



MEMORANDUM

TO: The Commission
FROM: Lobbying Unit
DATE: March 13, 2024
RE: Amendments to Part 943

The Lobbying Unit is proposing for publication in the State Register a Notice of Proposed Rulemaking amending 19 NYCRR Part 943 to:

- Codify the Commission's late fee program and establish criteria and requirements for requesting a waiver of a late filing fee.
- Clarify who is responsible for the submission, completeness, and truthfulness of lobbying filings when the Lobbyist or Client is a person or organization. For organizations, the proposed amendments clarify that the Responsible Party must have legal authority to bind the Lobbyist or Client. If the Lobbyist or Client is a person, the Responsible Party is such person. Additionally, the proposed amendments make clear that the Responsible Party is not an individual whose sole responsibility or authority is to prepare lobbying filings for the Lobbyist or Client.
- Clarify how a member of a Coalition may be disclosed as a source of funding.
- Require the Responsible Party to submit training compliance information to the Commission on behalf of themselves, their organization and/or their organization's Individual Lobbyists. Additionally, the Responsible Party must retain for a period of

three years a completed and executed affidavit of training completion by the organization's Individual Lobbyists.

- This Proposed Rulemaking also includes other minor clarifying amendments.

These proposed rulemakings will be published in the State Register and, upon publication, have a 60-day comment period.

Pursuant to the authority vested in section 94 of the Executive Law and Article 1-A of the Legislative Law, Part 943 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective January 1, 2025, after publication of a Notice of Adoption in the New York State Register, to read as follows:

New section 943.15 is added to the title of Part 943 to read as follows:

PART 943: LOBBYING

943.1 Purpose and Effect of Regulations

943.2 General Provisions

943.3 Definitions

943.4 Statutory Exceptions

943.5 Lobbying Activities – General Provisions and Restrictions

943.6 Direct Lobbying

943.7 Grassroots Lobbying

943.8 Procurement Lobbying

943.9 Reportable Lobbying Activity

943.10 Lobbyist Statement of Registration

943.11 Lobbyist Bi-Monthly Report

943.12 Client Semi-Annual Report

943.13 Lobbyist Disbursement of Public Monies Report

943.14 Reportable Business Relationships

943.15 Late Fees

Paragraph (1) of subdivision (g) of section 943.10 is amended to read as follows:

(g) (1) Any submitted Statement of Registration that is not timely filed will be subject to the late fee schedule set forth in section 943.15. [below:

DAYS LATE	ACTION	
	First-Time Filer	All Other Filers
1 – 7 days	Grace Period/No Late Fee	
8 – 14 days	\$75 flat late fee	\$150 flat late fee
15 – 30 days	\$150 flat late fee	\$300 flat late fee
31 – 90 days	\$300 flat late fee	\$500 flat late fee
91 – 180 days	\$500 flat late fee	\$1,000 flat late fee
181 days and more	\$1,000 flat late fee	\$2,000 flat late fee

A Lobbyist is considered a First-Time Filer only when the Lobbyist is required to file a Statement of Registration for the first time. First-Time Filer status applies to the first Statement of Registration received by the Commission from such Lobbyist and any other Statements received from such Lobbyist on that same day.]

Subdivision (k)(2) of section 943.10 is amended to read as follows:

Failure to make such amendments are subject to the imposition of late fees as set forth in section 943.15 [subsection943.10(g)].

Subdivision (d) of section 943.11 is amended to read as follows:

(d) Any Bi-Monthly Report that is not timely filed will be subject to the late fee schedule set forth in section 943.15. [below:

DAYS LATE	ACTION	
	First-Time Filer	All Other Filers
1 – 7 days	Grace Period/No Late Fee	
8 – 14 days	\$75 flat late fee	\$150 flat late fee
15 – 30 days	\$150 flat late fee	\$300 flat late fee
31 – 90 days	\$300 flat late fee	\$500 flat late fee
91 – 180 days	\$500 flat late fee	\$1,000 flat late fee
181 days and more	\$1,000 flat late fee	\$2,000 flat late fee

A Lobbyist is considered a First-Time Filer only when the Lobbyist is required to file a Bi- Monthly Report for the first time. First-Time Filer status applies to the first Bi- Monthly Report received by the Commission from such Lobbyist and any other Reports received from such Lobbyist on that same day.]

Subdivision (b) of Section 943.12 is repealed and replaced to read as follows:

(b)Any Client Semi-Annual Report that is not timely filed will be subject to the late fee schedule set forth in section 943.15.

Subdivision(d) of Section 943.14 is amended to read as follows:

(d) Penalties.

Failure to report a Reportable Business Relationship in a timely manner as required by this section subjects the Lobbyist or Client to civil penalties as prescribed by section 1- o(b)(i) of the Lobbying Act and/or late fees as prescribed by sections 1-e(e)(iii) and 1- j(c)(iii) of the Lobbying Act and section 943.15[943.10] of this Title. In addition, the submission of false filings subjects the Lobbyist or Client to a civil penalty as prescribed by section 1-o(b)(ii) of the Lobbying Act.

New Section 943.15 is added to read as follows:

943.15 Late Filings.

(a) Pursuant to sections 1- e, 1-h, 1-i, 1-j, and 1-l of the Lobbying Act, the Commission may impose a fee for a late filing of a Statement of Registration, Registration Amendment, Bi-Monthly Report, Client Semi- Annual Report, and Disbursement of Public Monies Report.

(b)Any Statement of Registration, Registration Amendment, Bi-Monthly Report, Client Semi-Annual Report, or Disbursement of Public Monies Report that is not timely filed will

be subject to the late fee schedule set forth below:

<u>Days Late</u>	<u>Action</u>	
	<u>First-Time Filer</u>	<u>All Other Filers</u>
<u>1 – 7 days</u>	<u>Grace Period/No Late Fee</u>	
<u>8 – 14 days</u>	<u>\$75 flat late fee</u>	<u>\$150 flat late fee</u>
<u>15 – 30 days</u>	<u>\$150 flat late fee</u>	<u>\$300 flat late fee</u>
<u>31 – 90 days</u>	<u>\$300 flat late fee</u>	<u>\$500 flat late fee</u>
<u>91 – 180 days</u>	<u>\$500 flat late fee</u>	<u>\$1,000 flat late fee</u>
<u>181 days and more</u>	<u>\$1,000 flat late fee</u>	<u>\$2,000 flat late fee</u>

(c) (i) With respect to Statements of Registration, a Lobbyist is considered a First-Time Filer only when the Lobbyist is required to file a Statement of Registration for the first time. First-Time Filer status applies to the first Statement of Registration received by the Commission from such Lobbyist and any other Statements received from such Lobbyist on that same day.

(ii) With respect to Bi-Monthly Reports, a Lobbyist is considered a First-Time Filer only when the Lobbyist is required to file a Bi-Monthly Report for the first time. First-Time filer status applies to the first Bi-Monthly Report received by the Commission from such Lobbyist and any other Reports received from such Lobbyist on that same day.

(iii) A Client is considered a First-Time Filer only when the Client is required to file a Client Semi-Annual Report for the first time. First-Time Filer status applies to the first Client Semi-Annual Report received by the Commission from such Client and any other Reports received from such Client on that same day.

(d) Upon a determination that a filing is late, the Commission will send the Lobbyist or Client a billing notice stating such determination and assessing the late filing fee.

(1) The Commission may send up to three billing notices.

(2) Each billing notice will indicate that the Lobbyist or Client may request a waiver or reduction of a late filing fee, subject to the eligibility requirements set forth in this section.

(e) Eligibility for a Waiver or Reduction of Late Filing Fee.

(1) The Commission may consider a Lobbyist or Client's request for a waiver or reduction of late fees if one or more of the following has occurred:

(i) The death or serious illness of the Responsible Party or immediate family member thereof; or

- (ii) A force majeure, including an extraordinary event or circumstance beyond the Responsible Party's control, such as a natural disaster or epidemic; or
- (iii) Other mitigating factor that reasonably impacted the Lobbyist's or Client's ability to submit timely.

(2) If a Lobbyist or Client is eligible for a waiver or reduction pursuant to paragraph (1) of this subdivision, the Commission must consider the following factors when determining whether to grant or deny a waiver or reduction of late fees:

- (i) Whether and how often the Lobbyist or Client has filed late in the past;
- (ii) Whether the Lobbyist or Client has received a waiver or fee reduction in the current or previous biennial period;
- (iii) The Lobbyist or Client organization's annual operating budget, as applicable, which means the estimated income and expenditures of the organization;
- (iv) Whether the Lobbyist, as applicable, lobbies solely on its own behalf;
- (v) For periodic reports, the number of lobbying matters and the amount of compensation and expenditures that were not timely reported during the relevant time period; and
- (vi) the significance and reasonable impact of the event or occurrence, as described in subdivision (e)(1)(i)-(iii), upon the Lobbyist's or Client's ability to timely file the statements or reports.

(3) A Lobbyist or Client seeking a waiver or reduction of a late filing fee must submit the following to the Commission:

- (i) A Late Fee Waiver Application, on a form supplied by the Commission,

submitted by the Lobbyist or Client's Responsible Party; and

(ii) An affidavit providing:

(a) A narrative detailing the cause of the late filing, within the context of the eligibility requirements set forth in subdivision (e)(1)(i)-(iii);

(b) The applicant's annual operating budget, as applicable;

(c) Whether the applicant lobbies solely on its own behalf or also utilizes Retained Lobbyists;

(d) For periodic reports, the number of lobbying matters and the amount of compensation and expenditures that were not reported timely during the relevant period;

(e) How the applicant plans to mitigate risk of future late filings; and

(f) Any other factors the applicant deems helpful to the Commission relating to its analysis and determination.

(iii) The Commission may request additional evidence to support any statements made in the affidavit.

(4) The Late Fee Waiver Application and affidavit must be received by the Commission no later than the due date provided by the Commission in the third and final billing notice.

(5) The Commission will notify the applicant in writing of its determination regarding a Late Fee Waiver Application as soon as practicable. Any such determination made by the Commission is final.

(6) If a waiver or reduction request is denied, payment of the applicable late filing

fee must be made no later than thirty (30) days from the date of the Commission's notice of denial.

(f) Technical Failure Causing Late Filing

(1) If there is a system-wide problem with the Commission's online Lobbying Application, the Commission may extend the applicable filing deadline to a date established by the Commission upon consideration of the nature and length of the system-wide problem.

(2) If, on the date a statutory filing is due, a Lobbyist or Client is unable to file a Statement or Report due to a technical failure of the Lobbying Application, the Lobbyist or Client may avoid a late filing fee and be granted a technical extension by the Commission only when:

(i) The Lobbyist or Client contacts the Commission before the filing deadline to resolve the technical issue that is preventing the filing of a Statement or Report by the filing deadline.

(ii) If, after the consultation described in subparagraph (i), the Lobbyist or Client remains unable to file the Statement or Report, the Lobbyist or Client must submit, by email, proof of the technical failure, no later than the close of business on the date of the filing deadline.

(iii) The following are acceptable as proof of a technical failure:

(a) A screenshot from the Commission's Lobbying Application containing the error message received when the filing was attempted;

(b) Evidence of electronic communications between the Lobbyist or Client and the Commission determining that a technical failure

occurred and remains unresolved as of the filing deadline; or

(c) Similar evidence of a technical failure that the Commission deems appropriate.

(iv) Lobbyists or Clients who are unable to file a Statement or Report due to a technical failure of the Commission's Lobbying Application after the close of the Commission's office hours on the filing deadline may avoid a late filing fee and be granted a technical extension if they submit a time-stamped screenshot or photograph of the Commission's Lobbying Application display showing both the error message and that the time of the attempted filing was prior to the filing deadline.

(v) Under no circumstances will the following be considered a technical failure:

(a) Failure of the Lobbyist or the Client to change its Responsible Party;

(b) The Responsible Party's inability to retrieve, change or reset its password;

(c) Any technical failure that is reported after the filing deadline; or

(d) A Filing that has been saved in the Commission's Lobbying Application but has not been submitted.

(g) Late Fees and Penalties.

(1) Failure to file a Statement of Registration, Registration Amendment, Bi-Monthly Report, Client Semi-Annual Report, or Disbursement of Public Monies Report in a timely manner, as required by this Title, may also subject the Lobbyist or Client to

civil penalties as prescribed in section 1- o(b)(i) of the Lobbying Act.

(2) Any outstanding late filing fees owed to the Commission by a Lobbyist or Client totaling \$500 or more may be referred to the Attorney General's Office for collection.

Pursuant to the authority vested in section 94 of the Executive Law and Article 1-A of the Legislative Law, Part 943 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective January 1, 2025, after publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (s) of section 943.3 is amended to read as follows:

(s) ***Responsible Party*** means the Lobbyist or Client's Chief Administrative Officer, or a designee, who is responsible for filing the Statements or Reports required under the Lobbying Act.

(1) If a Lobbyist or Client is an organization, the Responsible Party must have legal authority to bind the Lobbyist or Client.

(2) If a Lobbyist or Client is a person, the Responsible Party is such person.

(3) The Responsible Party does not include an individual whose sole responsibility or authority is to prepare such Statements or Reports for a Lobbyist or Client.

Subdivision (b) of section 943.9 is amended to read as follows:

(b) Obligations of the Responsible Party.

(1) All Statements or Reports required under the Lobbying Act or set forth in the Commission's regulations must be signed and attested to by the Responsible Party for the Lobbyist or Client, as applicable, [, or another who has been designated to sign and file such required Statement or Report. Such a designation must be signed by the Responsible Party and Designee, completed and submitted to the Commission before the due date of such Statements or Reports.]

Subparagraph(iii) of section 943.10(k)(1) is amended to read as follows:

(iii) The signature of the Responsible Party [or designee], if applicable.

Subdivision (e) of section 943.12 is amended to read as follows:

(e) **Responsible Party.** The Responsible Party of the Client [or another duly designated and reported to the Commission (prior to the due date for such Report)] is responsible for signing, attesting, and filing all Client reports. [Any such designation must be signed by the Responsible Party and Designee.]

Pursuant to the authority vested in section 94 of the Executive Law and Article 1-A of the Legislative Law, Part 943 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective January 1, 2025, after publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (h) and (m) of section 943.3 are amended to read as follows:

(h) *Employed Lobbyist* means a person who lobbies on behalf of the organization by which they [he is] are employed.

* * *

(m) *Lobbyist* means a person or organization who engages in Lobbying Activity and includes Retained, Employed, and Designated Lobbyists. Lobbyist includes officers, directors, trustees, employees, counsels, or agents of colleges, as defined by section two of the education law, but does not include any other officer, director, trustee, employee, counsel or agent of the State of New York, or any municipality or subdivision thereof when discharging [his or her] their official duties.

Paragraphs (1) and (3) of Subdivision (b) or section 943.5 are amended to read as follows:

(b) Online Ethics Training for Lobbyist and Clients

(1) All Lobbyists (Principal Lobbyists and Individual Lobbyists) and all Clients (Contractual Clients and Beneficial Clients) listed on a Statement of Registration commencing with the biennial period 2023-2024 and thereafter, must complete the online ethics training course for Lobbyists and Clients, as provided by the Commission.

(i) For organizations that engage in lobbying activity as either a Lobbyist or Client, the Responsible Party for the organization [organization Chief Administrative Officer] is responsible for completing the training on behalf of the organization.

(ii) In addition, all Individual Lobbyists must complete the training.

* * *

(3) The Responsible Party of Lobbyists and Clients [(including the Chief Administrative Officers of organizations engaged in lobbying activity as a Lobbyist or Client, as applicable)] must enter training compliance information on behalf of themselves, their organization and/or their organization's Individual Lobbyists, as applicable, into the Commission's online lobbying application, as directed by the Commission.

(i) For each Individual Lobbyist who has completed the online ethics training course, the Responsible Party for the Lobbyist must retain, for a period of three years, a completed and executed affidavit of training completion, in the form provided by the Commission.

Paragraph (3) of subdivision (c) of section 943.6 is amended to read as follows:

(3) Direct Lobbying can include Direct Contact with a Public Official who supports the position being advocated by the Lobbyist or [his] their Client.

Subdivision (e)(3)(ii) of section 943.9 is amended to read as follows:

(ii) Printing and/or postage that does not exceed \$500 in the aggregate;

The title of subdivision (h) of section 943.9 is amended to read as follows:

(h) Filing Requirements for Contractual and Beneficial Clients, Multi-Party Lobbying Relationships and Coalitions.

A new Paragraph (g) is added to subdivision (h)(3)(iv) of section 943.9 to read as follows:

(g) A Structured Coalition must disclose a Member of its Coalition as a source of funding if the requirements set forth in Part 938 of this Title are otherwise met, including if the Coalition meets the Expenditure Threshold as defined in such Part.

Subparagraphs (i) and (ii) of section 943.10(2)(j) are amended to read as follows:

(2) The name of the Principal Lobbyist.

(i) If an individual Lobbyist is an employee or partner of an organization or firm, the organization or firm should always be identified as the Principal Lobbyist unless the individual has been retained in [his] their individual capacity.

(ii) The Principal Lobbyist should only be listed as an individual if the Lobbyist conducts business in [his] their own name.

Subdivision (b) of section 943.11 is amended to read as follows:

(b) Any Lobbyist who [required to file] files a Statement of Registration for a Client for any biennial period must also file Bi-Monthly Reports in accordance with this section, regardless of Compensation, Expenses, or Lobbying Activity.

Paragraph (6) of subdivision (f) of section 943.12 is deleted and paragraphs (7)- (11) are re-numbered (6)- (10):

[(6) The identities of any Co-Lobbyists or Sub-Lobbyists as described in subsection 943.9(h), if applicable;]