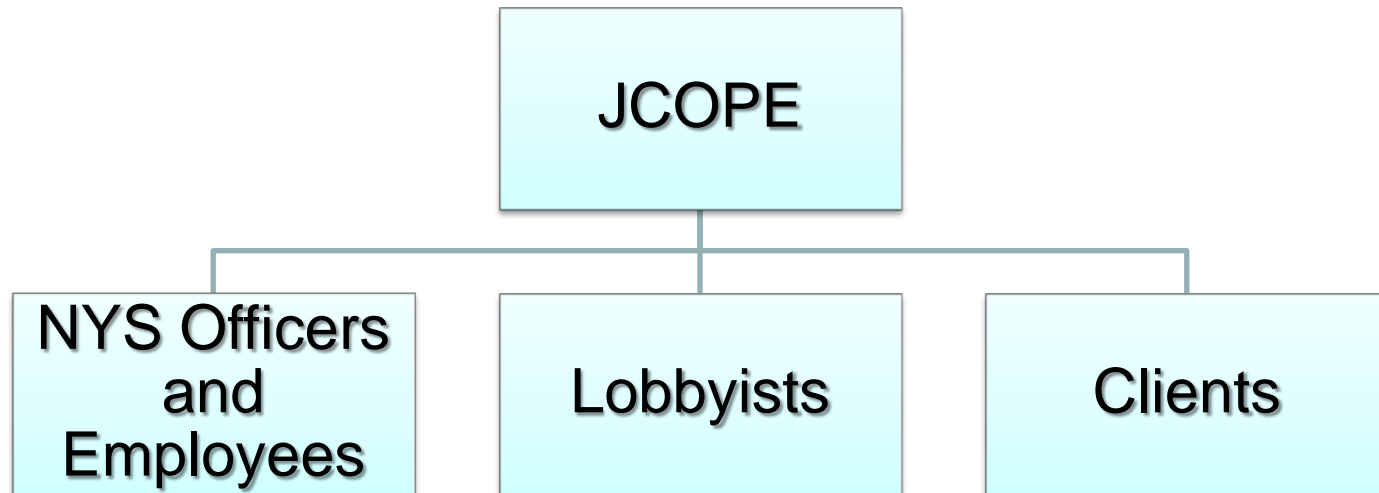


# ADVICE AND GUIDANCE

# ADVICE AND GUIDANCE



Anyone who falls under the jurisdiction of the Joint Commission on Public Ethics should contact JCOPE if they have questions or concerns about how ethics laws and regulations apply to their individual circumstances.





**Seeking Advice or Guidance?**

**Contact the Attorney of the Day**

**(518) 408-3976**

**[legal@jcope.ny.gov](mailto:legal@jcope.ny.gov)**

# ADVICE AND GUIDANCE

## Formal Advisory Opinion

Public document

Issued by JCOPE  
Commissioners

## Informal Advisory Opinion

Confidential

Issued by JCOPE  
staff based on  
precedent



# JCOPE INVESTIGATIONS AND ENFORCEMENT

# INVESTIGATION AND ENFORCEMENT

## Overview

- If JCOPE is going to commence an investigation, the subject will receive notice and an opportunity to be heard.
- All communications and records related to such an investigation are confidential unless and until JCOPE issues a Substantial Basis Investigation Report, which sets forth facts and legal analysis demonstrating there is a substantial basis to conclude that an ethics violation has occurred.
- Issuance of a Substantial Basis Investigation Report starts a formal hearing process.
- Hearing is conducted by an independent hearing officer in accordance with JCOPE's adjudicatory proceeding regulations set forth in **Title 19 NYCRR Part 941**.



# INVESTIGATION AND ENFORCEMENT

## Overview



- Hearing officer makes a recommendation to JCOPE concerning the facts and penalty amount.
- JCOPE may adopt in whole or in part, the hearing officer's findings of fact and penalty recommendation, or may reverse, remand or dismiss the case based on the record produced at the hearing.

# INVESTIGATION AND ENFORCEMENT

## Civil Penalty Amounts

### **Public Officers Law §§73\*, 73-a, and Civil Service Law §107**

- Civil penalty up to \$40,000 and the value of any gift, compensation or benefit received

**\*For certain violations of Public Officers Law §73, JCOPE may in lieu of or in addition to such civil penalties, refer the matter to the appropriate prosecutor (Class A misdemeanor)**

### **Public Officers Law §74(3) (a), (b),(c), (d), (e), (g) and (i):**

- Civil penalty of up to \$10,000 and the value of any gift, compensation or benefit received as a result of such violation.



# ETHICS TRAINING

# ETHICS TRAINING

## Why are we here today?

To complete the “Comprehensive Ethics Training Course” that is part of an ongoing ethics training program mandated by PIRA for State Officers and Employees and others who are required to file an annual Statement of Financial Disclosure (“FDS”).

***Executive Law §94(10)(a)***



# MANDATED ETHICS TRAINING FOR FDS FILERS

## **Comprehensive Ethics Training Course: Two-hour, Live** *Executive Law §94(10)(a)*

- Those individuals who were FDS filers on or before August 15, 2011 are required to complete the Comprehensive Ethics Training Course by August 15, 2013.
- Those individuals who became FDS filers after August 15, 2011 are required to complete the Comprehensive Ethics Training Course within two years of becoming an FDS filer.
  - The Ethics Officer or designated trainer must utilize JCOPE's Comprehensive Ethics Training Course **in the form provided and in its entirety**. However, trainers may supplement this course with information and examples specific to your Agency.



### **JCOPE Recommendation for Ethics Officers and Trainers:**

Regardless of the due date, Ethics Officers and trainers should strive to train all FDS filers as soon as possible.

# MANDATED ETHICS TRAINING FOR FDS FILERS

## **Comprehensive Ethics Training Course: Disclaimer**

This Comprehensive Ethics Training Course highlights certain, but not all, provisions in the ethics laws and in JCOPE's regulations, advisory opinions, and policies in effect at this time.

All applicable ethics laws, regulations, advisory opinions, policies and guidance documents within JCOPE's jurisdiction are set forth in their entirety on the agency's website at [www.jcope.ny.gov](http://www.jcope.ny.gov).

In addition, a State agency or entity may adopt its own ethics regulations and policies that are more restrictive than those covered in this course.

# MANDATED ETHICS TRAINING FOR FDS FILERS

## Online Ethics Orientation Course

### *Executive Law §94(10)(b)*

- Individuals newly subject to the FDS filing requirement are required to complete the Online Ethics Orientation Course within 3 months of becoming subject to the requirement.



- The Online Ethics Orientation Course is available to all FDS filers on SLMS.
- Individuals who complete the Comprehensive Ethics Training Course within 3 months of becoming an FDS filer shall not be required to complete the Online Ethics Orientation Course. However, the Online Ethics Orientation Course is **not a substitute** for the Comprehensive Ethics Training Course.

# MANDATED ETHICS TRAINING FOR FDS FILERS

## **Ethics Seminar: 90 Minute, Live**

### *Executive Law §94(10)(c)*

- After the completion date of the Comprehensive Ethics Training Course, FDS filers are required to complete an Ethics Seminar every three years. The Ethics Seminar is an update on any changes in the applicable laws, regulations and policies.



# MANDATED ETHICS TRAINING FOR FDS FILERS

## JCOPE Training Compliance Report

*Executive Law §94(10)(e)*



- Effective immediately, on an annual basis, JCOPE is required to submit a Training Compliance Report to the Governor's Office with the relevant training statistics regarding each agency and its FDS filers.



**PUBLIC OFFICERS LAW**  
**§73-a**  
**FINANCIAL DISCLOSURE**

# FINANCIAL DISCLOSURE

## Overview

- Section §73-a of the Public Officers Law requires certain State persons to file an annual statement of financial disclosure (“FDS”).
- An FDS is a publicly available record containing information about the financial holdings and professional associations of filers and their spouses.
- The purpose of the FDS is to provide transparency in order to prevent conflicts of interest and abuses of official position.
- The process of completing an FDS also assists an FDS filer in identifying and managing potential conflicts of interest.



# FINANCIAL DISCLOSURE

## Who is required to file?

Officers, members, directors and employees of any State agency, public authority, public benefit corporation, commission, or legislative employees who are:

- Designated by their appointing authority as a Policy Maker;
- In a position for which the annual full time salary is in excess of the "filing rate" of a SG-24 CSEA equivalent (\$90,020 as of April 1, 2014). Part-time employees may still be required to file an FDS;
- The four Statewide elected officials, Legislators, and candidates for those offices; or
- Political party chairpersons for State committees and county committees with a population over 300,000;



# FINANCIAL DISCLOSURE

## When are the filing due dates?



### May 15<sup>th</sup>

Statewide elected officials, State officers, political party chairs, policy makers, as well as State employees with an annual salary rate in excess of the job rate of a CSEA equivalent SG-24.

### November 15<sup>th</sup>

Academic employees at the SUNY and CUNY who meet the filing threshold requirements.

**Individuals who qualify for filing after these dates have 30 days to file.**

# FINANCIAL DISCLOSURE

## Financial Disclosure Statements are publicly available records



- FDSs for Statewide Elected Officials, and Legislators, are posted on JCOPE's website.
- Copies of FDSs for all other State officers and employees, are made publicly available upon request.
- Commencing in 2013, categories of value are no longer redacted from the publicly available version.

***Rules Governing access to FDS's and other publicly available records are set forth in Title 19 NYCRR Part 937***

## Privacy Concerns- What you should know



- JCOPE automatically redacts the name of any minor child from the copy of the FDS that is made publicly available.
- Electronic FDS forms do not require disclosure of your home address. Paper forms do require your home address, but it is automatically redacted from the publicly available copy.
- For question #17, if you have income property that is also a primary or secondary residence, indicate it as such, and include the location only. You do not have to include the physical address.



# FINANCIAL DISCLOSURE

## Requests for Redaction/Exemption



The Executive Director can review requests from filers wishing to:

- Redact specific information from the copy made publicly available. *Executive Law § 94(9)(h)*
- Not answer specific questions on the FDS regarding a spouse or minor child. *Executive Law § 94(9)(i)*

*These requests are granted in limited circumstances*

The procedures for appealing a denial of such request are set forth in Title 19 NYCRR Part 941.19



# FINANCIAL DISCLOSURE

## Applications for Exemptions from filing an FDS in its entirety

JCOPE has the discretion to grant an exemption when it determines that:

1. The applicant has **not** been designated as a Policy Maker by his or her agency; and
2. The public interest does not require the applicant's FDS to be disclosed; and
3. The applicant's duties **do not** involve the negotiation, authorization or approval of:
  - contracts, leases, franchises, revocable consents, concessions, variances, permits, or licenses;
  - the purchase, sale, rental or lease of real property, goods or services, or a contract therefor;
  - the obtaining of grants of money or loans; or
  - the adoption or repeal of any rule or regulation having the force and effect of law;

Such an exemption may be requested by an individual or by an agency on behalf of a class of individuals in the same position.

**The FDS Exemption procedure is set forth in Title 19 NYCRR Part 935**

# FINANCIAL DISCLOSURE

## Extensions

- You may request an extension of time to file an FDS on the basis of justifiable cause or undue hardship.
- Procedures for requesting an extension are set forth in Title 19 NYCRR Part 936.

## Exemption and Extension due dates:



# FINANCIAL DISCLOSURE

## FDS Change Effective in 2013

In question #8(b), an FDS filer must report the names of clients from whom he or she personally earns, or his or her partnership or firm earns, in excess of \$10,000 for services related to influencing certain governmental actions.

**In order to trigger reporting, such services must be in direct connection with:**

- A proposed bill or resolution in either house of the State Legislature during the reporting period;
- A contract in an amount totaling \$50,000 or more from the State or any State agency for services, materials, or property;
- A grant of \$25,000 or more from the State or any State agency during the reporting period;
- A grant obtained through a legislative initiative during the reporting period; or
- A case, proceeding, application, or other matter before a State agency during the reporting period (unless such matter is ministerial in nature).

# FINANCIAL DISCLOSURE

## Violations and Civil Penalties

If you fail to file your FDS or if you file a deficient FDS, JCOPE will notify you.

If you fail to comply, JCOPE will send you and your appointing authority a notice of delinquency that advises you of fees and penalties. Notices of delinquency are made publicly available on the Commission's website.

If you still fail to file your FDS, you may be subject to a civil penalty up to \$40,000 after a hearing.

In lieu of a civil penalty or in addition to such penalty, JCOPE may refer a violation to the appropriate prosecutor for criminal prosecution as a misdemeanor offense.

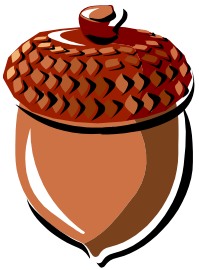


**PUBLIC OFFICERS**

**LAW §74**

**THE CODE OF ETHICS**

# PUBLIC OFFICERS LAW §74 -THE CODE OF ETHICS



## In a nutshell...

The Code of Ethics is intended to prevent the use of individuals' official position or authority for the benefit of themselves or another.

The Code of Ethics not only addresses actual conflicts of interest, but also the appearance of such conflicts when performing official duties.

## The Code of Ethics embodies the guiding principles of:

- Impartiality
- Confidentiality
- Stewardship of State resources
- Integrity

# PUBLIC OFFICERS LAW §74 -THE CODE OF ETHICS

## The Code of Ethics applies to **all** Officers and Employees of New York State including:

- Legislative members and employees
- Officers or employees of any State agency, department, division, board, commission, or any public benefit corporation or public authority at least one of whose members is appointed by the Governor, *including unpaid and per diem officers and members of such entities.*
- Officers or employees of the following specific “closely affiliated corporations:” Youth Research Inc., The Research Foundation for Mental Hygiene, Inc., Health Research Inc., The Research Foundation of the State University of New York, and Welfare Research Inc.



# PUBLIC OFFICERS LAW §74 -THE CODE OF ETHICS

## The General Rule: Public Officers Law §74(2)



**New York State officers and employees and Legislative members and employees shall not...**

“have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his (or her) duties in the public interest.”



# ETHICAL STANDARDS OF CONDUCT

## **Public Officers Law §74(3)(a):**

No covered person shall accept other employment which will impair his independence of judgment in the exercise of his official duties.

### **Example:**

You are an engineer for Long Island Rail Road (“LIRR”) working on a contract for services on Railway Project X. LIRR has retained the outside engineering firm ACME Co. to work on this project. In your official capacity with LIRR, you review ACME Co.'s work to determine whether ACME Co. has complied with LIRR's contract.

ACME Co. offers you a part-time position as a consulting engineer on a completely different project that does not involve Railway Project X, LIRR or its parent agency MTA.

Can you pursue this outside employment?

# ETHICAL STANDARDS OF CONDUCT

## Answer:

No. Accepting this employment would jeopardize your **impartiality** as an LIRR engineer because you would have the discretion to determine whether ACME Co. has met its contractual obligations with LIRR for Railway Project X.

This outside employment creates a public perception that your objectivity in regard to your LIRR duties may be impaired since you are privately benefiting from the consulting relationship with ACME Co.

# ETHICAL STANDARDS OF CONDUCT

## **Public Officers Law §74(3)(b):**

No covered person shall accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

### **Example:**

You are an information technology professional for the Office of Information Technology Services (“ITS”). In addition, you occasionally serve as an expert witness on cyber security.

You should be careful not to accept an assignment or give testimony that requires you to disclose confidential information which you have gained by reason of your ITS position.

# ETHICAL STANDARDS OF CONDUCT

## **Public Officers Law §74(3)(c):**

No covered person shall disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

### **Example:**

You work as a Child Protective Manager for the Office of Children and Family Services ("OCFS") and have access to CONNECTIONS, a confidential database of child abuse and maltreatment investigations throughout NYS.

Your good friend is the non-custodial grandmother of a child who is a victim of child abuse and an OCFS client. When asked by your friend, you disclosed information accessed through CONNECTIONS related to your friend's grandchild.

Disclosure of confidential information to an unauthorized person would be a violation of Public Officers Law §74(3)(c).

# STANDARDS OF ETHICAL CONDUCT

## **Public Officers Law §74(3)(d):**

No covered person shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

## **Example:**

You are an employee at a State Agency. You also have your own desktop publishing business. On occasion you use the State Agency's scanners, printers, computers and technical software to perform services for your clients.

By utilizing the State Agency's resources and equipment for the benefit of your private business, you have violated Public Officers Law §74(3)(d).

# STANDARDS OF ETHICAL CONDUCT

## **Public Officers Law §74(3)(e):**

No covered person shall engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

## **Example:**

A covered person is an executive at a State agency and will be part of a team evaluating applications for energy efficiency grants. The covered person is also a paid Board member of a corporation that is seeking to apply for one of the grants. In his official capacity at the State agency, can he participate in the evaluation of the corporation's application?

# STANDARDS OF ETHICAL CONDUCT

## Answer:

No. Given his outside activity as a Board member of the corporation, the covered person has at least an indirect financial interest in the awarding of the grant. Thus, his participation in an application decision regarding the corporation could reasonably conflict with the proper discharge of his State agency duties and would be a violation of §74(3)(e).

The covered person must recuse not only from participating in the State agency's evaluation of the corporation's application, but also from assisting the corporation's Board and staff in preparing its application.

In addition, the covered person should not consult with any member of the State agency as to the merits of the corporation's application.

# STANDARDS OF ETHICAL CONDUCT

## **Public Officers Law §74(3)(f):**

A covered person shall not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.



# STANDARDS OF ETHICAL CONDUCT

## Public Officers Law §74(3)(g):

A covered person shall abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

### Example:

A State agency will decide whether to locate a new power plant in the State. Should the power plant be approved, the value of the company owning the power plant will greatly increase.

The Chair of the agency has an opportunity to invest in the power plant company prior to the conclusion of the proceeding. The Chair **must not** invest in the company because it would create a substantial conflict between his duty as Chair and his personal financial interests.

# STANDARDS OF ETHICAL CONDUCT

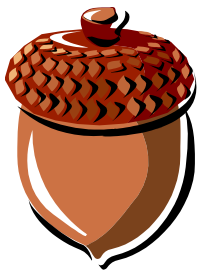
## **Public Officers Law §74(3)(h):**

A covered person shall endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

# STANDARDS OF ETHICAL CONDUCT

## **Public Officers Law §74(3)(i):**

No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.



### **In a Nutshell...**

If you are a full-time State Officer or Employee, you are prohibited from contracting for the provisions of goods and services with entities regulated or licensed by your agency. You may, depending on the circumstances, be permitted to concurrently work as an employee for such regulated entities.

# THE CODE OF ETHICS

## Civil Penalty Amount

### Public Officers Law §74(3) (a), (b),(c), (d), (e), (g) and (i):

- Civil penalty of up to \$10,000 and the value of any gift, compensation or benefit received as a result of such violation.

### Please note:

Violations of §§74(3)(f) and (h) carry no monetary civil penalty under the Public Officers Law; however violators are still subject to his or her agency's disciplinary action, which may include a fine or garnishment.



**OTHER APPLICATIONS OF  
§74**

**REVERSE TWO-YEAR BAR**

# REVERSE TWO-YEAR BAR

If you are entering State service from the private sector, the “reverse two-year bar” may, depending on the circumstances, require you to recuse from matters directly involving your former private sector employer for a two year “cooling off” period.

The Commission interpreted Public Officers Law §74 to contain this “reverse two-year bar” in Advisory Opinion Nos. 98-09 and 07-4.

In practice, the “reverse two-year bar” prevents the appearance that you, in the performance of your State duties, may give preferential treatment to - or be unduly influenced by - your former private sector employer.

## Did you know?



If your Ethics Officer or JCOPE determines that your recusal is appropriate, it runs for two years from the date that you terminated employment with the private sector employer.



**OTHER APPLICATIONS OF  
§74**

**NEGOTIATION OF FUTURE  
EMPLOYMENT**

# NEGOTIATION OF FUTURE EMPLOYMENT

## General Overview

As a State officer or employee, there are restrictions on when and if you may negotiate future employment with an entity or individual that has a specific matter pending before you.

## Rule on Solicited Offers

If you are interested in soliciting an employment opportunity with such an entity or individual, you may only solicit an employment opportunity after waiting 30 days from:

1. The date the matter before you closed; or
2. The date on which you notified your supervisor or Ethics Officer of your intent to solicit a job offer and recused yourself from the matter.



# NEGOTIATION OF FUTURE EMPLOYMENT

## **Rule on Unsolicited Offers**

If you receive an unsolicited job offer from an entity or individual that has a specific matter pending before you, you can only pursue employment discussions or negotiations with that entity or individual after waiting 30 days from the date:

1. You notify your supervisor or Ethics Officer of the unsolicited offer; and
2. Recuse yourself from the matter and any further contact with the entity or individual.

# NEGOTIATION OF FUTURE EMPLOYMENT

## **Duty to Notify**

You have a duty to promptly notify your supervisor or Ethics Officer if you intend to solicit a job offer, or if you receive an unsolicited job offer, from an entity or individual that has a specific matter pending before you.

## **Potential Violations**

Depending on the circumstances, failure to follow these requirements for solicited and unsolicited job offers could result in a violation of the Code of Ethics and/or the Gift Prohibition set forth in Public Officers Law §73(5)(a).



# PUBLIC OFFICERS LAW §73

# PUBLIC OFFICERS LAW §73

## Public Officers Law §73 applies to:

- Statewide Elected Officials
- Legislative members and employees
- Officers and Employees of NYS departments, boards, bureaus, divisions, commissions, councils, or other State agencies (***other than unpaid and per diem officers of such entities***)
- Members, directors, and employees of NYS public authorities and public benefit corporations (***other than unpaid and per diem members and directors of such entities***)

## **Public Officers Law §73 and Related Subject Matter:**

- Outside employment and professional activities
- Restrictions on political activities
- Nepotism
- Gifts
- Honorarium
- Travel payments for official activities
- Post-employment restrictions

# PUBLIC OFFICERS LAW §73 AND OUTSIDE ACTIVITIES



## General Rule

All covered individuals – **both Policy Makers and non-Policy Makers** - should evaluate the proposed activity **in light of Public Officers Law §§73 and 74.**

Prior to engaging in any outside activities, all covered individuals should seek advice from their Agency Ethics Officer or JCOPE concerning the propriety of such employment under the applicable laws and regulations.

Title 19 NYCRR Part 932 are the rules governing outside activities.



# PUBLIC OFFICERS LAW §73

## OUTSIDE ACTIVITIES

# OUTSIDE ACTIVITIES

**Part 932:** Policy Makers\* need approval for Outside Activities above the Compensation Threshold.

*\*(other than unpaid or per diem)*

## Compensation Threshold Amounts:



**Greater than \$1,000** – requires Agency approval.

**Greater than \$4,000** – requires JCOPE approval as well as the Agency's prior approval submitted in the Outside Activity Report, which is a form available on JCOPE's website.



# OUTSIDE ACTIVITIES

## Part 932: Approval Procedure for Policy Makers

- For Statewide Elected Officials and State Agency Heads, the Approving Authority is JCOPE.
- For Policy Makers (other than unpaid or per diem officers), the Approving Authority is the State agency or appointing authority.

***However, for the following activities Policy Makers must also seek JCOPE Approval:***

- Campaigning for and holding other public office regardless of compensation
- Private or public employment or activity involving compensation of more \$4,000
- Serving as a director or officer of a for profit corporation or institution

# OUTSIDE ACTIVITIES

## Part 932: Restrictions on Political Activities

### Part 932.2(a)

Policy Makers (*other than unpaid and per diems*) cannot serve as an officer of any political party or political organization.

### Part 932.2(b)

Policy Makers (*other than unpaid and per diems*) cannot serve as a member of any political party committee including political party district leader or member of the national committee of a political party.



# OUTSIDE ACTIVITIES

## Public Officers Law §73(4)

"No State Officer or Employee shall sell any goods or services having a value in excess of \$25 to any State agency unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding."

### Example:

You are a Department of Labor employee. You also have a seasonal snow plowing business. Is it permissible to provide snow plowing services at a regional office of a NYS Public Benefit Corporation?

This outside activity is permissible if you provide such services pursuant to a contract that was publicly noticed and competitively bid.

# OUTSIDE ACTIVITIES

## Public Officers Law §73(7)

Covered persons are prohibited from rendering services for compensation before **any** State agency in relation to:

- The purchase, sale, rental or lease of real property, or goods or services;
- Any proceeding relating to rate making;
- The adoption or repeal of any rule or regulation having the force and effect of law;
- The obtaining of grants of money or loans;
- Licensing; or
- Any proceeding relating to a franchise provided for in the public service law.

# OUTSIDE ACTIVITIES

## **Public Officers Law §73(7) Example**

You are a Department of Transportation (“DOT”) engineer. As an outside activity, you perform engineering services as a consultant. A client asks you to design a septic system plan and application that must be submitted to the Department of Environmental Conservation (“DEC”) for its review and evaluation in order to issue a wastewater permit to your client.

You may not, for compensation, perform such work and submit the permit application to DEC even though there is no connection between your official duties at DOT and this application before DEC.



# PUBLIC OFFICERS LAW §73 NEPOTISM RESTRICTIONS

# NEPOTISM

## Public Officers Law

### §73(14)

State employees are **banned** from participating in any decision to hire, promote, discipline or discharge a **relative**.

### §73(15)

State employees are prohibited from awarding contracts to a relative or investing public funds in any security in which a **relative** has a financial interest.

### Definition of “Relative” in §73(1)(m):

Any person living in the same household as the covered individual or any person who is a direct descendant of that covered individual’s grandparents or the spouse of such descendant.



**PUBLIC OFFICERS  
LAW §73  
GIFTS**



## Regulatory Update



- Effective as of June 18, 2014, there are new regulations governing the acceptance of gifts.
- The new gift regulations are contained in 19 NYCRR Part 933.

# GIFTS: NEW REGULATIONS (19 NYCRR PART 933)



## Overview

- The new regulations require that an analysis be done before you accept or receive a “Gift” (defined on the next page) from an individual or entity.
- Under the analysis, you are presumptively prohibited from accepting, or receiving a Gift from an “Interested Source.”
- The new regulations and the statute also list exclusions to the definition of Gift. You may accept these items or services from anyone as long as the acceptance does not create an actual or apparent conflict of interest or give the impression of improper influence.

# GIFTS: DEFINITION OF A GIFT

## What is a “Gift?”

Anything of more than “nominal value.”

- A Gift includes, but is not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, forbearance or a promise having a monetary value.
- “Nominal Value” – is not specifically defined. The Commission will generally consider something that has ***a fair market value of \$15 or less*** to be of Nominal Value.

# GIFTS: INTERESTED SOURCE

## **An Interested Source is a person or entity that:**

- Is regulated by or appears before you or your agency
- Has contracts with, or seeks contracts with, you or your agency
- Is a registered lobbyist or client of a lobbyist that lobbies your agency
- Is the spouse or the minor child of a registered lobbyist or client of a lobbyist that lobbies your agency
- Is involved in ongoing litigation that is adverse to you or your agency
- Has received or applied for funds from your agency at any time during the previous year up to and including the date of the proposed or actual receipt of the gift
- Attempts to influence you or your agency in an official action

# GIFT EXCLUSIONS

- The following items are not considered to be “Gifts” under the regulations.
- You may, therefore, accept these items provided that your acceptance does not violate Public Officers Law §74. In other words, you may accept these items or services from anyone as long as the acceptance does not create an actual or apparent conflict of interest or give the impression of improper influence.
  - Tickets to bona fide charitable and political events
  - Awards or plaques in recognition of public service
  - Honorary degrees
  - Promotional items with no resale value
  - Discounts available to the general public, or a broad segment thereof, e.g., wireless providers offer discounts to all government employees
  - Gifts from those with whom there is a demonstrated familial or personal relationship
  - Contributions reportable under the Election Law
  - Travel payments for speakers at informational events when payment or reimbursement is offered by a governmental entity or an in-state accredited institution of higher education
  - Meals and beverages provided to participants at professional and educational programs

# GIFTS: EXCLUSIONS (CONT)

- Local travel payments for tours related to one's official activity
- Food or beverage valued at \$15 or less per event
- Complimentary attendance offered by the sponsor of a Widely Attended Event

The following four conditions must be satisfied to qualify for the “**Widely attended event**” exclusion

1. Complimentary admission must be offered by the sponsor of the event, **and**
2. 25 individuals, who are not from your Agency, attend or are in good faith invited to attend, **and**
3. (a) The event is related to your official duties or responsibilities (this can be satisfied if there is a speaker at the event who addresses an issue of public interest or concern)  
  
or  
  
(b) The event allows you to perform a ceremonial function appropriate to your position
4. You inform your ethics officer in writing of the Widely Attended Event *prior* to the event taking place.

# GIFTS: STEP-BY-STEP ANALYSIS

- 1) Does the item or service have less than a Nominal Value?  
Yes – There is no need for further analysis. The item or service may be accepted  
No – Go to Step #2
- 2) Does the item or service fall into one of the Exclusions?  
Yes – The item or service may be accepted as long as the acceptance does not create an actual or apparent conflict of interest or give the impression of improper influence  
No – Go to Step #3
- 3) Is the Gift from an Interested Source?  
Yes – **Gift is presumptively prohibited unless** it is **not** reasonable to infer that the Gift was (i) intended or expected to influence the Covered Person or (ii) intended as a reward for official action  
No – **Gift is ordinarily permissible unless** it could be reasonably inferred that the Gift was (i) intended or expected to influence the Covered Person or (ii) intended as a reward for official action



# GIFTS: OTHER CONSIDERATIONS

## Gifts to Third Parties are Prohibited

You cannot redirect an impermissible Gift to a third party, including your spouse or child or a charitable organization.

## Multiple Gifts from the Same Source

If you accept multiple *permissible* Gifts from the same source, you could, depending on the circumstances, violate Public Officers Law §74 by creating an actual or an apparent conflict of interest or an appearance of improper influence.







# HONORARIUM

# HONORARIUM: DEFINITION

## What is an Honorarium?

A payment offered in exchange for a professional service or activity, such as giving a speech, writing an article, or serving on a panel and a seminar or conference, that is **not part** of the State person's official duties.

An honorarium includes expenses incurred for travel, lodging, and meals related to the service performed.



## **Honoraria must be approved by an individual's Approving Authority**

For a State Officer or Employee, the Approving Authority is the Head of a State Agency or Appointing Authority.

For Statewide Elected Officials and State Agency Heads (including Civil Department Heads), the Approving Authority is JCOPE.

- Written requests should be made to the Approving Authority prior to performing the requested service or activity.

# HONORARIUM: PART 930

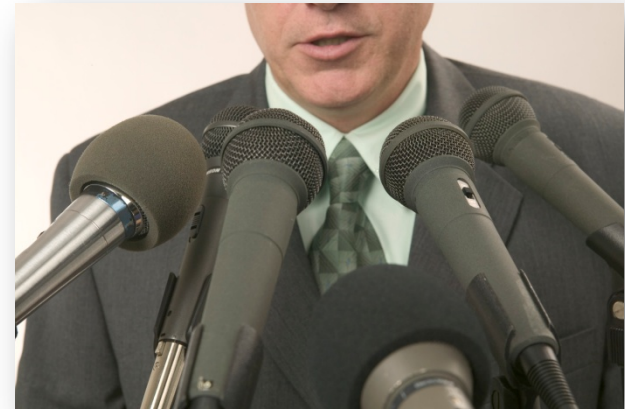
## General Requirements for Approval

- Cannot use State resources to prepare for or perform such service or activity
- Must perform service or activity during non-official, personal time
- An honorarium from an “Interested Source” is ordinarily impermissible
- Must report Honoraria on FDS

# HONORARIUM: PUBLIC OFFICERS LAW §73(5-a)

## Special Ban on Paid Speeches

*Statewide Elected Officials and Civil Department Heads **shall not** accept an honorarium for any speech.*



*Please note that not all State agencies are considered Civil Departments.  
See, Article 5, Section 2 of the New York State Constitution*



# OFFICIAL ACTIVITY EXPENSE PAYMENTS

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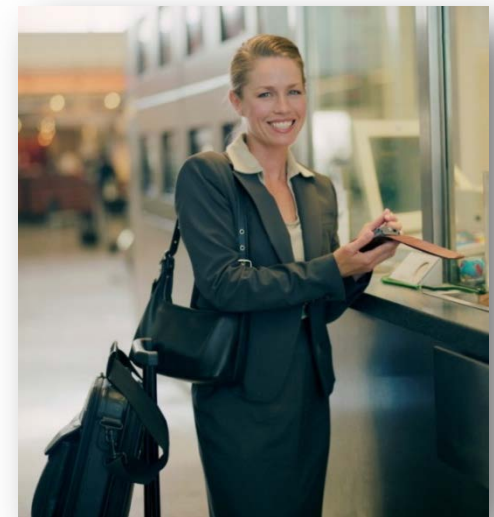
## Governed by Part 931

- A Covered Person may accept payment or reimbursement from third parties for travel and other expenses for an activity that is part of, and related to, his or her official position provided certain conditions are met.

## Payments/reimbursements for official activity expenses must be approved by the Approving Authority

- For a State Officer or Employee, the Approving Authority is the Head of a State Agency or Appointing Authority.
- For Statewide Elected Officials and State Agency Heads, the Approving Authority is JCOPE.

***Requests for approval must be made within a reasonable period of time prior to engaging in the official activity***



# OFFICIAL ACTIVITY EXPENSE PAYMENTS

## Summary of Part 931 Requirements

- Mode of travel and related expenses must be in accordance with your agency's travel policy
- Payment or reimbursement from an "Interested Source" is ordinarily impermissible
- Must report travel reimbursement on FDS





# POST-EMPLOYMENT RESTRICTIONS

PUBLIC OFFICERS LAW  
§73(8)(a)

# POST-EMPLOYMENT RESTRICTIONS

Post-employment restrictions apply to **all** State Officers and Employees subject to Public Officers Law §73.

Please note that the post-employment restrictions apply to part-time and seasonal employees. These restrictions apply equally to a one-day or thirty-year hire.

## Types of Restrictions:

- Two-year bar
- Lifetime bar



# POST-EMPLOYMENT RESTRICTIONS

## **TWO-YEAR BAR: §73(8)(a)(i)**

The two-year bar creates a "cooling off" period to prevent the appearance that you could unduly influence your former agency. The two-year bar contains two restrictions both of which apply for two years immediately following your separation from State services.

### **1. Appearance/Practice Prohibition**

- You may not appear or practice before your former agency.
- This prohibition applies to both paid and unpaid work.

### **Some examples of prohibited appearances or practices are:**

- negotiating a contract with a former agency;
- submitting a grant proposal or application to a former agency;  
and
- representing a client in an audit before a former agency.

# POST EMPLOYMENT RESTRICTIONS: TWO-YEAR BAR

## 2. Backroom Services Prohibition

- You are prohibited from being paid to perform certain services on behalf of a client that are in relation to a matter before your former agency even if those activities do not involve appearing or practicing before your former agency.
- This prohibition applies only to paid work. There is no prohibition on performing backroom services for no compensation.

### **Some examples of prohibited services are:**

- preparing documents for a private firm when it is reasonably foreseeable that the documents will be reviewed by your former agency;
- assisting another person in the creation or development of an application to be submitted to your former agency; and
- assisting another person in the creation or development of a plan or strategy for influencing a decision of your former agency.

## **Special Two-Year Bar for Executive Chamber Employees:**

- Former Executive Chamber employees are prohibited from appearing or practicing regardless of compensation before all State agencies, not just the Executive Chamber.
- They may, however, perform backroom services for compensation to State agencies other than the Executive Chamber.

# POST-EMPLOYMENT RESTRICTIONS

## Two-Year Bar Waiver for Laid Off State Officers and Employees

- Pursuant to Public Officers Law §73(8)(b)(i), the two-year bar does not apply to a State Officer or Employee terminated between January 1, 2009 and April 1, 2014 because of **economy, consolidation or abolition of functions, curtailment of activities or other reduction in the state work force.**
- On or before the date of such termination, the State agency shall provide a written certification and notice to the employee that he or she is covered by this waiver.
- Non-Policy Makers who receive this certification are automatically exempt from the two-year bar.
- There is an extra step for Policy Makers that requires JCOPE approval:
  - For each job opportunity, a Policy Maker must also apply to the JCOPE to by submitting a form available on JCOPE's website.
- After review, JCOPE approves the certification.

**Please note that the lifetime bar still applies.**

# POST-EMPLOYMENT RESTRICTIONS

## The Lifetime Bar - §73(8)(a)(ii)

“No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any **case, proceeding, application or transaction** with respect to which such person was **directly concerned** and in which he or she **personally participated** during the period of his or her service or employment, or which was under his or her **active consideration.**”

# POST-EMPLOYMENT RESTRICTIONS

## What you need to know... The Lifetime Bar

- If you participated in a specific case, proceeding, application or transaction while in State service:
  - 1) If the same matter is before any New York State agency, you cannot ever participate regardless of compensation.
  - 2) If the same matter is not before a New York State agency, you may perform services on the same matter provided you receive no compensation.



Not sure if you are life-time barred from a matter?

Prior to accepting any new employment, please contact JCOPE for post-employment guidance.



# POST-EMPLOYMENT RESTRICTIONS: EXCEPTIONS

## 3 Common Exceptions

### 1. Government-to-Government

- Accepting a position as an employee of a Federal, state, or local government entity. Exception **does not apply** to independent contractors retained by such government entities.

### 2. Continuity of Care for Health Care Professionals

- Former State-employed health care professionals may treat patients and clients at the State facility which formerly employed the health care professional.

### 3. Public Officers Law §73(8-b) Certificate of Exemption

# POST-EMPLOYMENT RESTRICTIONS

## Public Officers Law §73(8-b) Certificate of Exemption

- Pursuant to Public Officers Law §73(8-b), JCOPE is authorized to grant exemptions to both revolving door provisions of the Public Officers Law to permit an agency to contract with a former employee for services.
- JCOPE can issue a Certificate of Exemption where “the agency head certifies in writing to the Commission that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost.”



**CIVIL SERVICE LAW**  
**§107**  
**“LITTLE HATCH ACT”**

# CIVIL SERVICE LAW §107

## Political Activity in the Workplace

- The term "political activity" means doing something in active support of or opposition to a political party, a candidate for partisan political office (e.g., President, senator, representative, state or local legislature or office), or a partisan political group.
- Civil Service Law §107 prohibits certain political activity in the workplace.
- JCOPE has the jurisdiction to enforce these restrictions over those individuals subject to Public Officers Law §73.

# CIVIL SERVICE LAW §107

## Prohibitions

- State Officers and Employees may not be questioned, directly or indirectly, about their political affiliation as a condition of employment.
- A potential employee cannot be asked about their political party affiliation, whether or not that applicant made any political contributions or how that applicant voted.
- No person can use his or her official State position to coerce, intimidate or influence other State Officers or Employees for any political purpose, action or contribution, or interfere with any election.
- State offices may not be used for soliciting or collecting any political contributions.
- No State Officer or Employee shall corruptly use or promise to use any official authority or influence in exchange for political action on another's part.

# CIVIL SERVICE LAW §107

## **Examples of political activity that would violate Civil Service Law §107 if done while on duty or using NYS property include:**

- circulating a candidate's nominating petition within your office;
- using the computer in your office after work to produce a brochure in support of a candidate's campaign;
- sending e-mail invitations to campaign events to friends within the agency; and
- using New York State Internet connections to forward e-mail messages received from a partisan campaign or someone supporting a partisan candidate.

# CONTACT INFORMATION



FOR QUESTIONS ON TRAINING EMAIL US AT:  
**[education@jcope.ny.gov](mailto:education@jcope.ny.gov)**

FOR LEGAL GUIDANCE EMAIL US AT:  
**[legal@jcope.ny.gov](mailto:legal@jcope.ny.gov)**

OR CONTACT US BY PHONE AT:  
**(518) 408-3976**