

Public Affairs Council

# Complying with the Lobbying Disclosure Act

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# Federal Lobbying Law

- Lobbying Disclosure Act of 1995 (“LDA”)
- Honest Leadership and Open Government Act of 2007 (“HLOGA”)
- Three forms:
  - LD-1 Registration
  - LD-2 Reports
  - LD-203 Semi-annual disclosures

# Registration

- LD-1 Form - Due 45 days from initiating lobbying
- What triggers registration?
  - In-house registration triggers:
    - (1) at least one employee of a company or trade association must have two or more lobbying contacts at any point in an employee's employment;
    - (2) the same employee must spend 20% or more of his or her time engaged in lobbying activity in a calendar quarter; and
    - (3) the company or trade association must spend more than \$14,000 on lobbying activity in a quarter.

# Registration

- Outside consultant triggers:
  - (1) at least one employee of the outside consultant must have two or more lobbying contacts on behalf of a particular client during the period of representation;
  - (2) the same employee of the consultant must spend 20% or more of his or her time engaged in lobbying activity on behalf of a particular client in a calendar quarter (the 20% test is a per client analysis); and
  - (3) the outside consultant must receive direct lobbying income of \$3,000 or more in a calendar quarter computed on an accrual basis.

# Registration

- When a company or trade association triggers registration as a result of one or more employees meeting the above tests, just the employer of that employee or employees registers.
- Foreign-owned companies - If a company or trade association triggers registration, the LD-1 form requires that all foreign entities that are 20% equitable owners must register. The guidance requires that even intermediate foreign owners must be disclosed.

# What is Lobbying Activity? LD-2 Report

- Lobbying activity - The definition of lobbying activity applies to all employees of a company or trade association. Even if an employee spends less than 20% of his or her time lobbying, the value of the time spent engaged in lobbying activity must be calculated for disclosure purposes.
  - The definition of lobbying activity includes:
    - research and preparation for lobbying contacts for work performed with the intention of being used for a lobbying contact by the employee performing the work or by another employee of the registrant;
    - strategic planning and research;
    - time spent during a lobbying contact whether in person, in writing, electronic, or telephonic;
    - time spent educating covered officials on issues related to the lobbying effort; and
    - strategizing with others in the industry, trade associations, and task forces is likely included as lobbying activity.

# What is Lobbying Activity? LD-2 Report

- Other considerations in computing lobbying activity:
  - Travel time
  - Door-opening
  - Administrative time
- What about:
  - “Hide-behind lobbying”?
  - Time spent at fundraisers?
  - Lobbying issues where there is no pending legislation?
  - Requests for proposals or pitches on government contracts?
  - “Shadow lobbying?”

# Who is a Covered Official? LD-2 Report

- Method A - Covered Officials (LDA Method)

- Legislative Branch:

- Members of Congress
- Senators
- Congressional staff of Members of Congress and Senators
  - This includes personal and committee staff members

- Executive Branch:

- President and Vice President
- White House staff and those in the Executive Office of the President
- Military grade O-7 and above (*e.g.*, generals and admirals)
- Presidential and Schedule C appointees (does not include career Senior Executive Service)
- Plum Book lists covered official positions



# Who is a Covered Official? LD-2 Report

- Method C - Covered Officials (Tax Code method)

- Federal:

- Members of Congress
    - Senators
    - Congressional staff of Members of Congress and Senators
      - This includes personal and committee staff members
    - President and Vice President
    - White House staff
    - Top two officials in any office or division of the Executive Office of the President (e.g., OMB Director and Deputy Director)
    - Cabinet-level officials and their first deputies
    - No independent agency officials are covered

# Who is a Covered Official? LD-2 Report

- Method C - Covered Officials (Tax Code method)
  - State:
    - State legislative officials on legislative matters
    - State executive officials only on legislative matters
  - Local legislative officials

# LD-2 Report

- Other factors under Method C
  - Federal and state grassroots lobbying on legislative issues is included
  - Executive branch contacts with non-covered officials if on legislative matters
  - De minimis lobbying excluded if less than 5% and no contacts by an employee
    - Note: Method A has no de minimis exception

# Social Media

- Direct lobbying
  - Email
  - Direct messages
  - Tagging
  - Texting
- Indirect lobbying (grassroots) - Method A does not cover these activities
  - Tweeting or X
  - Retweets
  - Facebook
  - Instagram
  - Threads
  - Tiktok

# Filing Dates - Due 20 Days After Each Quarter

- The House and Senate make the LD-2 filings publicly available.
- Upcoming due dates:
  - 4th Quarter (2025): January 20, 2026
  - 1st Quarter (2026): April 20, 2026
  - 2nd Quarter (2026): July 20, 2026
  - 3rd Quarter (2026): October 20, 2026
- \* Reports are due 20 days after the end of each calendar quarter; however, the LDA allows for filing on the next business day if a reporting date falls on a weekend or federal holiday.

# What Accounts for the Total Spent on Lobbying Activities for the LD-2 Report?

- In-house employees - compensation of employees for time spent lobbying, including a gross-up for overhead (e.g., 175% gross-up method)
- Outside consultant fees
- Coalition dues
- Trade association dues for the portion spent on lobbying. If a company pays dues for the entire year in one quarter, the entire amount goes on that quarterly report. It cannot be amortized.
- Travel expenses
- Entertainment expenses

# Tracking of Time

- Preference is contemporaneous tracking of time.
- At least keeping time on a weekly basis if not daily.
- Estimating time without back-up is not advised.
- Putting down 100% is not a solution if not lobbying all the time.

# Tracking Issues

- Disclose issues on which the registered lobbyists work.
  - A filer does not disclose issues that only non-registered employees work on.
  - A company or trade association does not disclose contacts and lobbying activities of its outside consultants, only the contacts and activities of its in-house lobbyists.
- Description of issues should include bill number (if applicable), a brief description of the legislation, and the portions of the bill lobbied.



# Other Issues

- Interest of foreign entities disclosed on the LD-1. This may be important regarding the interplay between the LDA and the Foreign Agents Registration Act.
- Updates or changes
  - For example, changes in address and incoming and outgoing lobbyists get reported on the quarterly LD-2 on the last page of the report.
- Previous legislative and executive branch covered employment
  - Lobbyists disclose prior covered positions during the past 20 years.
  - In-house lobbyists do this once when they are first listed as “new.”
  - Do not list private positions, such as “CEO of a company.”

# Justice Against Corruption on K Street - JACK Act

- Disclose on the LD-1 and LD-2 federal and state convictions of lobbyists for bribery, extortion, embezzlement, kickbacks, tax evasion, fraud, false statements, perjury, money laundering, and certain conflicts of interests.
- Provide details of the offense such as jurisdiction and statutory cite.
- Even if very unlikely that any such convictions have occurred, it is necessary to survey lobbyists quarterly and so report.

# Affiliate Disclosure

- A registrant only discloses the identity of an affiliate if:
  - (1) an employee of an affiliate actively participates in the planning, supervision, or control of a registrant's lobbying activity; and
  - (2) the affiliate contributes \$5,000 or more in a calendar quarter toward the lobbying effort.

# Terminating and Switching Lobbyist Registrations

- Termination is permitted if an individual has no reasonable expectation of continuing to meet the 20% threshold.
- A registrant can terminate a lobbyist by listing the lobbyist's name on the LD-2 report.
- The registrant (not the lobbyist) must sign in to the LD-203 Contribution System and update the lobbyist's status to "inactive" and enter an effective date of termination.
- The lobbyist must file an LD-203 report for any reporting period for which he or she was an active lobbyist.
- When a lobbyist leaves a company or organization, the lobbyist should properly terminate registration and make it part of the exit interview process to make sure the employee files an LD-203.
- If a lobbyist is merely switching employers and will continue to lobby, then the lobbyist must sign into the LD-203 Contribution System in the “Manage Your Profile” section and request an employer transfer.

# Trade Associations and Informal Coalitions

- Requirement:

- A trade association or coalition must identify members or participants that contribute over \$5,000 in a reporting period and actively participate in the lobbying effort.

- Exception:

- A trade association does not need to list its members meeting the \$5,000/active participation threshold if it publicly discloses the identities of its members.
- A coalition is an informal group. If it engages an outside lobbyist, the outside lobbyist must register and report and note on the disclosure that the group it represents is an informal coalition.

# LD-203 Reports: Semi-annual

- All lobbyists, lobbying firms, and lobbyist employers must file their own semi-annual LD-203.
- Upcoming due dates:
  - For second six months of 2025 - January 30, 2026
  - For first six months of 2026 - July 30, 2026
- LD-203 Reporting Categories
  - PAC donations under the Federal Election Campaign Act
    - Covers contributions to federal candidates, leadership PACs and party committees
  - Honorary expenses
    - Includes controlled committees, such as the Congressional Black Caucus, Congressional Hispanic Caucus, and Congressional Asian Pacific American Caucus
  - Presidential library and inauguration
  - Other expenses, such as certain meeting expenses

# LD-203 Certification and Compliance Program

- An LD-203 filer must certify that they are familiar with House and Senate gift rules and that they have not provided, requested, or directed a gift to a Member of Congress, Senator, or staff
- Due diligence
- Companies and trade associations need a method of contacting certain employees to make an accurate certification
- Training in lobby and gift rules
- Robust gift policy
- Disclaimers: if due diligence is performed, a filer may state that a filing is to the best of his or her knowledge after reasonable due diligence
- Disclosure of service on a corporate, trade association, or other PAC board

# Federal Legislative Branch Gift Rules

- Reception exception
- Widely attended events
- Friendship exception
- Site visits
- Home district products
- Nominal items
- Training
- Commemorative items
- Informational materials
- Personal hospitality
- Political contributions
- Items paid for at fair market value



# Federal Executive Branch Gift Rules

- Gifts to executive branch officials and employees are generally limited to \$20 per occasion and \$50 per calendar year
- Exceptions:
  - Widely attended gatherings (requires pre-clearance from agency)
  - Meals and entertainment from non-prohibited source
  - Personal relationship
  - Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal
  - Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
  - Gifts the receipt of which is specifically authorized by statute (e.g., Foreign Gifts and Decorations Act)
  - Gifts to the President and Vice President

# Federal Executive Branch Gift Rules - Biden Executive Order

- Biden Executive Order prohibits most gifts to executive branch officials and employees from lobbyists, lobbying firms, and lobbyist employers. Expect Trump EO on ethics after he is inaugurated.
- May not utilize \$20/\$50 or widely attended gathering exceptions, among others
- Limited exceptions remain, including:
  - Personal relationship
  - Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal, but not including receptions with alcohol like in the legislative branch
  - Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
  - Gifts the receipt of which is specifically authorized by statute (e.g., Foreign Gifts and Decorations Act)
  - Gifts to the President and Vice President

# Enforcement and Audits

- Government Accountability Office (“GAO”) oversight of LDA and HLOGA filings
- Random audits only
  - 80-100 LD-2 per year
  - 160 LD-203 per year
- Referrals from House and Senate to the U.S. Attorney for the District of Columbia
- Any U.S. Attorney may prosecute an LDA/HLOGA violation
- Errors from GAO Audits\*:
  - 13% of LD-2 reports were not properly rounded to the nearest \$10,000
  - 21% of LD-2 reports failed to properly disclose one or more covered positions
  - 5% of LD-203 reports missed reportable contributions

*\* Findings from 2024 GAO Report on federal lobbying released in April 2025*

# Good Faith Compliance

- The standard for compliance is good faith, but the law provides no definition
- DOJ stated an increase for review of HLOGA compliance
  - Abramoff pleas - prison term
  - Carmen Group - \$125,000 fine
  - Mauk - \$30,000 settlement
  - Biassi Business Services - \$200,000 default judgment
- Penalties:
  - Civil and criminal penalties of up to 5 years of imprisonment for knowingly and corruptly violating the law
  - 60-day cure provision for reporting violations but not for gift rule violations; however, returning gifts and late amendments mitigate

# Questions?



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