Project Sunlight & It’s Impact on SUNY

SUNY System Administration
April 2013
Project Sunlight, a component of the Public Integrity Reform Act of 2011 (Ch. 399, Part A, §4, L. 2011), is an online database that provides the public with an opportunity to see what entities and individuals are interacting with government decision-makers.
What is Project Sunlight

Project Sunlight’s public-facing website will aggregate and publish data submitted to the NYS Office of General Services (“OGS”) by State entities, including SUNY, concerning individuals and firms who or that appear before decision-makers of the state entities concerning five categories of matters:

(1) procurement of State contract for real property, goods, or services over $25,000
(2) rate-making,
(3) regulatory matters,
(4) judicial or quasi-judicial proceedings, and
(5) rule-making per the State Administrative Procedures Act
Compliance Mandate:
SUNY is now required to report to OGS appearances by individuals and firms who/that appear before State decision-makers or persons who advise decision-makers, regarding one of the five designated categories, on an OGS form, electronically available in an electronic portal.
**Required SUNY Action**

EACH CAMPUS & OPERATIONAL CENTERS/UNITS*

**MUST:**

1. **Designate one/several individuals** responsible for entering data in the OGS Project Sunlight database & undergo Project Sunlight training

2. **Develop procedures** to assure SUNY individuals before whom outside individuals and firms make reportable appearances **complete the OGS form or convey notice of the appearance** to the SUNY individual responsible for entering data in the OGS database

* Charter Schools Institute/ Statutory Colleges
SYSTEM ADMINISTRATION:

Adopt a plan for compliance for Project Sunlight per OGS’s most recent communication mandating compliance plans are adopted by each state entity.

- Continue Communication with campuses on Project Sunlight
- Train within System Administration and ensure that campuses are training their personnel

Required SUNY Action
State operated campuses
SUNY System Administration
Construction Fund
Charter Schools
Board of Trustees
Statutory Colleges

Who MUST report under Project Sunlight
Project Sunlight:
What Entities **DO NOT NEED TO** report

- RF
- Foundations
- Auxiliary Corps.
- Community Colleges
Project Sunlight:
Who DOES NOT NEED TO report

- Medical practitioners in SUNY Hospitals and Medical Practitioners at SUNY Optometry and the UB Dental School, unless they are acting in the capacity as a SUNY Administrator
- Elected officials, executive or legislative employees or judges or employees of the judiciary
- Inmates and parolees and their representatives before criminal justice state entities regarding their supervision and/or conditions of confinement
- Representatives of the media
- Persons under the age of 18
Under law, must report appearances that could result in purchase of $25,000 or more in goods and/or services.
Time Requirement:
Appearances must be reported to the database within five (5) business days of the appearance.
SUNY is required to:

Report appearances to SUNY by individuals or firms (whether they represent themselves or others) that occur in-person, by telephone or by video-conference (not letter, e-mail or fax) – telephone appearances are OPTIONAL to report.

To the OGS database within five (5) days of its occurrence

**IF:**

If interaction is a substantive interaction, not ministerial, If person at SUNY has power to exercise decision-making* with respect to the matter or who advises the decision-maker, and If cost of service/ good would equal more than $25,000
Report appearances by individuals or firms

What is an APPEARANCE?
An appearance must be a substantive interaction that is meant to have an impact on the decision making process of a state entity. In order to constitute an appearance, the interaction must be an in person meeting, a telephone conversation, or a video conference.

NOTE REGARDING TELEPHONES: Telephone interactions are appearances under the law, but optional to report.
Report appearances by individuals or firms

Initiation: it does not matter WHO initiated the appearance. It must be reported.

Vendor calls you unprompted, and you are unwilling to purchase from vendor & did not solicit the call, you STILL have to report when over $25,000, you spoke in person/phone/video-conference, and you are a decision-maker or decision-influencer (except phone appearances are optional to report).
Report appearances by individuals or firms

Formality and Location: the level of formality of an appearance is irrelevant, and the physical location of the meeting is irrelevant.

Informal conversation constitutes an appearance if the goal / substance of the communication is part of an effort to influence the decision making process of a state entity. You must report whether it happened in or out of your office or theirs, or anywhere.

Example: Vendor/advocate approaches you at the gym and tries to influence you = you must report
Report appearances by individuals or firms

Single Matter Can Have Multiple Appearances:
There can be multiple appearances related to one single matter, and each appearance must be reported separately.

Only One Report Per Meeting:
If multiple covered individuals attend a meeting together, only one report is necessary. Each meeting need only be entered into the Project Sunlight database once.
Report appearances by individuals or firms

Appearances by advocacy organizations: Advocacy Organizations such as unions and other businesses) are also reported as appearances

Example: Another higher education institution advocates for SUNY to use a vendor that they also use, this constitutes a reported appearance
If interaction is a substantive interaction, not ministerial

Substantive interaction v. ministerial:
If the interaction between the SUNY representative and the vendor/advocate is purely informational, reporting is not required.

Ex. Individual calls to schedule a meeting → not reported
If person at SUNY has power to exercise decision-making with respect to the matter or who advises the decision-maker

Power to exercise decision-making or advising of decision-maker: Individual at the state entity has the power to exercise agency discretion in one of the five covered categories, or advises someone who has such discretion.
Campus decision-makers include, but are not limited to:

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<thead>
<tr>
<th>Vice President for Administration</th>
<th>Director of Procurement</th>
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<tbody>
<tr>
<td>Purchasing Agent</td>
<td>Athletics Director</td>
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<tr>
<td>President</td>
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<td>Vice President for Administration</td>
<td>Chief Information Officer</td>
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<td>Provost</td>
<td>Facilities Director</td>
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YOU MUST ONLY REPORT APPEARANCES RELATED TO THE SPENDING OF STATE FUNDS or the PROCURING OF A STATE CONTRACT

If your appearance was related to the spending of funds from another account (foundation, auxiliary, RF) those are not considered State Funds and are, thus, not reported

If you are meeting to discuss a potential State contact (i.e. for the sale of SUNY land), you would have to report

If the appearance was by an advocacy group and not the vendor itself, it still must be reported
Vendor Conferences:

- Appearances at vendor conferences and vendor expos, or appearances where a vendor attends a SUNY Conference do not need to be reported.

“Appearances” shall not include appearances related to procurement before a SUNY representative that takes place in the public area at which a vendors conference involving multiple vendors, sponsored by SUNY or another entity, occurs.
Phone Appearances:
• Appearances by phone are reportable appearances under the law, but they are OPTIONAL to report

Webinars:
• Webinars that are open to the public do not need to be reported as appearances
Project Sunlight Exclusions: What DOES NOT need to be Reported by SUNY

**RF:**
- Appearances in front of the RF - we have an existing contract with the RF to do business, generally

**Existing Contracts:**
- Appearances **following** the award of a contract **do not** need to be reported.
- Appearances related to State OGS contracts that SUNY can use at will **DO NOT** need to be reported
Project Sunlight Exclusions: What DOES NOT need to be Reported by SUNY

**RFP:**
• Appearances that occur DURING the restricted RFP or IFB processes

**M/WBE:**
• If SUNY reaches out to a M/WBE firm to determine interest in or availability to provide goods or services--> NOT REPORTED
Project Sunlight Exclusions: What DOES NOT need to be Reported by SUNY

Informational:
• If appearance is INFORMATIONAL and is INITIATED BY SUNY e.g. market research), than reporting is not required

Confidential Proceeding:
• Any interaction that an agency or authority treats as confidential pursuant to any law, rule or regulation does not need to be reported.
  • NOTE: Confidentiality requirements from federal/ state statutes, rules or regulations always take precedence over reporting requirements of Project Sunlight.
Public meetings

• 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 available, is NOT reported
  • However, communications outside of such public meetings but with respect to the same matter covered in the public meeting MUST be reported
Discretionary contracts?

Appearances for the purpose of advocating for the receipt of discretionary state funds that have already been appropriated must be reported, but a meeting to finalize a contract for any discretionary award need not be reported.

**Discretionary contracts** refers to an agency’s threshold to purchase without a formal process (IFB or RFP)
Elected Officials:
• Contact by elected officials, executive or legislative employees: NOT REPORTED

Legislation/ Budget Appearances:
• Contact related to legislation or SUNY’s budget: NOT REPORTED

Other State Agencies/ Local Govt’s:
Appearances before other state and local agencies and authorities, as well as tribal governments and federal government representatives
Emergency Procurements:
• Appearances related to emergency procurements do not need to be reported

Employee/Student Disciplinary Matters:
• Employee and student disciplinary matters conducted in-house are not judicial or quasi-judicial proceedings: NOT REPORTED
Project Sunlight: What Info Must be Reported

- **Date of Appearance** (month, day, year)
- **Type of Meeting:** □ In-Person □ Telephone □ Video Conference
- **Location of Appearance:** BUILDING, STREET, CITY, STATE, ZIP
- **Purpose of Meeting:** (one of the 5 categories listed in the law) PROCURING, RATE MAKING, REGULATORY MATTERS, JUDICIAL, ADOPTION OF A RULE
- **Name of SUNY Contact and Affiliation:** SUNY SYS ADMIN, SUCF, CAMPUS
- **Name of Company at Appearance**
- **Company Location:** CITY, ZIP ONLY
  IF LARGE COMPANY, LOCATION THAT REPRESENTATIVE WORKS OUT OF
- **Outside Representative at Appearance:** (E.G., COMPANY’S ATTORNEY, LOBBYIST)
- **Outside Representative’s Location:** CITY, ZIP ONLY
  IF LARGE COMPANY, LOCATION THAT REPRESENTATIVE WORKS OUT OF
- **Name of Non-SUNY Contacts**
1. A vendor wants to print a campus alumni magazine. Do they have to be included in the reporting? **YES**

   → YES, CONTACT BY A PRINTING VENDOR IS REPORTABLE, as long as the procurement would total $25,000 or more, and State Funds would be used
   → If foundation or Auxiliary Corporation money would be used, the appearance would not need to be reported

2. A radio station or a television station contact us wanting an interview. Do they have to be included in the reporting? **NO**

   → No, the media representative is not initiating an appearance related to influencing a decision related to procurement, so the appearance is not reported
3. A vendor calls and speaks with your administrative assistant. The vendor is interested in selling you over $25,000 in pencils. Is this reportable? **NO**

   → No, because the vendor only spoke with the administrative assistant, who under the law is not a ‘decision-maker’, so this communication is not reportable

4. Same as #3, but the administrative assistant **transfers the call to you**, the decision-maker, and you promptly say no? Is this reportable? **YES**

   → YES, because the vendor spoke to you, as the ‘decision-maker’, so this communication IS reportable; Now you will need to get all of the necessary information from the rejected vendor, including their name, address, company name, company location (street, zip, state)
5. A vendor **e-mails** you, the decision-maker, to sell you over $100,000 in pencils. Is this reportable?  **No**

   →  No because appearances are only reportable if they occur in-person, by telephone or by video-conference BUT not written contacts by letter, e-mail or fax.

6. **Current** vendors with existing contracts with SUNY visiting a SUNY conference to talk with various campus representatives?  Is this reportable?  **No**

   →  No because the vendor already has a contract with SUNY, and so ‘appearances’ related to that contract are not reported  **EXCEPT** if the appearance discussion is outside the scope of the existing contract, where the vendor is trying to influence your decision unrelated to the existing contract, then that would be reported
7. Vendor tables at a Conference?  Case-by-case analysis
   → If, during the interaction, the vendor attempts to influence a covered individual to purchase, the contact should be reported
   → If the interaction is purely informational, reporting is not required

8. A bidders conference occurs during the RFP process.  Is this reportable?  No
   → No because appearances are not reportable if they during the Restricted Period of the RFP Process. However, a contact before the Restricted Period that is a substantive attempt to influence a SUNY decision-maker to purchase a vendor’s product, even if unsolicited, IS a reportable appearance.
9. Another University/Union/Association is advocating for you to procure or contract with a particular vendor? Yes
   ➔ The law states that we must report appearances where people are acting in a representative capacity, and this advocacy is reportable

10. In-person Meeting related to the sale of SUNY land? YES
    ➔ The appearance is related to a potential state contract, so it is reported, even if SUNY is selling its on property

11. Do Emergency Procurements need to be reported? NO
    ➔ Appearances related to emergency procurements do not need to be reported
Project Sunlight Information

All information related to Project Sunlight can be found at the Compliance Website

www.suny.edu/compliance

⇒ TOPICS: Project Sunlight

Questions: submit to projectsunlight@SUNY.edu

Specific legal questions: SUNY Legal Counsel Office (518) 320-1400 or your campus counsel directly
SUNY System Administration will be using a form that is then submitted to one office, who will input the information into the database.

- **Form to fill out** available on compliance website

- **Microsoft word form** is available for the campuses to copy and use

- SUNY System PowerPoint also available on the web for campuses to use on compliance website
Questions?