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Federal Lobbying Disclosure Act: Key Components

The Lobbying Disclosure Act of 1995 (LDA) regulates federal lobbyists and organizations that lobby. The law defines and specifies the following:

Who is a Lobbyist?

Any person who:

- Receives compensation of \$5,000 or more per six-month period, or makes expenditures of \$20,000 or more per six-month period, for lobbying;
- Makes more than one lobbying contact; and
- Spends 20 percent or more of his or her time over a six-month period on lobbying activities for an organization or a particular client.

Unless each of these criteria is met, there is no registration requirement for that individual.

An organization is required to register under the LDA if it plans to engage in lobbying activities during any six-month period and incurs at least \$20,500 in lobbying expenses.¹

What Are “Lobbying Activities”?

The time spent on a lobbying contact and efforts in support of such contacts. These include the preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

There are several categories of activities for influencing public policy that are specifically not defined as lobbying contacts for reporting purposes under LDA. Some of these are:

- Congressional testimony;
- Petitions for agency action;
- Compelled statements;
- Public comments solicited through the *Federal Register*;
- Public statements or media-broadcast statements;
- Written responses to government information requests (FOIA);

- Communication directed solely to the intended agency regarding judicial, criminal or civil law proceedings; and
- “Grassroots” lobbying activities, which encourage private citizens to contact officials on a particular issue.

What Are “Lobbying Contacts”?

Virtually any communication written or oral, with either “covered legislative branch officials” or “covered executive branch officials” regarding the formulation, modification, or adoption of policy or legislation. Also included are communications relating to the:

- Administration or execution of a federal program or policy (including contracts, grants, loans or permits); and
- Nomination or confirmation of a person subject to confirmation by the Senate.

For reporting purposes, the question of which officials are “covered” is quite simple with respect to Congress and somewhat less clear with regard to the Executive Branch.

1. Covered Legislative Branch Officials

- Members of Congress;
- An elected officer of either House;
- Any employee of, or any other individual functioning in the capacity of (but not volunteers or contractors) a Member of Congress, a committee, a leadership staff, or a working group or caucus; or
- A senior employee of the Clerk of the House or Secretary of the Senate.

2. Covered Executive Branch Officials

- The President, Vice President, and any employee in the Executive Office of the President;
- Any officer serving in level I-V of the Executive Schedule: agency heads, assistant secretaries, deputy assistant secretaries, general counsels of agencies, and so forth;
- Any member of the uniformed services whose pay grade is at or above 0-7 under section 201 of title 37 United States Code; and
- Any other employee serving in a “confidential, policy determining, policy-making, or policy-advocating” position as described in section 7511 (b)(2) of title 5, United States Code. This includes so-called “Schedule C” employees.

In practice, it can sometimes be difficult to determine whether an executive branch official is “covered.” One rule of thumb is that if the official has a significant role in the formulation of policy, then it’s likely he or she is covered. Where there is uncertainty, lobbyists should always ask. All government officials are required to disclose their status if asked by a lobbying contact.

Registration Procedures

A lobbyist or lobbying firm must register within 45 days of making a lobbying contact or being employed for such activities, whichever occurs first.²

In order to register, lobbyists must file with the Secretary of the Senate and the Clerk of the House and disclose the following information:

- The name, address, business telephone number, and principal place of business of the registrant, and a general description of its business or activities;
- The name, address, and principal place of business of the registrant's client, and a general description of its business or activities (if different from registrant);
- The general issues on which the organization intends to engage in lobbying activities and, to the extent practicable, the specific issues that are likely to be addressed;
- Each employee whom the organization expects to act as a lobbyist;
- The identity of any organization that provides more than \$10,000 in support in a semi-annual period and plays a major part in the supervision of the registrant's lobbying activities; and
- The identity of a foreign entity that influences the registrant's lobbying activities, directly or indirectly, or is an affiliate of the client and has a direct interest in the outcome of the lobbying activity.³

Filing Requirements

Once an organization or lobbyist registers under the LDA, they are required to file semi-annual reports so long as they remain registered. If the organization or lobbyist ceases lobbying, they must file a registration termination form.

Semi-annual reports for the period of January through June must be filed on August 14th of each year. Reports for the period of July through December must be filed on February 14th of each year. These reports must include the following information:

- For each general issue in which the organization or lobbyist is engaged in lobbying, a list of the specific issues on which the lobbyists are working. This should include a list of bill numbers and references to specific executive branch actions "to the maximum extent practicable";
- A list of the houses of Congress (Senate and House) and federal agencies contacted by any employee acting as a lobbyist;
- The names of the employees who acted as lobbyists during the semi-annual period;
- A disclosure of the interests of any foreign entity listed in the registration statement; and
- A "good faith" estimate of the organization's or lobbyist's total expenses relating to lobbying activities during the semi-annual period. The Act provides that expenses above \$10,000 should be rounded to the nearest \$20,000.⁴

Penalties

The Secretary of the Senate and the Clerk of the House are responsible for enforcing the LDA. If either the Secretary or the Clerk is made aware that “any lobbyist or lobbying firm...may be in noncompliance” with the LDA, they must notify the lobbyist or lobbying firm in writing. The lobbyist or lobbying firm then has 60 days to respond and provide appropriate information. Failure to do this triggers notification to the United States Attorney for the District of Columbia to initiate an investigation. However, efforts by the House Clerk and the Senate Secretary to ensure compliance are very limited, and referrals for repeated noncompliance to the Department of Justice had been non-existent until very recently when both offices have come under increasing public pressure to fulfill their mandate.

A lobbyist or lobbying firm found to be in violation of the LDA may be assessed civil fines of up to \$50,000 for knowingly failing to comply with the LDA or for failing to resubmit a complete filing within 60 days of notification.

The Department of Justice’s enforcement of the LDA appears to be very weak, only recently finding anyone in violation of the law. Even in these few cases, the Department abides by a policy of confidentiality that is at odds with the purpose of the LDA. The Department will not discuss any LDA enforcement actions, even those that have been completed.

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Endnotes

¹ The LDA specifies that every four years from January 1, 1997 the dollar amounts are to be adjusted according to the Consumer Price Index and rounded to the nearest \$500. See 2 U.S.C. Sec. 1603 Chapter 26, (a)(3)(B)(ii).

² 2 U.S.C. Sec. 1603, Chapter 26.

³ 2 U.S.C. Sec. 1603, Chapter 26.

⁴ 2 U.S.C. Sec. 1610, Chapter 26.