“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
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
TOPIC OVERVIEW

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

Overview
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.
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 §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 941: Adjudicatory Proceeding Regulations
  - Interim Guidance on Gifts
- **Civil Service Law §107:** Political Activity
- **Public Officers Law §73-a:** Financial Disclosure
  - Title 19 NYCRR Part 935: FDS Exemption
  - Title 19 NYCRR Part 937: Access to Publicly Available Records
  - Title 19 NYCRR Part 941.19: Appeals from denials for FDS redactions and exemptions
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
ADVICE AND GUIDANCE

Formal Advisory Opinion
- Public document
- Issued by JCOPE Commissioners

Informal Advisory Opinion
- Confidential
- Issued by JCOPE staff based on precedent
ETHICS TRAINING
Why are we here today?

To complete the “Comprehensive Ethics Training Course” which is part of an ongoing ethics training program mandated by PIRA for FDS filers.

Executive Law §94(10)(a)
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.
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.

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.
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 **not available at this time**; therefore, JCOPE urges all FDS filers to take the Comprehensive Ethics Course as soon as possible.

- Individuals who have completed the Comprehensive Ethics Training Course 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.
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.
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.
JCOPE
INVESTIGATIONS 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.
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.
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-e) and §74(3)(g) and (i)

- Civil penalty up to $10,000 and the value of any gift, compensation or benefit received
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
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.
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.”
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?
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.
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.
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).
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:

The Commission determined that a Hearing Officer for the NYS Homes and Community Renewal ("HCR") violated Public Officers Law §74(3)(d) when, identifying himself as an HCR Hearing Officer, he wrote to a municipal agency on behalf of his neighbor on a matter unrelated to HCR or his official position.

By identifying himself as an HCR Hearing Officer, he misused his State position in an attempt to secure favorable treatment by the municipal agency for another person.
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?
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.
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.
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...
You are prohibited from providing goods and services of any kind to entities regulated or licensed by your agency.
Civil Penalty Amount

Public Officers Law §74(3)(a-e), (g) and (i):

- Civil penalty of up to $10,000 and the value of any gift, compensation or benefit received.
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.

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.

Please note:
Officers and employees should always consider their conduct in light of these standards. 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.
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
- Negotiation of future employment
- Post-employment restrictions
- Reverse two-year bar
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.

- Rules governing outside activities are set forth in Title 19 NYCRR Part 932.

Part 932.3(a) provides:

“No covered individual shall engage in any outside activity which interferes or is conflict with the proper and effective discharge of such individual's official duties or responsibilities.”
Part 932: Compensation Threshold for Policy Makers

Approvals required based on annual compensation:

$1,000 – requires Agency approval.

$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.

Not a policy maker? – Your outside employment is not subject to the above approval procedures in Part 932; however, prior to pursuing any outside employment you should seek advice from your Agency Ethics Officer or JCOPE concerning the propriety of such employment under the applicable ethics laws and regulations.
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:

  - 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
Part 932: Restrictions on Political Activities

**Part 932.2(a)** Policy Makers cannot serve as an officer of any political party or political organization.

**Part 932.2(b)** Policy Makers 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.

**Running for Office**
Those designated as Policy Makers are required to obtain both agency and JCOPE approval prior to campaigning.

**Campaigning**
No State resources can be used to help campaign for any candidate including: phone calls, photocopying, faxing, e-mails and State time.
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.
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
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
**GIFTS: REGULATORY UPDATE**

- JCOPE is in the process of drafting new gift regulations as well as amending the honoraria and travel regulations.
- The anticipation is that the Rule Making Notices will be issued in the State Register in June 2013.
- JCOPE welcomes your input during the public comment period.
On November 20, 2012, JCOPE issued the **Interim Guidance on Gifts** to update Advisory Opinion No. 08-01 in light of the amendments enacted by PIRA.

This **Guidance** embodies JCOPE's current interpretation of the gift prohibitions and will remain in effect until the new rules are finalized.

The new rules will change and supersede the **Interim Guidance on Gifts**.

The following slides summarize the **Interim Guidance on Gifts**.
**General Rule**

Covered persons cannot accept, receive or solicit “Gifts” from a “Disqualified Source.”

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**What is a “Gift?”**

Anything of more than nominal value, in any form, including but not limited to:

- Money, service, loan, travel, lodging, meals, refreshments, entertainment, forbearance or a promise having a monetary value
GIFTS: DISQUALIFIED SOURCE

A Disqualified 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, or is the spouse or the minor child of a registered lobbyist or client
- Attempts to influence you or your agency in an official action
- 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
The following items are permissible to accept even from a Disqualified Source:

- Food or beverage valued at $15 or less*
- Complimentary attendance offered by the sponsor of a Widely Attended Event*
- 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
- 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
- Local travel payments for tours related to one’s official activity
- Meals and beverages provided to participants at professional and educational programs
- Gifts for customary occasions
GIFTS: NEW AND NOTEWORTHY

- Food or beverage valued at $15 or less per event is permissible

- To qualify as a "Widely attended event":
  - Complimentary admission must be offered by the sponsor of the event, and
  - 25 individuals, who are not from your Agency, attend or are in good faith invited to attend, and
    - The event is related to the State officer’s or employee’s duties or responsibilities, or
    - The event allows such individual to perform a ceremonial function appropriate to his or her position.
Gifts to Spouses and Minor Children

Spouses and minor children of individuals who are subject to Public Officers Law §73 cannot solicit, accept, or receive gifts from registered Lobbyists or Clients. *Public Officers Law §73(5)(b)*
Even if the “item or service” is not offered by a Disqualified Source, and is covered by one of the gift exclusions, you still have to consider all of the circumstances to determine whether your acceptance would create an “appearance” or the public perception of a conflict of interest.
HONORARIUM
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.
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
- Cannot accept Honoraria from a “Disqualified Source”
- Must report Honoraria on FDS
**Special Ban on Paid Speeches**

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

The NYS Constitution defines “Civil Department” to mean the following agencies:

Travel Payments for Official Activities
Travel Payments for Official Activity

Governed by Part 930

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

Travel payments for official activities 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
TRAVEL PAYMENTS FOR OFFICIAL ACTIVITY

Summary of Part 930 Requirements

- Mode of travel and related expenses must be in accordance with your agency’s travel policy.
- Cannot accept from a “Disqualified Source”.
- Must report travel reimbursement on FDS.
- If a “payment in lieu of a honorarium” is offered, it must be paid to the general fund of the State or to such fund as is appropriate for an entity not funded through State general fund appropriations.
NEGOTIATION OF FUTURE EMPLOYMENT
General Rule on Solicited Offers

Employees are prohibited from *soliciting* an employment opportunity with an entity or individual that has a specific pending matter before that employee. *Advisory Opinion No. 06-01*

**Requirements**

If you are seeking employment with an entity or individual that has a specific matter pending with you, then you may only solicit an employment opportunity with the individual or entity after waiting 30 days from the time either:

a) the matter before you is closed, or

b) you have no further involvement with the matter because of recusal or reassignment.
General Rule on Unsolicited Offers

Requirements:

If you receive an unsolicited job offer from an entity or individual that has a specific pending matter before you, you cannot pursue employment with that entity or individual unless:

- you recuse yourself from the matter and any further official contact with the entity or individual,

  and

- wait 30 days from such recusal to enter into any future employment discussions with the entity or individual.
Duty to Notify

Whether an offer is solicited or unsolicited, you must promptly notify your supervisors and ethics officer of the job offer whether or not you intend to pursue the job offer.

Potential Violations

Depending on the circumstances, failure to follow this guidance could result in a violation of the gift prohibition and/or The Code of Ethics.
POST-EMPLOYMENT RESTRICTIONS

PUBLIC OFFICERS LAW §73(8)(a)
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
Former State Officers and Employees are prohibited from:

1. Appearing or practicing regardless of compensation before his or her former agency, ("appear/practice clause")

   and

2. Receiving compensation on behalf of a client in relation to a matter before his or her former agency. ("backroom services clause")

Former State officers and employees are subject to this restriction for the two-year period immediately following separation from State service.
Examples of Appear/Practice

- Representing a client in a hearing or other proceeding before the former agency.
- Writing, preparing, or submitting an application to the former agency for grants or RFPs.
- E-mails, phone calls, and meetings on and off site with a former agency that are considered attempts to influence the former agency.

Example of Backroom Services

- Receiving compensation for work product that will be reviewed by the former agency, even if the agency does not know the former employee was involved.
Special Application 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.
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 required 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.
To ensure that State officers and employees do not use their State positions for the benefit of themselves or others:

The Commission has construed the Public Officers Law to contain a “reverse two-year bar” that requires State officers and employees to recuse from matters involving their former private sector employers for two years after entering State service. *Advisory Opinion No. 07-04.*

**Example:**

Prior to commencing State service, you were a manager at Provider X, which is a private organization regulated by the Office of Mental Health (“OMH”). In May 2013 you became an OMH employee whose duties and responsibilities include reviewing and evaluating OMH audits of regulated entities such as Provider X. Is it permissible for you, in your capacity as an OMH employee, to review and evaluate audits of your former private employer Provider X?
No, not until May 2015. For two years, you should recuse from all matters that pertain to your former private sector employer. Because your current OMH position enables you to exercise substantial discretion in matters pertaining to Provider X, there may be a perception that you could use your State position to “secure unwarranted privileges or exemptions” for your former employer, or raise suspicion that you may be engaged in acts that violate the public trust.
Lifetime Bar - §73(8)(a)(ii)

The lifetime bar prohibits a former State Officer or Employee from providing services regardless of compensation and from rendering services for compensation, in relation to any case, proceeding, application or transaction with respect to which the former employee was directly concerned and in which he or she personally participated or which was under his or her active consideration while in State service.
**Lifetime Bar - §73(8)(a)(ii)**

- Determined on a case-by-case basis
- Applies to a former employee who was directly involved in a specific case, proceeding, application or transaction
- May apply to a former high-level manager who supervised employees who were directly involved in a specific case, proceeding, application or transaction

Any future involvement in the specific case, proceeding, application or transaction is prohibited regardless of compensation, if the specific matter is before any State agency.

In any other circumstance or venue, such as before a Federal Agency or a court of law, you may only perform **uncompensated services** in relation to such matter.
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**
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”
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.
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.
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.
Public Officers Law
§73-a
Financial Disclosure
Overview

- Section §73-a of the Public Officers Law requires certain State persons to file an annual statement of financial disclosure ("FDS").
- The purpose of the FDS is to provide transparency in order to aid in the prevention of corruption, favoritism, undue influence and abuses of official position.
- An FDS is a publicly available record containing information about the financial holdings and professional associations of filers and their spouses.
  - 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.

Rules Governing access to FDS’s and other publicly available records are set forth in Title 19 NYCRR Part 937
PIRA FDS Changes Effective in 2013

- Categories of value were expanded to provide more precise financial information.
- Categories of value are no longer redacted from the publicly available version.
- New Question No. 8(b) in regard to outside employment and business affiliations.
- Higher threshold for disclosing debts/liabilities in Question No. 19.
*New FDS Question No. 8(b)\* 

Effective January 1, 2013

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.
**New FDS Question #8(b)**

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).
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
- Receive annual compensation in excess of the job rate of a SG-24 CSEA equivalent ($88,256 in 2011). *Part-time employees whose annual full-time salary exceeds $88,256 (but whose actual compensation is less) are required to file an FDS.*
- The four Statewide elected officials, Legislators, and candidates for those offices
- Political party chairpersons for State committees and county committees with a population over 300,000
When are the filing due dates?

**May 15th**
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 15th**
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 Statements are publicly available records

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**

**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.

- If you have a secondary residence that is also an income property, you may either request that JCOPE redact the address, or only provide street name and location indicating that it is a secondary residence.
Applications for Exemptions from filing an FDS in its entirety

JCOPE may exempt only non-Policy Makers provided the applicant's duties do not involve the negotiation, authorization or approval of:

- contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses;
- the purchase, sale, rental or lease of real property, goods or services, or a contract there for;
- 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.

Exemption procedure is set forth in Title 19 NYCRR Part 935
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:

- **Due dates:**
  - All Applicable FDS Filers: May 15th
  - SUNY/CUNY: November 15th
Violations and Civil Penalties

If you fail to file a statement or if you file a deficient statement, 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 fail to file the financial disclosure statement, 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.
FOR QUESTIONS ON TRAINING EMAIL US AT:
education@jcope.ny.gov

FOR LEGAL GUIDANCE EMAIL US AT:
legal@jcope.ny.gov

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