

Note: As a result of the Public Employee Ethics Reform Act of 2007 (Laws 2007, Chapter 14), commonly referred to as “PEERA,” a registered lobbyist or client shall not offer or provide a gift of more than nominal value to a public official. These draft proposed regulations, which are required by Executive Law §94(16)(a), provide guidance to those registered lobbyists and clients concerning the offering and giving of gifts to public officials. 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

PART 934
STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY
PROPOSED GIFT REGULATIONS
FOR THE LEGISLATIVE LAW

§934.1 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 exclusively to advance and promote its 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 Section 172, unless otherwise exempted from filing pursuant to Executive Law Section 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 the public official to any recreational activity that is collateral to the conference or event, or travel or lodging.

(g) Educational Program: shall mean a program that provides continuing education credits to attendees. “Educational Program” shall also mean a program presented by a public official as part of his or her public duties.

(h) Family Member: shall mean any person who is a direct descendant of the public official’s grandparents or the spouse of such descendant.

(i) Functionality: shall mean the utility of an item in day-to-day activities,

- (j) Gift: shall mean anything of more than nominal value, in any form, offered or given to a public official. A “gift” may include, but shall not be limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise.
- (k) Informational event: shall mean a program that provides information about a specific subject or subjects related to a public official’s duties or responsibilities.
- (l) Lobbyist: shall mean every person or organization as defined in Legislative Law §1-c(a).
- (m) Nominal value: shall mean such an insignificant value, such as the value of a regular cup of coffee or 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 public official, in the performance of his or her official duties or responsibilities, 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.”
- (n) 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.
- (o) 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 governmental entity or would enable a group of public officials to perform their duties in a more effective manner.

(p) Public official: shall mean:

(1) the governor, lieutenant governor, comptroller or attorney general;

(2) members of the state legislature;

(3) state officers and employees including:

(i) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis,

(ii) officers and employees of statewide elected officials,

(iii) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies,

(iv) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, and employees of such authorities, corporations and commissions;

(4) officers and employees of the legislature; and

(5) municipal officers and employees including an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof, and in the case of a county, shall be deemed to include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer fireman or civil defense volunteer, except a fire chief or assistant fire chief.

(q) Public Service: shall mean service related to an person's official duties and responsibilities as a public official.

(r) 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 interests in a given subject matter. The event must provide the opportunity for an exchange of ideas and opinions among those in attendance.

934.2 Gifts

(a) No person or entity required to be listed on a statement of registration (*see* Legislative Law, Article 1-A, Paragraphs 1-e[c][1] and [2]) may offer or give a gift to any public official, unless under the circumstances it is not reasonable to infer that the gift was intended to influence the public official in the performance of his or her official duties or was intended as a reward for any official action on his or her part. No such person or entity may offer or give a gift to the spouse or unemancipated child of any public official under circumstances where it is reasonable to infer that the gift was intended to influence the public official in the performance of his or her official duties or was intended as a reward for any official action on his or her part. No spouse or unemancipated child of an person required to be listed on a statement of registration should offer or give a gift to a public official under circumstances where it is reasonable to infer that the gift was intended to influence such public official in the performance of his or her official duties or was intended as a reward for any official action on his or

her part. The prohibition does not apply to gifts to officers, members or directors of boards, commissions, councils, public authorities or public benefit corporations who receive no compensation or are compensated on a per diem basis, unless the person or entity offering or giving the gift appears or has matters pending before the board, commission or council on which the recipient sits.

(b) A gift does not include:

- (1) anything for which a public official pays market value;
- (2) anything for which a governmental entity has paid or secured by a government contract; and
- (3) rewards or prizes given to competitors in contests or events, including random drawings open to the public.

(c) Offering or giving multiple items, 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 public official or enjoying his or her favor in connection with the performance of the public official's official duties.

(d) An otherwise prohibited gift is not permissible because it is given to a third party at the public official's direction.

(e) A gift that could not be given to a public official may not be directed by the public official to a third party, including (a) the public official's spouse, parent, sibling, child, relative or friend, or (b) to any other person or entity designated by the public official, including a charitable entity.

934.3 Exceptions to the Definition of Gift

- (a) Notwithstanding the prohibitions set forth in 934.2, the following, when offered or given under the following circumstances, are considered exceptions to the definition of gift:
 - (b) Complimentary Attendance at *bona fide* 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 person or entity other than the charitable or political organization whose charitable or political purposes the event advances or promotes shall be considered a prohibited gift to the public official.
 - (3) Food and beverage of a nominal value, offered or given other than as part of a meal, is not considered a gift.
 - (c) Complimentary Attendance at Widely Attended, Officially Related Event
 - (1) Complimentary attendance, including food and beverage, offered or given by the sponsor of an event that is intended to be widely attended.
 - (2) Complimentary attendance offered, given or paid for by a person or entity other than the sponsor of the event shall be considered to be a prohibited gift to the public official.
 - (3) Attendance at the event must be related to the public official’s duties and responsibilities, or allow the public official, or his or her designee, to perform a ceremonial function appropriate to his or her position.

- (4) Under no circumstance shall travel or lodging be included.
- (5) An event is related to the public official's duties or responsibilities if it has as its principal purpose promoting the exchange of information about an issue or issues of public interest.
- (6) The public official may accept a sponsor's invitation to an accompanying spouse to participate in all or a portion of the event at which the public official's complimentary attendance is not prohibited if such an invitation is offered to the spouses of all other attendees.
- (7) 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 public official or his or her spouse.
- (8) In determining whether complementary attendance should be accepted, the following factors should be considered:
 - (i) the nature of any pending matter affecting the donor's interest,
 - (ii) the importance of the event in relation to the public official's agency, department or other governmental unit,
 - (iii) the relevance of the event to the public official's duties and responsibilities,
 - (iv) the timing of the event,
 - (v) the purpose of the event, the identity of other expected participants and the monetary value of the complementary attendance, and
 - (vi) whether the event provides the opportunity for an exchange of ideas and opinions among those in attendance.
- (9) The public official's agency, department or governmental unit shall, in each instance, make a written finding that the public official's attendance at the event has been approved in accordance with the factors set forth in the preceding paragraph.

(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 it would be permissible for the public official to accept such an award, the following factors will be considered:
 - (i) Functionality of the item;
 - (ii) Monetary value of the item;
 - (iii) Whether the item is personally engraved;
 - (iv) Whether the donor had regularly bestowed the same or equivalent items to others under similar circumstances in the past; and
 - (v) Whether the public official has any pending matter affecting the interest of the donor of the item.
- (3) Awards, plaques and other ceremonial items given and accepted in compliance with this subparagraph shall be the property of the public official.

(e) Honorary Degrees

An honorary degree bestowed upon a public official 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 public official 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 public officials shall not be considered gifts.
- (3) The following factors should be considered when any other type of discount is made available to a select group of public officials to determine whether the discount would be considered to be a gift:
 - (i) the scope of the class of public officials who are offered the discount;
 - (ii) the amount and duration of the discount; and
 - (iii) whether the offeror has a nexus to the class of public officials who are offered the discount, *i.e.*, whether the offeror has a pending matter, is regulated by or is seeking to contract with the public official's governmental entity; and
 - (iv) whether the criterion for the offer is based on factors other than the public officer's official duties and responsibilities
- (4) Public officials should contact their Ethics Officer for guidance prior to accepting such a discount.

(h) Gifts from a Family Member

- (1) Gifts from a family member, member of the same household, or person

with a personal relationship with the public official, including invitations to attend personal or family social events, when the circumstances establish that it is the family, household, or personal relationship that is the primary motivating factor.

- (2) In determining motivation, the following factors shall 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;
 - (iii) whether the donor at the same time gave similar items to other public officials;
- (3) the offer or giving 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 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 prohibited.

(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 public official 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 gifts unless otherwise excluded from the definition of a gift.

(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 part of the public official's duties and responsibilities, when the meals or refreshments are provided to all participants.

(2) A program sponsored by a person or entity that does or seeks to do business with a governmental entity and is comprised substantially of one or more presentations that describe the products or services offered or sold by such person or entity to governmental entities which 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.

§ 934.4 Guidance

Any person or entity may contact the Commission for guidance concerning the propriety of any gift.