



May 18, 2012

**Joint Commission on Public Ethics**  
**540 Broadway**  
**Albany, New York 12207**  
**Email: [jcope@jcope.ny.gov](mailto:jcope@jcope.ny.gov)**

**VIA EMAIL**

Dear Commissioners,

We write in response to the invitation for public comment by the Joint Commission on Public Ethics (JCOPE) for developing guidelines and regulations relating to new disclosure requirements of business relationships and sources of income of lobbyists and clients of lobbyists pursuant to The Public Integrity Reform Act of 2011.

Citizens Union is a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union serves as a civic watchdog, combating corruption and fighting for political reform. We work to ensure fair and open elections, honest and efficient government, and a civically-engaged public.

Citizens Union commends JCOPE for soliciting input at this early stage before draft rules have been written. Absent guiding questions or identification of areas that JCOPE is seeking input for, we have focused on those issues we believe should be addressed in the rules. We do, however, welcome the opportunity to address other issues that may surface or are of concern to JCOPE.

Our recommendations to inform the development of regulations are summarized immediately below and described in full in the subsequent sections of this commentary.

*Disclosure of Business Relationships*

1. Disclosure by lobbyists and clients of business relationships should be prospective with reporting only required for new business relationships or new matters for existing business relationships reported.
2. Lobbyists and clients should report the general subjects of business relationships in conformance with a listing of subject areas that is created for the purposes of reporting by JCOPE. The listing should match the subjects of business relationships disclosed by public officers and state employees in their financial forms, namely bills, resolutions, contracts and grants.

3. A public officer or state employee playing a significant role, albeit not an exclusive or primary role, in performing or providing goods or services in a business relationship should be reported by the lobbyist or client.
4. Certain factors should determine whether a lobbyist or client had “reason to know” whether a public officer or state employee had an ownership stake or management position in a corporation or firm including but not limited to:
  - a. the origins of the business relationship;
  - b. the length of the business relationships;
  - c. the nature of the business relationship;
  - d. the dollar value of the business relationship;
  - e. whether the ownership or management status of the public officer or state employee is reasonably obtainable publicly available information; and
  - f. any efforts by the lobbyist or client to obtain such information regarding ownership or management status.

*Disclosure of Sources of Income for Certain Lobbyists and Clients*

5. Full names, for example those on birth certificates or other official documents, should be reported to the extent practicable in disclosing sources of income. Abbreviations or nicknames should not be reported.
  - a. Additional identifying information (like a source’s employer’s name and address as provided to the Department of State) beyond full names should be sought by JCOPE to distinguish donors from each other and to identify trends in contributions to lobbying activity by particular employers or industries.
6. “Sources of income” should be defined to ensure single sources of income are treated as such for limited liability corporations, limited liability partnerships, affiliated unions, and individuals in the same family.
7. JCOPE should be exceptionally judicious in providing any further blanket exemptions to disclosure of sources of income for areas of public concern beyond civil rights and civil liberties.
  - a. JCOPE should define “harm”, “threats”, “harassment” or “reprisals” in a manner consistent with definitions in penal law provided the definitions also consider financial damage or threats of financial damage to the donor or organization. This will ensure that frivolous claims do not serve as the basis for a wholesale exemption of entire issue area from disclosure.
  - b. A “substantial likelihood” of harm, threats harassment or reprisals should be interpreted as a high threshold met only if there are a significant number of recently documented cases of threats or injury to actual lobbyists or advocates or their funders working in the issue area. Blanket exemptions from donor disclosure should not be provided to entire issue areas simply because there is a perceived danger but only when there is data to support such a perception.
  - c. The location and date of documented cases of harm, threats, harassment and reprisals should be taken into account in any blanket exemption of all disclosure of sources of income funding an issue area.

- d. Any blanket exemptions that are granted should be temporary in nature and subject to review and renewal.

*Integration of New Disclosure Requirements in JCOPE's Work*

8. Online ethics training for lobbyists should reflect the need to report sources of income and business relationships as applicable.
9. Complaint procedures should be modified to allow for complaints for lack of disclosure of sources of income and business relationships.
10. Auditing should check for disclosure of sources of income and business relationships.
11. Computer databases available to the public should integrate new reporting requirements and allow for searches by source of income and business relationships.
12. The annual report issued by the Commission should include top sources of income to lobbying entities; lobbyists and clients with the most business relationships; and the business relationships of the highest dollar values ranked overall and by subject area.

**Disclosure of Reportable Business Relationships**

The Public Integrity Reform Act of 2011 requires that lobbyists in their statement of registration and clients in their semi-annual reports disclose "reportable business relationships." A reportable business relationship is defined in the Lobbying Law as:

"a relationship in which compensation is paid by a lobbyist or by a client of a lobbyist, in exchange for any goods, services or anything of value, the total value of which is in excess of one thousand dollars annually, to be performed or provided by or intended to be performed or provided by (i) any statewide elected official, state officer, state employee, member of the legislature or legislative employee, or (ii) any entity in which the lobbyist or the client of a lobbyist knows or has reason to know the statewide elected official, state officer, state employee, member of the legislature or legislative employee is a proprietor, partner, director, officer or manager, or owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange)."

Lobbyists and clients are required to disclose for each reportable business relationship the public office address of any statewide elected official, state officer, state employee, member of the legislature or legislative employee and entity in which any of aforementioned public officers and state employees has a substantial ownership stake or is in a senior management position. They are additionally required to disclose the general subjects of the business transaction and the costs and compensation involved and the amount of each that has been paid to date.

In promulgating the rules and guidelines for these sections of law pertaining to disclosure of reportable business relationships, JCOPE should examine the required reporting in law by the other side of the business transaction with lobbyists and clients: the public officers and state employees. Public officers and state employees are required to disclose certain business relationships in their financial disclosure forms as required by Public Officers Law 73-A amended

by the Public Integrity Act of 2011. They are required to report as of June 1, 2012, new customers and clients or new matters for existing customers and clients in instances in which they refer the customer or client to the firm or corporation of which they are part or personally provide services valued over \$10,000 annually in connection with bills, resolutions, large contracts and grants.

The disclosure of business relationships required of public officers and state employees is informative in considering JCOPE rules and guidelines for disclosure by lobbyists and clients. As is done for disclosure of business relationships of public officers and state employees, Citizens Union believes disclosure by lobbyists and clients should be prospective with only new business relationships reported or new matters for existing business relationships. The general subjects of the business relationships disclosed by the lobbyists or clients should conform to a list of subject areas created for the purposes of reporting by JCOPE. This list should include general subjects that match categories disclosed by public officers and state employees in their financial forms, namely bills, resolutions, contracts and grants. If lobbyists and clients are required to report general subjects of business relationships aligned with a listing of subjects created by JCOPE, it will allow for disclosure in its database that can more easily be analyzed by good government groups, journalists and the general public. It will also enable more direct comparisons to be made with required reporting of public officers and state employees which, while varying in dollar value, will ensure required reporting is taking place by both sides of the business relationship.

JCOPE should also clarify what “to be performed or provided by” means in the definition of “reportable business relationship.” Citizens Union recommends that if the public officer or state employee plays a significant role, albeit not an exclusive or primary role, in performing or providing goods or services that the relationship be reported by the lobbyist or client. JCOPE will also need to further explain what qualifies as a lobbyist having “reason to know” when a public officer or employee has significant ownership stake or is a senior employee in an entity with which they do business that would trigger reporting even if the public officer or employee was not directly performing or providing the goods or services. Citizens Union believes certain factors should determine whether a lobbyist or client had “reason to know” including but not limited to: 1) the origins of the business relationship; 2) the length of the business relationship; 3) the nature of the business relationship; 4) the dollar value of the business relationship; 5) whether the ownership or management status of the public officer or state employee is reasonably obtainable publicly available information; and 6) any efforts by the lobbyist or client to obtain such information.

### **Sources of Funding by Certain Lobbyists and Clients**

The Public Integrity Reform Act of 2011 provides specific criteria detailing the circumstances under which particular lobbyists and clients must disclose certain sources of income that support their lobbying activities. The Act requires that lobbyists advocating on their own behalf and clients filing semiannual reports disclose the names of their sources of income if meeting particular criteria. Lobbyists and clients are only required to disclose sources of income if, during the calendar year or in the last year from the date of filing of required reports, reportable expenditures and

compensation exceed \$50,000 and three percent of total expenditures of the organization were devoted to lobbying in New York State. 501c3 organizations are exempted from disclosure, as are 501c4 organizations whose “primary activities concern any area of public concern determined by the commission to create a substantial likelihood that application of this disclosure requirement would lead to harm, threats, harassment, or reprisals to a source of funding or to individuals or property affiliated with such source, including but not limited to the area of civil rights and civil liberties.” A source of income is only disclosed if providing over five thousand dollars in contributions that “were used to fund the lobbying activities reported.”

The lobbyist or client can also present facts in advance of any disclosure to JCOPE that disclosure of a particular source of income “may cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source.” Should JCOPE make a determination that the source of income should be disclosed, the lobbyist or client can appeal to an independent judicial hearing officer without disclosure of the particular source of income until a final determination is made.

Citizens Union believes the Act already provides numerous exceptions to reporting sources of income for lobbying activity, and any rules or guidelines promulgated by JCOPE should generally seek to promote transparency of those who fund lobbying activity, which has grown astronomically in the last two decades. A record \$220 million was spent on lobbying activity in 2011, more than three times the \$66 million spent in 2000 and more than seven times the \$31 million spent in 1991.<sup>1</sup>

In promulgating rules or providing guidelines for sources of funding of lobbying activity, JCOPE should prescribe how names of sources of income should be provided. While this may appear to be a non-issue at first blush, our experience in using databases related to campaign finance disclosure is that the inconsistent manner in which names are provided frustrates transparency. JCOPE should require that full names be reported without the use of abbreviations or nicknames as provided on birth certificates or other official documents. While a plain reading of the Act does not appear to provide latitude to obtain additional information about sources of income such as employer or address, the disclosure of only a name will mean little if it is a common name such as “John Smith.” It may even be misleading or confusing if there are multiple identical names within the same lobbying entity required to report its sources of income or for multiple different entities that appear to have the same donor when in fact there are numerous donors with the same common name. Citizens Union recommends that JCOPE seek additional identifying information, to the extent the law allows, like a source’s employer and address (as reported to the Department of State) from lobbying entities required to provide their sources of income to distinguish sources of income from each other and reveal trends by certain employers or industries in funding lobbying activities.

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<sup>1</sup> Karlin, Rick. “Lobbying is recession proof, says JCOPE’s Biben,” *Capitol Confidential*. March 27, 2012. Available at: <http://blog.timesunion.com/capitol/archives/122539/lobbying-is-recession-proof-says-jcopes-biben/>

JCOPE should also clarify what is meant in the Act by “sources of income” to ensure single sources of income are treated as such. The state’s porous campaign finance laws allow for entities to circumvent contribution limits by spinning off limited liability corporations (LLCs) and partnerships (LLPs). Affiliated unions engage in similar activity. Similar practices with regard to contributions to lobbying entities could be done to evade disclosure under the Act. For example, real estate entities that are in reality a single source could donate \$4,999 through numerous LLCs to a particular lobbying entity and avoid disclosure. JCOPE should promulgate rules and guidelines that close this potential loophole. For unions, we suggest that they be considered a single source if they share a majority of members of their governing boards, officers of their governing boards, make policy determinations together or one entity on behalf of another, lobby jointly or one on behalf of another, or share authority to hire, fire, manage or otherwise influence staff involved in policy or lobbying activities or one on behalf of another. JCOPE should also look to Public Officers Law 73-A related to financial disclosure in determining whether individuals should be considered as a single source. Citizens Union believes that contributions from an individual, their spouse or domestic partner, and their unemancipated children should be considered as one source for the purposes of disclosure of sources exceeding the \$5,000 threshold.

In promulgating rules and guidelines, JCOPE will also have to determine the scope of exemptions to disclosure for 501c4 organizations whose primary activities are in an area of public concern that creates a substantial likelihood that disclosure of sources of income would result in harm, threats, harassment, or reprisals to a source of funding or to individuals or property. The law already provides a blanket exemption to one area of concern: civil rights and civil liberties. Citizens Union recommends JCOPE narrowly interpret this provision and be exceptionally judicious in providing any further blanket exemptions for areas of public concern beyond civil rights and civil liberties.

Citizens Union believes for the purposes of this provision JCOPE should define “harm”, “threats”, “harassment” or “reprisals” in a manner consistent with definitions in penal law so that frivolous claims do not serve as the basis for a wholesale exemption of entire issue area from disclosure. Likewise, “substantial likelihood” should be interpreted as a high threshold met only if there are a significant number of recently documented cases of harm, threats, harassment or reprisals to actual lobbyists or advocates or their funders working in the issue area. Blanket exemptions from donor disclosure should not be provided to entire issue areas simply because there is a perceived danger but only when there is data to support such a perception. The location and date of those documented cases should also be taken into account. Any blanket exemptions that are granted should also be temporary in nature and subject to review and renewal because the danger of supporting particular positions on issues changes based upon the time and place in which advocacy is done.

Citizens Union advocates a narrow approach to exempting whole issue areas because the Act allows for lobbyists and clients to seek exemptions for groups of or individual donors, and appeal unfavorable decisions by the Commission. There is also nothing that precludes organizations from notifying their donors in advance that such disclosure will occur, and enabling donors to contribute funds to 501c4 activities that do not fall under the definition of lobbying. Advance

notice should provide adequate protection such that blanket exemptions for entire issue areas could be used sparingly.

### **Integrating New Reporting Requirements in JCOPE's Work**

Beyond these recommendations for disclosure of sources of funding for lobbying and business relationships, JCOPE should also integrate these new requirements into its existing practices. Online ethics training for lobbyists should reflect the need to report sources of income and business relationships as applicable. Complaint procedures should be modified to allow for complaints for lack of disclosure of sources of income and business relationships. Auditing should check for disclosure of sources of income and business relationships. Computer databases made available to the public should integrate these new reporting requirements so searches can be conducted by source of income and business relationships. The annual report issued by the Commission should include top sources of income to lobbying entities, lobbyists and clients with the most business relationships, and the business relationships of the highest dollar values ranked overall and by subject area.

Citizens Union thanks JCOPE for the opportunity to submit our comments, and is available to discuss our recommendations in greater detail. Should you have any questions or comments, please contact Alex Camarda, Citizens Union's Director of Public Policy & Advocacy, who participated in writing this testimony at [acamarda@citizensunion.org](mailto:acamarda@citizensunion.org) or 212-227-0342 ext 24.

Sincerely,

A handwritten signature in black ink that reads "Dick Dadey". The signature is written in a cursive, slightly slanted style.

Dick Dadey  
Executive Director