



The Joint Commission on Public Ethics (JCOPE)  
540 Broadway,  
Albany, NY 12207

#### Comments on New Disclosures

Common Cause/NY submits these written comments in response to The Joint Commission on Public Ethics request for comments regarding new disclosure requirements. Susan Lerner, Executive Director of Common Cause/NY will testify on the organization's behalf at the hearing on June 7.

Common Cause/NY is a nonpartisan citizens' lobby and a leading force in the battle for honest and accountable government. Common Cause fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve the general interest, and not simply the special interests. For more than 30 years, we have worked at both the state and municipal level to bring about honest, open and accountable government. We have been a long-standing advocate for innovative campaign finance and ethics laws in New York, as well as throughout the country.

Common Cause/NY recognizes that, to a certain extent, the newly required disclosures break new ground, for which there are limited precedents and examples in other jurisdictions. We provide these comments to raise issues which the proposed regulations should address and may provide further and more extensive suggestions at the hearing.

#### Reportable Business Relationships

A threshold issue to determine regarding the disclosure of reportable business relationships is the time by which a new relationship must be reported. Common Cause/NY believes that a lobbyist's Statement of Registration should be amended within 30 days of the date on which a new reportable business relationship within the covered categories has been entered into in order to provide the required information.

We do not believe that there is any need for a delay in requiring disclosure of reportable relationships from the date of adoption of the implementing regulation. The statutory requirement is straightforward and the lobbying community has been on notice for quite some time regarding this additional requirement of disclosure.

The only comparable requirement that we found in an admittedly incomplete review of other states' lobbying disclosure laws is found in the laws of the State of Washington, which requires lobbyists who employ legislators, board or commission members, or state employees to disclose that fact. The reporting is done on Washington State Public Disclosure Form L-7, which is a simple and straightforward form. It can be accessed on the PDC's website, <http://www.pdc.wa.gov/>.

It is Common Cause/NY's position that the proposed regulation should make clear that lobbyists will be considered to have constructive knowledge of any official's relation to any entity that the official includes in its financial

disclosures pursuant to Public Officers Law Sec. 73-A. If the interest or relation is disclosed in the financial disclosures required by Public Officers Law 73-A, then there will be an irrefutable presumption that the lobbyist who failed to report the relationship with the official "knows or has reason to know" of the status of the official vis a vis the reported entity, pursuant to new subdivision (w) of section 1-C of the Legislative Law.

#### Source of Funding Reporting

This new requirement raises more challenging issues than the relatively straightforward requirement to disclose reportable business relationships between public officials and lobbyists and their clients. The first issue which should be considered is how to insure that the public receives meaningful disclosure of the actual and original source of funding used to fund lobbying activities by entities which lobby on their own behalf, as required by new paragraph 4 to subdivision (c) of section 1-H of the Legislative Law. Disclosures which simply reveal what is known as a "Russian doll problem" – where the immediate source of the funding is an intermediary entity, perhaps a committee or association, which is not the original source of the funds – should not be considered to satisfy the requirements of the law. Common Cause/NY urges the Commission to draft rules which will provide information regarding the original source of funding. This can be done by requiring the lobbying entity to obtain the required information from its funders above \$5,000. Just as in the campaign contribution area, the reporting organization should be required to reject any contributions above \$5,000 designated for lobbying in New York State or which will be used for lobbying from entities or associations which do not provide the required information.

Equal care should be taken in drafting regulations that govern the circumstances in which an organization may be exempted from the required disclosure. The exemption should only be used to shield an organization's donors from actual possibility of serious and widespread harm or threats and not to shield the funders from the responsibility or general social accountability for their actions which disclosure is meant to provide. This will require a thorough review of the circumstances alleged to constitute purported harm, threats, harassment or reprisal. Any request for exemption should be required to be weighed on the basis of the severity of the threat, harm, harassment or reprisal that will purportedly result from disclosure. Embarrassment or social discomfort should not be considered to rise to the appropriate standard. Nor should the possibility that a customer may exercise their lawful right to stop patronizing certain businesses to express their opposition to those businesses' political activities or that friends and acquaintances may wish to engage the funder in an uncomfortable conversation regarding the impact of their support for certain positions rise to the required level for exemption. Recent court cases in federal courts around the country, rejecting the contention of the National Organization for Marriage that campaign contributors should be shielded from public disclosure because members had received phone calls or yard signs had been stolen and, in one case, a supporters' business had been the subject of a demonstration, are instructive. In order to qualify an organization for an exemption, the possibility of threats, harassment and reprisals should be both serious and widespread.

Common Cause/NY looks forward to working with the Commission and its staff to strike the appropriate balance in the regulations that will be drafted.

Submitted on behalf of Common Cause/NY,

Susan Lerner  
Executive Director, Common Cause/NY