



August 16, 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) on draft guidelines relating to new disclosure requirements of business relationships of lobbyists and clients pursuant to The Public Integrity Reform Act of 2011 (PIRA).

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 not only following the release of guidelines for reporting business relationships but also prior to drafting the guidelines.

We also thank JCOPE for integrating in its draft guidelines two of our four previous recommendations. We are pleased that a State Person playing a significant role, but not necessarily exclusive or primary role, in performing or providing goods or services in a business relationship with lobbyists or clients will still be reported by those advocates. We also appreciate that JCOPE adopted several of our recommended factors to determine whether lobbyists or clients in a business relationship with a corporation or firm had “reason to know” a State Person was an owner or served in a management capacity at the entity at issue.

We generally believe the draft guidelines for reportable business relationships are well crafted and are intended to maximize transparency, as the guidelines should. This is evident in several instances in the draft guidelines. The calculation of the \$1000 annual threshold that triggers reporting is expansive. For example, contracts that don’t necessarily result in a payment of \$1000 every year are still reported in the event the relationship is ongoing over several years. This is consistent with the law’s provisions of reporting when the payment is to be paid or is paid. JCOPE’s adoption of our recommendation for defining “Performed or Provided” ensures that lobbyists and clients must report business relationships when a State Person is involved in the

Citizens Union of the City of New York  
299 Broadway, Suite 700 New York, NY 10007-1976  
phone 212-227-0342 • fax 212-227-0345 • [citizens@citizensunion.org](mailto:citizens@citizensunion.org) • [www.citizensunion.org](http://www.citizensunion.org)  
Peter J.W. Sherwin, Chair • Robert Abrams, CUF President • Dick Dadey, Executive Director

provision of goods, services or anything of value even if they are not solely responsible for performing or providing the goods or service. JCOPE also wisely decided to aggregate the value of business relationships a lobbyist or client may have with the same State Person. This will prevent many transactions that are small in value but significant in sum from being hidden from public view. We commend JCOPE for its approach in maximizing transparency in numerous instances in crafting these guidelines.

Our recommendations to refine the final guidelines are summarized immediately below and described in full in the subsequent sections of this commentary. Several of these recommendations were provided in our initial testimony and are repeated here again.

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. Exemptions should be granted to disclosure of business relationships that relate to personal medical and financial transactions that have no implications for broader policy-making.
4. Lobbyists' and clients' duty to amend their biennial registration should be limited to instances in which the amount of compensation related to the business relationship changes significantly (for example, 20 percent or more) unless it results in new disclosure as a result of exceeding the \$1000 threshold.
5. Online ethics training for lobbyists should reflect the need to report sources of income and business relationships as applicable.
6. Complaint procedures should be modified to allow for complaints for lack of disclosure of sources of income and business relationships.
7. Auditing should check for disclosure of sources of income and business relationships.
8. Computer databases available to the public should integrate new reporting requirements and allow for searches by source of income and business relationships.
9. 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**

### *PIRA*

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 (referred to in the guidelines as a “State Person) and entity in which any State Person has a substantial ownership stake or is in a senior management position (referred to in the guidelines as the “Requisite Involvement”). 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 or is scheduled to be paid.

#### *Effective Date*

In finalizing the guidelines for disclosure of reportable business relationships, JCOPE should make explicit the effective date for the reporting of business relationships by lobbyists and clients. Reporting of business relationships is laid out in sections eight and nine of PIRA of Part A of the law. Section 22 makes clear that Part A of the law takes effect immediately with some provisos. One of those conditions is the formation of JCOPE itself, which was established in December of 2011. This would suggest the date of JCOPE’s formation is in fact the effective date for reporting business relationships. However, given the fact that the guidelines are yet to be finalized, we believe JCOPE should require reporting prospectively starting with the semi-annual client report and the lobbyist registration next submitted (January 2013) after the date the guidelines are approved. This will provide adequate notice to lobbyists and clients reporting the relationships as to which information they need to report and facilitate proper record keeping. Lobbyists and clients should be required to report new relationships or new matters for old relationships predating PIRA in the reports subsequent to the finalization of the guidelines by JCOPE. This is consistent with the disclosure of business relationships required of public officers and state employees who are required to report new business relationships or new matters for existing business relationships in their financial disclosure reports as a result of the PIRA.

#### *Reporting General Subjects*

In our previous testimony, Citizens Union called for JCOPE to provide a listing of general business subjects that lobbyists and clients would have to report relationships in conformance with. To do otherwise will frustrate disclosure via a database or by other means. Allowing lobbyists and clients to define the business subjects of their relationship prevents analysis by categories under which these relationships fall. JCOPE should provide drop down menus for lobbyists and clients to

categorize the business subjects of their relationship with write-in space for additional details. The listing of general business subjects provided by JCOPE through drop down menus should mirror the required reporting in law by the counterparty to 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.<sup>1</sup>

This list created by JCOPE should include general subjects that match categories disclosed under by public officers and state employees in their financial forms. Those subjects should include bills, resolutions, contracts, grants and cases, proceedings, or applications before a state agency that is not a ministerial matter. Matching general subjects reported by lobbyists and clients with those reported by public officers and state employees in their financial disclosure forms will enable more direct comparisons to be made which, while varying in dollar value, will ensure required reporting is being done by both parties of the business relationship.

#### *Exemptions to Disclosure of Business Relationships*

While this may be more an issue pertaining to the law rather than the guidelines, Citizens Union is concerned that because reportable business relationship is broadly defined (see page 3 of this commentary) a literal interpretation may require lobbyists and clients to report personal transactions with state employees. For example, it is unclear if a lobbyist receiving health services from a doctor at a public hospital would be required to report that transaction as a business relationship. Likewise, the current law raises questions as to whether a lobbyist or client would have to report a business relationship if they regularly visit a psychiatrist or social worker that happens to be a state employee yet provides services outside of their job working for the state. Similarly, would TimeWarner Cable or Verizon Wireless, known lobbyists, have to report business relationships with customers who are State Persons that it has contracts with exceeding \$1000 annually? To the extent the law provides flexibility, Citizens Union believes exemptions should be granted for privacy particularly as it pertains to health services obtained by lobbyists and clients from State Persons.

#### *Amending Biennial Registrations*

The draft guidelines require lobbyists amend registrations when the compensation related to a business relationship changes. Citizens Union supports updated information being reflected in registrations but does not feel it is meaningful unless substantial changes occur. If compensation or expenses changes by 20 percent, for instance, that may warrant an amendment to a registration but minor changes in costs of a business transaction ought not to require registration changes that will only be unduly burdensome to lobbyists who file such paperwork.

---

<sup>1</sup> As required by Public Officers Law 73-A, and amended by the Public Integrity Reform Act of 2011, public officers and state employees 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, grants and cases, proceedings, or applications before a state agency that is not a ministerial matter.

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

Beyond these recommendations for disclosure of business relationships, JCOPE should consider detailing in its guidelines integration of these new requirements into its existing practices. Online ethics training for lobbyists should reflect the need to report business relationships as applicable. Complaint procedures should be modified to allow for complaints for lack of disclosure of business relationships. Auditing should check for disclosure of business relationships. Computer databases made available to the public should integrate this new reporting requirement so searches can be conducted by business relationships. The annual report issued by the Commission should include 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