



## **Citizens Union Positions on New York State Ethics Reform, Compensation and Budgeting March 2015**

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Citizens Union recommends the following steps for immediate legislative action to strengthen ethics laws and change the way New York State legislators and other state elected officials are compensated. The State Legislature is the closest branch of state government to New Yorkers. We deserve a legislature whose members operate ethically, without conflict, and in the public interest. While there are many ways to reduce corruption in Albany, compensation of elected officials has received particular attention given recent scandals, and deserves immediate corrective action. Outside employment activities need to be fully disclosed and appropriately limited to reduce the potential for corruption and ensure that the veil of secrecy that has been used to cloak sources and amounts of outside income no longer exist. We also support a significant salary increase, given that the current, too modest salary hasn't been increased in 16 years and has likely encouraged lawmakers to pad their per diem requests and had the unfortunate consequence of a few legislators seeking additional income through unethical or illegal means.

In addition to overhauling elected officials' compensation, reforms to strengthening our ethics laws and enforcement are critically needed. Reforms to our state's campaign finance system, and the budget process are also needed. Our recommendations in these four areas are detailed below.

### **I. OVERHAUL ELECTED OFFICIAL COMPENSATION**

#### **A. ESTABLISH A QUADRENNIAL COMPENSATION COMMISSION**

- 1. Citizens Union calls for the establishment of a stakeholder-balanced quadrennial compensation commission to determine the salaries of legislators and statewide elected officials.**
  - The commission should consist of 14 commissioners: six appointed by the governor, one by the attorney general, one by the comptroller, two by the temporary president of the senate, two by the assembly speaker, one each by the house minority leaders.
  - The commission should make recommendations on the level of compensation for members of the legislature and statewide elected officials. As part of its review of legislators' compensation, the commission should review the current system of awarding stipends to determine whether they should be provided and for which positions, if any, and the manner in which stipends are granted.
  - The commission's recommendations should have the force of law on a given date unless the legislature modifies the recommendations by statute before that date.
2. Citizens Union does not endorse the compensation commission proposed in the Executive Budget or its two tiered level of pay. The commission proposed by Governor Cuomo would consist of only three commissioners – appointed by the “three men in a room” – and would establish two tiers of pay, one for lawmakers who agree to forego outside income, and a lower tier for those who elect to receive outside income.

- B. REQUIRE FULL DISCLOSURE OF ALL SOURCES OF OUTSIDE INCOME.**<sup>1</sup> Citizens Union supports Governor Cuomo's proposal to increase disclosure of outside income but would require additional levels of disclosures, and lower the triggering fee. The governor would require public officials to disclose the identity of all clients paying fees greater than \$5,000, and would require a description of the services actually provided, but would impose the requirement only where the official personally represented the client.

**Building off of the governor's proposal, Citizens Union recommends:**

1. Lowering the triggering fee from \$5,000 to \$2,500;
  2. Requiring public officials who work as members or employees of firms to disclose the identity of firm clients seeking state action, whether or not the legislator has personally represented the clients, and describe the services actually provided on matters related to state action; and
  3. Requiring public disclosure in an electronic format permitting independent analysis.
- C. CAP OUTSIDE INCOME.** Citizens Union recommends a cap on income earned by legislators from outside activities. This is the clearest and most easily enforced way to combat the kind of conflict of interest that arises when lawmakers earn significant income from sources other than their public salaries. **A cap on outside income must be accompanied by a significant salary increase.**

Most New York State legislators do not earn outside income, and only a small portion earn more than \$20,000 from outside income. Citizens Union does not recommend a specific cap. We note that members of Congress are subject to a 15% cap on outside income, but members of Congress also receive a much higher salary and have received a more recent pay increase. An outside pay cap as high as 25% or more could be acceptable depending upon the scope of a salary increase and other factors, such as the appointment of a quadrennial commission to review stipends.

New York State leads the nation as a center of economic activity and remains an incubator for new social policies that requires a legislature that can handle complex and time-consuming matters. The demands of serving effectively and productively in New York preclude most legislators from earning significant income from outside activities, which is why a cap on outside income should be accompanied by an increase in compensation for state legislators.

- D. INCREASE IN THE SALARY OF LEGISLATORS.** Citizens Union recommends a significant increase in the base salary for New York State legislators. New Yorkers need a legislature that is fairly compensated. It has been sixteen years since New York lawmakers received a pay increase, and during that time, the cost of living has risen 40 percent. A cap on outside income, therefore, must be part of package that includes both a significant salary increase and a mechanism – such as a compensation commission – for determining salaries in light of increases in the cost of living.
- E. PROHIBIT OUTSIDE INCOME FOR REFERRING A PERSON SEEKING STATE ACTION TO A LAWMAKER'S FIRM.** New York lawmakers are prohibited by law from earning income for services rendered in connection with any matter pending before the legislature. **Citizens Union recommends prohibiting compensation, direct or indirect, for referring any client or customer who is lobbying or advocating on behalf of any favorable state action to any entity with which the member has a business relationship.**

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<sup>1</sup> Retaining exceptions for matters related to domestic relations, etc., already delineated in the disclosure law.

**F. RETAIN THE PER DIEM SYSTEM – BUT ADD A SYSTEM OF VERIFICATION.** Citizens Union recommends retaining per diem payments but only if a system is established that requires legislators to verify their presence in Albany on days for which they claim per diem payments, and present verification in such a way as to be viewed easily by the public. The governor would replace per diem payments with a reimbursement system. Citizens Union does not support this approach because such systems are cumbersome and impose high administrative costs on government resources.

**G. APPLY ALL COMPENSATION REFORMS TO THE GOVERNOR AND STATEWIDE ELECTED OFFICIALS**

## **II. STRENGTHEN ETHICS ENFORCEMENT**

**A. APPOINT A REVIEW COMMISSION IMMEDIATELY TO EVALUATE THE PERFORMANCE OF THE JOINT COMMISSION ON PUBLIC ETHICS (JCOPE) AND THE LEGISLATIVE ETHICS COMMISSION (LEC).** This is long overdue: the statute required appointment of the commission by June 1, 2014, and required its report by March 1, 2015.

**B. ELIMINATE THE ABILITY OF THREE COMMISSIONERS OF THE SAME PARTY AND SAME BRANCH AS A PERSON BEING INVESTIGATED TO BLOCK AN INVESTIGATION AND/OR ISSUE OF FINDINGS.** If the three-person veto remains, require JCOPE to disclose every vote tally where a minority of three blocks an investigation or report.

**C. GRANT JCOPE COMPLETE JURISDICTION TO HOLD ENFORCEMENT HEARINGS AND TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW.** This is necessary for transparency: LEC hearings are conducted in private; JCOPE hearings are public hearings. The legislature would retain authority to determine penalties of its members and staff.

**D. INCREASE JCOPE’S BUDGET FROM ITS CURRENT \$4.5 MILLION AND PROVIDE INDEPENDENT BUDGETING.** An independent budget can be created by linking JCOPE appropriations to the appropriations of another state office or agency.

**E. INCREASE TRANSPARENCY AND DISCLOSURE.** JCOPE should disclose the commissioner vote tally and name of a subject within seven days of a decision to issue a substantial basis report, rather than 45 days; and require JCOPE to broaden the scope of its reporting in its annual report.

**H. REQUIRE PUBLIC OFFICIALS TO FILE ALL FINANCIAL DISCLOSURE STATEMENTS ELECTRONICALLY.**

**I. REEVALUATE THE DISCLOSURE STATEMENTS.** The financial disclosure requirements should be examined to make sure they elicit meaningful information. Also, disclosure requirements should be reviewed to decide whether they should be applied to those who are mandated to file solely on account of their income and not because they hold policy-making positions.

**J. SUBJECT PUBLIC OFFICIALS AND SITTING LEGISLATORS TO PENSION FORFEITURE.** Citizens Union recommends authorizing pension forfeiture as a sanction against current elected officials, state agency heads, and judges convicted of specifically enumerated crimes related to holding office. Citizens Union does not support automatic forfeiture but rather supports the application of judicial discretion and other measures to ensure fairness.

## **III. REFORM CAMPAIGN FINANCING**

**A. IMPOSE CLEAR AND STRICT LIMITS ON THE PERSONAL USE OF CAMPAIGN FUNDS**

Citizens Union supports proposals in the Executive Budget authorization bills to impose limits on the personal use of campaign funds but would require additional limits, specifically:

- **Prohibit elected officials from using campaign funds to pay attorneys' fees** and costs of defending against civil and criminal investigations or prosecutions alleging violations of state or federal law, unless the expenditure is exclusively related to the candidate's campaign.
  - **Define *all* household expenditures as "personal use" expenditures** even if a portion of a household is used for campaign activities, and define *all* clothing purchases as "personal use" expenditures, including clothing used in the campaign.
- B. CLOSE THE LIMITED LIABILITY CORPORATION (LLC) LOOPHOLE COMPLETELY.** The governor proposes treating an LLC as a corporation for the purposes of campaign finance limits. **A requirement should be added that LLCs, together with a common managing member, be considered a single source for the purposes of campaign contribution limits.**
- C. ENACT COMPREHENSIVE CAMPAIGN FINANCE REFORM, INCLUDING PUBLIC MATCHING FUNDS**
- IV. INCREASE PUBLIC TRANSPARENCY OF LUMP SUMS IN BUDGET and END LINKING POLICY CHANGES TO BUDGET APPROPRIATIONS REFORM**
- A. REFORM LUMP SUM APPROPRIATIONS**
1. Support the governor's proposal to require an affirmation from legislators who seek to make awards from lump sum appropriations **that the contract or grant is for a lawful, public purpose, that the lawmaker has not and will not receive any financial benefit**, and that there are no conflicts of interest, and that the legislator is in compliance with all financial disclosure requirements in the public officers law.
  2. **Expand the governor's proposal to apply to *all* state elected officials involved in determining grants, including the governor; and *all* lump sum funds authorized in the budget.** It appears that 15 lump sum pots in the proposed FY 2016 were covered by the new requirements. Citizens Union has identified at least 66 pots in the current budget, 12 of which were covered by the requirements (note: 3 additional items were covered that were not initially found by Citizens Union, as they do not identify an elected official as responsible for their distribution). **This should be further codified in state finance law to ensure application to all future lump sum pots.**
  3. **There should be comprehensive, online disclosure of all grants and contracts expended under lump sum funds.** The disclosure should be in a user-friendly format permitting independent analysis and should include all MoUs, plans, resolutions and other agreements, funds distributed and the identity of recipients, and the amount of funds that remain.
  4. **Lump-sum appropriations should disclose in the state budget the detailed purposes** and criteria set forth for their distribution.
  5. For lump sum items distributed via assembly or senate resolution, **require resolutions to age for 3 days and require the resolutions to identify the legislative sponsor.**
  6. **Create a time limit for the reappropriation of lump-sums** to decrease slush funds and the use of such funds as "one-shot" budget gap fillers
- B. END THE USE OF APPROPRIATIONS BILLS TO CHANGE POLICY.** While supporting many of the governor's proposed reforms, Citizens Union does not support the governor's use of the budget appropriations process to achieve reform. CU does support including reform measures in Article VII authorization bills that accompany the budget, as the legislature can amend those bills.