

# PROJECT SUNLIGHT POLICY

Current as of 5/22/13

## 1.1 Introduction

Project Sunlight, an important component of the Public Integrity Reform Act of 2011, is an online database that provides the public with an opportunity to see the individuals and entities that are interacting with government decision-makers. For the text of the law, see Chapter 399 Part A, § 4 of the Laws of 2011. The following sets forth guidance to help agencies comply with the requirements of Project Sunlight.

## 1.2 Applicability

Project Sunlight applies to every executive state agency, department, division, office, and board; every public benefit corporation, public authority and commission at least one of whose members is appointed by the governor; the state university of New York and the city university of New York, including all their constituent units except community colleges of the state university of New York; and the independent institutions operating statutory or contract colleges on behalf of the state.

In order for an interaction to be covered by Project Sunlight it must:

1. Be an appearance,
2. Between covered individuals, and
3. Concern one of the five subject areas covered by Project Sunlight (procurement, rate making, regulatory matters, agency-based judicial or quasi-judicial proceedings, adoption or repeal of a rule or regulation).

Each agency shall maintain a list of the types of appearances that are not covered by Project Sunlight, and shall make such list publicly available.

## 1.3 Definitions

**(a) Appearance shall mean:** An interaction that is an in-person meeting or a video conference between covered individuals, related to one of the five covered categories. The location and formality of the interaction is irrelevant as to whether it constitutes an appearance, and it is irrelevant who initiates the interaction. There can be numerous appearances related to a single matter.

**(b) Appearance shall not mean:** **(1)** Ministerial or informational appearances, such as communications to schedule meetings or requests for information.

**(2)** Written communications such as letters, faxes, or emails.

**(3)** Telephonic conversations.

**(4)** Appearances regarding legislation or the budget.

- (5) Any appearance related to individuals or matters that are treated by a state entity as confidential pursuant to federal or state statute, rule or regulation.
- (6) Any appearance that if disclosed could endanger the life or safety of any person.
- (7) Participation in meetings which are open to the public, such as conferences or meetings subject to the Open Meetings Law or where a record of the meeting is otherwise publicly available.
- (8) Appearances between a covered individual at a state entity and an agent of the agency, such as a consultant.
- (9) Any appearance that if disclosed could subject an individual to a risk of retaliation or adverse employment action.
- (c) A covered individual at a state entity shall mean:** An individual at the state entity who has the power to exercise agency discretion in one of the five covered categories, or advises someone who has such discretion.
- (d) A covered individual at a state entity shall not mean:** Outside agents of a state agency or authority, such as retained outside counsel.
- (e) A covered individual outside of a state entity shall mean:** Appearances by both “external” (e.g., a lobbyist) and “internal” (e.g., a general counsel) representatives of an entity, appearances by an individual appearing on behalf of him/herself, and appearances by advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members.
- (f) A covered individual outside of a state entity shall not mean:**
  - (1) State and local government employees and elected officials as well as those of tribal governments and federal government representatives.
  - (2) Judges or employees of the judiciary.
  - (3) Individual inmates and parolees and their representatives before state entities regarding their supervision and/or conditions of confinement.
  - (4) Representatives of the media.
  - (5) Persons under the age of 18.
- (g) Five covered categories:** procurement of real property, goods and services, rate making, regulatory matters, agency-based judicial or quasi-judicial proceedings, adoption or repeal of a rule or regulation.
- (h) Reporting:** reporting is the act of transmitting information covered by Project Sunlight into the Project Sunlight database.
- (i) Restricted Period:** State Finance Law Sections 139-j and 139-k impose restrictions on communications between a state entity and an offerer/bidder during the procurement process. An offerer/bidder is restricted from making certain contact (defined in the law as communications intended to influence the procurement) from the date of the earliest notice of intent to solicit offers/bids through the date of the final award and, if applicable, approval of the contract by the Office of the State Comptroller to those other than designated staff. This interval of time is known as the Restricted Period.

#### **1.4 Appearances Related to the Procurement of Real Property, Goods and Services**

- (a)** Project Sunlight’s reporting requirement for appearances related to the procurement of real property, goods and services applies to those appearances between covered individuals that are for the purpose of procuring a State contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated.
- (b)** Appearances during the Restricted Period—whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law—do not need to be reported.
- (c)** Appearances for the purpose of advocating for the receipt of discretionary state funds that have already been appropriated must be reported.

- (d)** Appearances related to revenue contracts—under which revenue will be received by the State in exchange for real property, goods, or services—must be reported. Gifts, donations, or grants to the State that are not in exchange for real property, goods, or services do not need to be reported.
- (e)** Unsolicited appearances by vendors to attempt to influence a covered individual to purchase the vendor's products, even if not associated with a specific procurement, must be reported.
- (f)** Participation in widely-attended industry or professional conferences, including attending panels, participating in training or educational programs, or visiting booths on a show floor or exhibit hall is not an appearance.
- (g)** Appearances that are purely informational and occur at the request of the state entity—e.g., a state agency is conducting market research, seeking information of its own accord to inform a policy decision, or reaching out to an M/WBE firm to determine interest in and availability to provide goods or services—need not be reported.
- (h)** Appearances related to procurements under \$25,000 do not need to be reported.
- (i)** Appearances related to emergency procurements do not need to be reported.
- (j)** Appearances related to public auctions do not need to be reported.

### **1.5 Appearances Related to Rate Making**

- (a)** State entities that conduct ratemaking should record all applicable appearances that lead up to the setting of the rate. For example, if a utility company is requesting an increase in a rate from a rate-making agency, all appearances made by covered individuals of that utility company before covered individuals at the agency should be reported, unless otherwise exempted.
- (b)** Appearances to influence rates outside of any formal ratemaking proceeding must also be reported; that is, any appearance that is an effort to influence a rate, formal or informal, should be reported.
- (c)** Once a rate has been set, the agency or authority need not record appearances related to such rate, unless they are appearances to attempt to influence the application of a particular rate to a particular client or entity or are part of advocacy for future rate changes.
- (d)** Factual inquiries about rates, following reports by state agencies or authorities or otherwise, do not need to be reported. These inquiries are informational. If an inquiry about a particular rate is both informational and advocacy, however, the appearance must be reported.

### **1.6 Appearances Related to Regulatory Matters**

- (a)** A regulatory matter is one related to agency enforcement of regulations and existing law. An appearance regarding a regulatory matter need only be reported if it is before a covered individual at a state agency or authority.
- (b)** Regulatory inspections that are for information-gathering purposes do not need to be reported. However, ancillary or subsequent communications related to the inspection, such as contesting a finding, must be reported.
- (c)** Appearances in connection with a state investigation of a regulated entity do not need to be reported.

## **1.7 Appearances Related to Judicial or Quasi-Judicial Proceedings**

**(a)** Judicial or quasi-judicial proceedings refers to proceedings that take place before a neutral arbiter at a state agency. In order to be covered by Project Sunlight, the proceeding must include a state entity as a party to the matter. For example, a challenge to a fine assessed by a state entity that takes place before an administrative law judge is a judicial or quasi-judicial proceeding. Similarly, an enforcement action undertaken by a state entity that requires the involvement of an administrative law judge is a judicial or quasi-judicial proceeding.

**(b)** Appearances related to a judicial or quasi-judicial proceeding in which a party brings an action against another party, where the state entity only serves as a neutral arbiter or as a forum for the resolution of disputes between private parties, does not need to be reported.

**(c)** Employee disciplinary matters, the contractual grievance process, and challenges to employee performance reviews are not to be reported.

**(d)** Litigation pending in the court system and proceedings related to that litigation are not encompassed by Project Sunlight as they are not appearances before a state entity. Settlement negotiations related to litigation in the courts is therefore also not covered by Project Sunlight.

**(e)** Settlement negotiations related to otherwise covered judicial or quasi-judicial proceedings must be reported.

## **1.8 Appearances Related to the Adoption or Repeal of a Rule or Regulations**

**(a)** An appearance must be reported only if a covered individual is advocating for the repeal or adoption or amendment of a rule or regulation subject to the State Administrative Procedures Act ("SAPA"), and the appearance is before a covered individual at the state entity.

**(b)** This reporting category is limited to agency rules and regulations. Appearances regarding the repeal or adoption or amendment of a statute, including an appropriation bill, are exempted.

**(c)** This category does not contemplate appearances related to the application or interpretation of rules and regulations that are in effect. Such appearances are covered by the category of "regulatory matters."

## **2.1 Reporting Logistics**

**(a)** Appearances should be timely entered into the database within five business days after they occur where feasible.

**(b)** Each appearance need only be entered into the Project Sunlight database once. If multiple covered individuals from state entities attend a meeting, only one entry need be made. The database allows for the reporting of the names of multiple covered individuals.

**(c)** State entities are responsible for internally assigning those staff members who will be responsible for reporting the appearances.

**(d)** All inquiries regarding the Project Sunlight database should be directed to [help@projectsunlight.ny.gov](mailto:help@projectsunlight.ny.gov) and/or a state entity's Project Sunlight liaison.

## 2.2 Compliance

**(a) Liaisons:** Each state entity shall appoint a Project Sunlight liaison who will be responsible for regularly communicating with Project Sunlight, and be further responsible for communicating Project Sunlight directives to state entity personnel and reporting regarding compliance.

**(b) Training: 1.** Covered state entities are expected to train all appropriate staff members on the substance and technical aspects of Project Sunlight. Both technical and substantive trainings are available on the Statewide Learning Management System, and will be circulated to each agency liaison.

**2.** Upon request by Project Sunlight, each covered state entity will be required to report which personnel has received Project Sunlight training.

**(c) Compliance Plans 1.** Each covered state entity is required to adopt an internal compliance plan for reporting, and to make such plan available for review upon request by Project Sunlight.

**2.** Each state entity shall adopt a progressive discipline policy for those state employees who do not comply with Project Sunlight reporting duties.