

*Note: As a result of the Public Employee Ethics Reform Act of 2007 (Laws 2007, Chapter 14), commonly referred to as “PEERA,” a State officer or employee may not solicit, accept or receive any gift of more than nominal value under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part. These draft proposed regulations, which are required by Executive Law §94(16)(a), provide guidance to State officers and employees concerning limitations on the receipt of gifts. By setting forth conditions under which gifts may be offered and accepted, these rules establish parameters of acceptable conduct for covered individuals. Pursuant to the State Administrative Procedure Act, these draft proposed regulations are being reviewed by the Governor's Office of Regulatory Reform prior to commencing a formal notice and comment period. In the meantime, we are interested in your informal comments, which you may submit to the Commission on Public Integrity at [KBurgess@nyintegrity.org](mailto:KBurgess@nyintegrity.org)*

PART 933  
STATE OF NEW YORK  
COMMISSION ON PUBLIC INTEGRITY  
GIFT REGULATIONS: PUBLIC OFFICERS LAW

**§ 933.1 Definitions.**

- (a) *Bona fide* charitable event: shall mean a function initiated and organized by a charitable organization exclusively to advance and promote its charitable purposes.
- (b) *Bona fide* political event: shall mean a function initiated and organized by a political organization or political candidate(s) exclusively to advance and promote political purposes or political candidate(s).

- (c) Charitable organization: shall mean an entity as defined in Executive Law §171-a(1) that is registered with the Office of the Attorney General, as required by Executive Law §172, unless otherwise exempted from filing pursuant to Executive Law §172-a.
- (d) Client: shall mean every person or organization as defined in Legislative Law §1-c(b).
- (e) Commission: shall mean the New York State Commission on Public Integrity.
- (f) Complimentary Attendance: shall mean the waiver of all or part of a registration or admission fee, or waiver of all or part of a fee or charge for the provision of food, refreshments, entertainment, instruction or materials. “Complimentary attendance” shall not include registration or admission without charge to an attendee to any recreational activity that is collateral to the conference or event, or travel or lodging.
- (g) Disqualified Source: shall mean any person or entity who, on his or her own behalf or on behalf of a non-governmental entity, or a non-governmental entity on its own behalf that:
  - (1) is regulated by, or regularly negotiates with, appears before (other than in a ministerial matter), does business with, seeks to contract with or has contracts with the State agency with which a State officer or employee is employed or affiliated; or
  - (2) is required to be listed on a statement of registration pursuant to Legislative Law §1-e(a)(1), or is the spouse or unemancipated

minor child of a person who is required to be listed on a statement of registration; or

- (3) is not required to be listed on a statement of registration pursuant to Legislative Law §1-e(a)(1), and lobbies or attempts to influence action or positions on legislation or rules, regulations or rate-making before the State agency by or with which the State officer or employee is employed or affiliated; or
- (4) is a party, attorney or witness to any civil action, criminal proceeding or administrative proceeding, including, without limitation, any adjudicatory proceeding adverse to the State, with the State agency by or with which the State officer or employee is employed or affiliated, where such adjudicatory proceeding is pending and the time for appeal has not expired; or
- (5) has received or applied for funds from the State agency by or with which the State officer or employee is employed or affiliated, including, without limitation, participation in a bid on a pending contract award, at any time during the previous year up to and including the date of the proposed or actual receipt of the gift; or
- (6) seeks to contract with or has contracts with a State agency other than the agency by or with which the State officer or employee is employed or affiliated when the officer or employee's agency is to receive the benefits of the contract.

(h) Educational Program: shall mean a program that provides continuing education credits to attendees. "Educational Program" shall also mean a program presented by a State officer or employee as part of his or her official duties.

- (i) Family Member: shall mean any person as defined in Public Officers Law §73(1)(m).
- (j) Functionality: shall mean the utility of an item in day-to-day activities.
- (k) Gift: shall mean anything of more than nominal value, in any form, solicited, accepted or received by a State officer or employee. A “gift” may include, but shall not be limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise.
- (l) Informational event: shall mean a program that provides information about a specific subject or subjects related to a State officer’s or employee’s official responsibilities.
- (m) Lobbyist: shall mean every person or organization as defined in Legislative Law §1-c(a).
- (n) Nominal value: shall mean such an insignificant value, such as the value of a regular cup of coffee or a soft drink, given under circumstances that it could not be reasonably inferred as something that is intended to influence, or could reasonably be expected to influence, a State officer or employee in the performance of his or her official duties, or was intended as a reward for any official action on his or her part. A meal or an alcoholic beverage is deemed to have a value greater than “nominal value.”

- (o) Political organization: shall mean any organization that is affiliated with or a subsidiary of a political party including, without limitation, a partisan political club or committee, or a campaign or fund-raising committee for a political party or political candidate.
- (p) Professional Program: shall mean a program, including, without limitation, a conference, meeting, seminar, teleconference, videoconference or “webinar” that provides information on a broad range of services or products, or trends in an industry or discipline that would benefit the administration or operation of a State agency or would enable a group of State officers or employees to perform their duties more effectively.
- (q) Public Service: shall mean service related to a person’s official duties and responsibilities as a State officer or employee.
- (r) State agency: shall mean an entity as defined in Public Officers Law §73(1)(g).
- (s) State officer or employee: shall mean persons subject to Public Officers Law §§73(5) or 74 who are also subject to the Commission’s jurisdiction set forth in Executive Law §94(1).
- (t) Widely Attended Event: shall mean an event that is intended to be open to a large number of persons from a given industry or profession, including invitees who represent a broad and diverse range of interest in a given subject matter. The event must provide the opportunity for an

exchange of ideas and opinions among those in attendance.

**§ 933.2 Gifts.**

- (a) A State officer or employee shall not, directly or indirectly, solicit, accept or receive a gift, in any form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her, or could reasonably be expected to influence him or her in the performance of his or her official duties, or was intended as a reward for any official action on his or her part, or if accepting or receiving the gift would constitute a substantial conflict with the proper discharge of his or her duties in the public interest. No person shall, directly or indirectly, offer or make any such gift to a State officer or employee under such circumstances.
- (b) A gift does not include:
  - (1) anything for which a State officer or employee pays market value;
  - (2) anything for which the State has paid or secured by State contract; and
  - (3) rewards or prizes given to competitors in contests or events, including random drawings open to the public.
- (c) A gift from a disqualified source is *per se* impermissible, except as provided in 933.3.
- (d) Solicitation, acceptance or receipt of multiple gifts, regardless of value,

from a single donor on a recurrent basis could create a reasonable basis for the impression that the donor was influencing or rewarding or attempting to influence or reward the State officer or employee or enjoying his or her favor in connection with the performance of the official duties of the State officer or employee.

- (e) An otherwise impermissible gift is not made permissible because it is offered or given to a third party at the State officer's or employee's direction.
- (f) A gift that could not be offered or given to a State officer or employee by a disqualified source may not be directed by a State officer or employee to any other person, including, without limitation, (a) the spouse, parent, sibling or child, or any other relative, friend or co-worker of the State officer or employee, or (b) any other person or entity designated by the State officer or employee, including, without limitation, a charitable entity.

### **§ 933.3 Permissible Gifts.**

- (a) Notwithstanding the prohibitions set forth in §933.2, the following gifts given under the following circumstances are permitted to be solicited, offered, accepted, received and/or given:
  - (b) Complimentary Attendance at Charitable or Political Events
    - (1) Complimentary attendance, including food and beverage, at a *bona fide* charitable or political event. "Food and beverage" shall include a meal that is offered to all in attendance as part of the event.

- (2) Complimentary attendance at a *bona fide* charitable or political event offered, given or paid for by a disqualified source, other than the charitable or political organization, shall be considered an impermissible gift.
  - (3) Food and beverage of a nominal value, offered or given other than as part of a meal, by a disqualified source is permissible.
- (c) Complimentary Attendance at Widely Attended, Officially Related Event
- (1) Complimentary attendance including, without limitation, food and beverage, offered or given by the sponsor of an event that is widely attended or was, in good faith, intended to be widely attended is a permissible gift if such attendance furthers the State agency's program and operations and is related to the attendee's duties and responsibilities as a State officer or employee, or allows a State agency head, or his or her designee, to perform a ceremonial function appropriate to his or her position.
  - (2) Complimentary attendance offered, given or paid for by a source, other than the sponsor, under circumstances in which it could reasonably be inferred that the gift was intended to influence the state officer or employee in the performance of his or her official duties, shall be considered an impermissible gift.
  - (3) In order for a State agency to find that attendance at a widely attended event will further agency programs and operations, the agency should conclude that its interest in the employee's participation outweighs the likelihood that such participation may appear improperly to influence the employee in, or reward him or her for, the performance of his or her official duties. In that

connection, the agency should consider at least the following factors:

- (i) the nature of any pending matter affecting the interest of the sponsor of the event;
  - (ii) the significance of the event to the State officer or employee's agency;
  - (iii) the relevance of the event to State officer or employee's duties and responsibilities;
  - (iv) the timing of the event; and
  - (v) the purpose of the event, the identity of other expected participants and the monetary value of the gift, and
  - (vi) whether the event provides the opportunity for an exchange of ideas and opinions among those in attendance.
- (4) The State agency shall in each instance make a written finding that the State officer or employee's attendance at the event has been approved in accordance with the factors outlined in the preceding paragraph.
- (5) The State agency may authorize the State officer or employee to accept a sponsor's invitation to an accompanying spouse to participate in all or a portion of the event at which the complimentary attendance is permitted if such invitation generally is offered to the spouses of the other attendees.
- (6) Travel expenses, lodging, entertainment collateral to the event, or meals taken other than on the same basis generally provided to other attendees may not be included as part of the gift, either to the officer or employee or their respective spouses.

(d) Awards, Plaques and Other Ceremonial Items

- (1) Awards, plaques, and other ceremonial items that are publicly presented, or intended to be publicly presented, in recognition of public service, provided that the item or items are of the type customarily bestowed at such or similar ceremonies and are otherwise reasonable under the circumstances.
  - (2) To determine whether an award, plaque or other ceremonial item is permissible in a particular circumstance, the following factors should be considered:
    - (i) Functionality of the gift;
    - (ii) Monetary value of the gift;
    - (iii) Whether the gift is personally engraved;
    - (iv) Whether the donor had regularly bestowed the same or equivalent gifts to others under similar circumstances in the past; and
    - (v) Whether the entity has any pending matter affecting the interest of the donor of the award.
  - (3) Awards, plaques and other ceremonial items given and accepted in compliance with this subparagraph shall be the property of the State officer or employee, unless the agency decides otherwise.
- (e) Honorary Degrees  
An honorary degree bestowed upon a State officer or employee by a public or private college or university.
- (f) Promotional Items  
Items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts that bear an organization's name, logo, or message in a manner that promotes the organization's cause.

- (g) Discounts for Goods and Services
  - (1) Goods and services, or discounts for goods and services, offered to the general public or a segment of the general public defined on a basis other than status as a State officer or employee and offered on the same terms and conditions as the goods and services are offered to the general public or segment thereof.
  - (2) Broad-based discounts made available to all State officers and employees constitute permissible gifts.
  - (3) The following factors should be considered when any other type of discount is made available to a select group of State officers or employees to determine whether the discount would be permissible:
    - (i) the scope of the class of State officers or employees who are offered the discount;
    - (ii) whether the offeror of the discount is a disqualified source;
    - (iii) the amount and duration of the discount;
    - (iv) whether the offeror has a nexus to the class of State officers or employees who are offered the discount, *i.e.*, whether the offeror has a pending matter, is regulated by or is seeking to contract with the State officers' or employees' agency; and
    - (v) whether the criterion for the offer is based on factors other than the State officers' or employees' official duties and responsibilities.
  - (4) State officers and employees should contact their agency Ethics Officer for guidance prior to accepting a discount offered to State officers and employees.

(h) Personal Gifts

- (1) Gifts from a family member, member of the same household, or person with a personal relationship with the State officer or employee, including, without limitation, an invitation to attend a personal or family social event, when, in light of all the circumstances, it would be reasonable to infer that the gift was primarily motivated by the family, household, or personal relationship.
  - (2) In determining motivation, the following factors should be among those considered:
    - (i) the history and nature of the relationship between the donor and the recipient, including whether items have previously been exchanged;
    - (ii) whether the item was purchased by the donor; and
    - (iii) whether the donor at the same time gave similar items to other State officer or employees.
  - (3) The gift shall not be considered to be motivated by a family, household, or personal relationship if the donor seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client.
  - (4) Any reimbursement to the donor may be considered in determining whether the gift is deemed motivated by a family, household or personal relationship.
- (i) Contributions Reportable under Election Law Article 14
- Contributions in compliance with the requirements of Election Law Article 14 are permissible. Contributions in excess of the requirements of Election Law Article 14 are impermissible gifts.

- (j) Reimbursement of Expenses for Speakers at Informational Events
  - (1) Travel reimbursement or payment for transportation, meals and accommodations for an attendee, panelist or speaker at an informational event when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus.
  - (2) The State officer or employee may only accept lodging from an institution of higher education:
    - (i) at a location on or within close proximity to the host campus; and
    - (ii) for the night preceding and the night of any day on which the attendee, panelist or speaker actually attends the event.
  
- (k) Provision of Local Transportation to Inspect Facilities
  - (1) Provision of local transportation to inspect or tour facilities, operations or property owned or operated by the entity providing such transportation.
  - (2) The payment or reimbursement of lodging, meals or travel expenses to and from the locality where such facilities, operations or property are located shall be considered to be impermissible gifts unless otherwise permitted under this subdivision.
  
- (l) Meals for Participants at a Professional or Educational Program
  - (1) Receipt of meals or refreshments when participating in a professional or educational program as a part of a State officer's or employee's official duties, provided the meals or refreshments are

available to all participants.

- (2) A program sponsored by a person or entity that does or seeks to do business with the State and is comprised substantially of one or more presentations that describe the products or services offered or sold by such person or entity to State offices or employees, who would use such products or services as part of their official duties, shall not be considered a professional program for the purposes of this section.

(m) Gifts for Customary or Special Occasions

Items that are modest, reasonable and customary, given on special occasions that occur in the personal life of a State officer or employee, including, without limitation, marriage, illness, retirement or death in a family are permissible.

(n) Invitations to State Agency Heads

- (1) A statewide elected official or an agency head may accept an invitation to attend an event in his or her official capacity sponsored by any person or entity.
- (2) If the invitation includes travel or lodging expenses that are to be reimbursed by such person or entity, the requirements of 19 NYCRR §930.6 must be met.
- (3) The elected official or agency head may designate a staff member to attend in his or her place.
- (4) Such event should be of the type that would likely be publicized and normally appear on the schedule of such elected official or agency head.
- (5) The purpose of attendance must be appropriate to the

performance of the attendee's official duties or to afford the attendee an opportunity to perform a ceremonial function appropriate to his or her official position.

**§ 933.4 Agency Rules.**

Nothing contained in this Part shall prohibit any State agency from adopting or implementing its own rules, regulations or procedures with regard to gifts that are more restrictive than the requirements of this Part.