Topics of Discussion

• What Constitutes Lobbying under federal law
• Calculation of Lobbying Expenses for LDA and IRS reporting purposes
• Congressional Gift and Travel Rules
• Executive Branch Rules/Obama Executive Orders
The New World for Lobbyists

University government relations representative

Lobbying Disclosure Act

Office of Government Ethics

Obama Executive Order

House and Senate Ethics Rules

Office of the Comptroller General

Special Interest Groups/Media

IRS/FEC
Lobbying Disclosure Act

- The LDA is intended to provide broad disclosure of both Legislative and Executive Branch lobbying activities
- Signed into law by President Clinton in 1995
- Subsequent minor technical amendments
- Major changes were made by the Honest Leadership and Open Government Act of 2007 (HLOGA)
Lobbying Disclosure Framework

• The LDA is built around the definitions of a
  – lobbyist
  – covered legislative & executive branch officials
  – lobbying activities
  – Exceptions

• LDA contains its own definitions of these terms

• Corporations and nonprofit entities may use alternative IRS definitions
Who is a Lobbyist?

The LDA defines a “lobbyist” using a three-part test:

1. More than one “lobbying contact” with covered officials
2. “Lobbying activities” constitute 20% or more of the services performed by that individual on behalf of his/her employer or client during any quarter
3. Total organization “lobbying expenses” of $11,500 per quarter in the case of an employed “lobbyist” (or $3,000 per quarter in income for a lobbying firm)
Who Must Register?

• Individuals are “lobbyists”. A corporation or nonprofit group that has at least one employee who meets the definition of a “lobbyist”, meets the definition of “registrant” and must register under LDA

• If an organization hires an outside person or entity that meets the definition of a “lobbyist” – then that outside person or entity must register under the LDA and disclose the corporation as the “client”

• Form LD-1 registration must be filed within 45 days
  – After lobbyist is employed or retained
  – After lobbyist employee makes second contact and meets 20% threshold;
Covered Contacts (LDA Definition)

Oral, written or electronic communications with covered Legislative or Executive Branch official regarding:

– formulation, modification, or adoption of Federal legislation
– formulation, modification, or adoption of a Federal rule, regulation, Executive order, policy or position
– the administration or execution of a Federal program or policy (including the negotiation, award or administration of a Federal contract, grant, loan, permit or license)
– the nomination or confirmation of a person subject to confirmation by the Senate
What is NOT a “Lobbying Contact”

• EXCEPTIONS – “lobbying contact” does NOT include:
  – a speech, article, publication or other material that is distributed and made available to the public through a medium of mass communication
  – a request for a meeting, a request for the status of an action, or other similar administrative request
  – testimony given before Congress or submitted for inclusion in the public record
  – information provided in writing in response to an oral or written request, or in response to a request for public comments in the Federal Register
  – required by subpoena or civil investigative demand
  – written comment filed in the course of a public proceeding
  – made by the media if the purpose is gathering and disseminating news and information to the public.
Covered Individuals (LDA Definition)

- A “Covered Legislative Branch Official” includes
  - Members of Congress
  - an elected officer of either House of Congress
  - employees of a Member, Committee, leadership staff, joint committee, working group or caucus
Covered Individuals (LDA Definition)

• A “Covered Executive Branch Official” includes
  – the President
  – the Vice President
  – any officer or employee in the Executive Office of the President
  – any Executive Schedule level I – V officer or employee
  – any member of the armed services at or above pay grade O-7 & above
  – “Schedule C” political appointees
Covered Individuals using IRC definitions

• “Covered Executive Branch Official” includes
  – All White House staff
  – Top two officials of all departments within the Executive Office of the President (OMB, STR)
  – Top two officials (and immediate staff) of each Cabinet Agency
  – Any person in the Executive Branch with legislative responsibility with whom you interact in attempting to influence specific legislation
“Lobbying Activities”
(LDA Definition)

Lobbying activities means lobbying contacts AND efforts in support of such contacts including 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.
Categories of Lobbying Expenses

• Calculation of time, overhead for all employees engaged in lobbying activities;
• Hard costs (travel, hotels, conference fees, meals)
• Payments to outside lobbying firms, vendors, consultants, coalitions
• Percentage of association dues for lobbying
• State and local lobbying costs for Method B
• Grassroots communications for Method B
IRS 990 Reporting

• New IRS Form 990 requires additional reporting of lobbying

• PART IV – Question 4 – “Did the organization engage in lobbying activities”? If “YES”, complete Schedule C, Part II

• If no internal lobbying --then answer NO

• Schedule C – Part II-A for those that made a 501(h) Safe Harbor election; Form 5768

• Schedule C - Part II-B for those that made no Safe Harbor election;
Special Issues for Using Outside Lobbying Firms

• Your retainer agreement language and record keeping do matter

• Be specific regarding the scope of services and whether you anticipate lobbying activities or political communications

• The work of outside firms must be included in lobbying expenses for LDA/federal tax filings

• Both a nonprofit and its outside firms may need to register depending on the factual situation

• The LDA reports of a nonprofit and its outside firms should be consistent in disclosing lobbying expenses for LDA and tax purposes
Surviving a Federal Audit

- Auditors want to see a system in place that tracks the type of information that must be provided; time sheets, collection of information
- Full disclosure of topics, sections of bills being lobbied
- IRS Auditors ask questions about percentage of time spent by senior executives
- DCAA and other government contract auditors are asking questions about nature of services performed by outside consulting firms hired by corporations
Semiannual LDA (LD-203) Reports

- Filed by Registrants and individual Lobbyists (1/30 and 7/30)
- Must disclose campaign contributions or donations to presidential libraries/inaugural committees >$200
- Also expenditures with respect to legislative & executive branch officials:
  - For events honoring covered officials
  - to an entity named after or in recognition of such official
  - to an entity “established, financed, maintained or controlled” or an entity designated by such official
  - to pay for a meeting, retreat or conference held by or in the name of one or more officials
LD-203 Certification Requirement

• LDA reports filed by Registrant and each listed lobbyist must include certification that:
  – They have “read and [are] familiar with” the gift & travel rules
  – Have “not provided, requested, or directed” any gift or travel “with knowledge” of any violation of these rules

• Increased civil fines up to $200,000 and criminal penalties up to 5 years in jail for a knowing violation
Byrd Amendment


- Prohibits use of “appropriated” federal funds to influence any type of federal award, including contracts, subcontracts, grants and cooperative agreements

- Requires disclosure of payments made to outside lobbyists to influence a federal award
Activities Covered By The Byrd Amendment

• Any communications to Congress or agency intended to influence an award, including its extension, renewal or modification (including exercise of options), or the earmarking of funds for a particular program within a bill
Exempt Byrd Amendment Activities

• Discussions with an agency regarding products/services prior to issuance of an RFP

• Agency and legislative liaison activities not related to a particular federal award

• Providing information specifically requested by Congress or an agency

• Post-award communications regarding administration of an award

• Technical services provided by employees or outside consultants in connections with preparation of a proposal or negotiation of an award
Byrd Amendment Disclosure/Certification Requirements

• While disclosure applies only to federal awards greater than $100,000, the costs of Byrd activities for all awards (regardless of value) are still unallowable

• Flow to sub-awardees

• Standard Form LLL requires identification of LDA registrants engaged in covered activities for that award (but not internal employees)

• Awardee must certify that appropriated funds not used for internal or external lobbying
University Lobbying Disclosure and Ethics Compliance Checklist

- Does at least one employee of the University make “lobbying contacts” and spend 20% or more time on “lobbying activities”? If yes, is University registered under the Lobbying Disclosure Act?
- Does the University have a policy stating who is allowed to make “lobbying contacts” on behalf of the University?
- Does the University have a procedure for tracking and reporting of “lobbying contacts” made by employees?
- Is the University capturing and reporting all costs of “lobbying activities” to nearest $10,000? Calculations should include salary, benefits, and overhead; Travel and other expenses; Payments to outside lobbying firms; and an appropriate percentage of dues payments to lobbying organizations.
University Lobbying Disclosure and Ethics Compliance Checklist

• How does University pay for lobbying expenses? How does University pay for gifts/meals to Members of Congress and staff?
• Does University track lobbying activities that must be disclosed on Byrd Amendment forms (LLL forms)?
• Has University educated key administrators about House and Senate gift and travel rules?
• Does the University obtain an acknowledgement from key employees that no gifts/travel has been offered to a Member of Congress or staff in violation of the rules?
• Are the Governmental Affairs officers/Public affairs officers/Legal Counsel knowledgeable and prepared to answer any media questions that might arise?
Federal Gifts and Travel Rules

Common Questions

1. What is the scope of the gift ban on lobbyists?
2. What type functions may I host? Widely attended Events? Nominal Food?
3. Are Members/staff or Executive officials allowed to accept hosted travel? Length of trip? Lobbyist Involvement?
4. BASIC RULE – Member of Congress and staff and Executive Branch officials may NOT accept ANYTHING of value from ANYONE – whether personal or official – UNLESS acceptance is allowed under one of the Exceptions to the gift rules
We tell our Congressional clients they may NEVER:

• Solicit a gift from any person who has interests before the House;

• Accept a gift that is linked to any official action that the individual has taken, or is being asked to take;

• Accept any other gift, unless specifically allowed under one of the provisions of the House/Senate gift rules.
The biggest change for lobbying organizations & their employees:

*Under HLOGA, no lobbyist and no employee of an organization employing lobbyists (or hiring outside lobbyists) may rely on the “$50” exception in giving gifts to any Member of Congress or staff.*

More than 20 other exceptions remain available
Permitted Gifts
Personal Friendship Exemption

• Based on long-standing personal friendship
• Paid for personally
  – Not with Corporate credit card
  – Not Charged to the Firm
  – No Business Tax Deduction
• Reciprocal Gift giving
• History of the Relationship
• Similar Gifts to others
Widely Attended Event

- Widely Attended Event
  - At least 25 other than Members
  - Open to individuals from throughout a given industry or profession . . .

- Invitation came from the Sponsor of the Event (contributors are not sponsors)

- The attendance of the staff person is related to his or her official duties
  - Ceremonial role
  - Appropriate to duties
Charity Events

- Primary purpose to raise funds for IRC 170(c) organization
- Invitation only from the sponsor of the event
- Unsolicited
- May include waiver of fee, food, entertainment and instructional materials
Educational Events

- lectures, seminars, discussion groups
- sponsored by universities, foundations, think tanks, or similar non-advocacy organizations
- does not extend to meals in connection with presentations by lobbyists
- does not extend to meals in connection with legislative briefings
Permitted Gifts

• Nominal food not part of a meal -- includes meeting snacks, reception food, light hors d’oeuvres, no one on one coffee or drinks
• An item of “nominal” value – any item under $10, greeting cards, baseball caps and T-shirts”
• Books or other informational material
• Special plaques or awards
General Travel Rules

• Privately sponsored travel by nonlobbyists is still allowed:
  – three days for a domestic trip
  – seven days for foreign travel

• Travel days don’t count

• Travel must be for official purposes and no entertainment or recreation expenses
HLOGA Travel Restrictions

• Privately sponsored travel may not be paid for by any lobbyist or organization employing or retaining an outside lobbyist (subject to a limited exceptions)

• **Exceptions**: Among the exceptions:
  – The travel for a House Member or staff is sponsored by a private higher education institution; or
  – The travel for a Senate Member or staff is sponsored by a nonprofit group (including private higher education institutions) and there is only de minimis involvement by a lobbyist in planning the trip and there is no special access during travel or at the destination
HLOGA Travel Restrictions (cont.)

- Sponsors must certify in advance (subject to penalties for false statements) the purpose of the trip, the source of funding and must certify that there was no inappropriate involvement of lobbyists.
- Both members & staff must obtain advance approval and submit reports after travel is completed.
- Travel must still be connected to meeting, speaking engagement, fact finding, or similar official event.
- Entertainment & recreational expenses may not be paid.
- Incidental meal expense (company cafeteria) or travel from airport allowable for site visits without pre-approval.
- Expenses must be reasonable; Senate rules say alcohol is NOT a reasonable expense.
Executive Branch Ethics Rules

Generally, an Executive Branch employee may not accept gifts from “prohibited sources” (those seeking official action, doing business with the government or have interests that may be substantially affected by performance or non-performance of the employee’s official duties) or given because of the employee’s official position.
Executive Branch Exceptions

- a gift valued at $20 or less, provided that the total value of gifts from the same person is not more than $50 in a calendar year (employees of the same company are considered the same source).
- a gift based on family relationship or personal friendship
- gifts of free attendance at certain widely attended gatherings (WAGS), provided the agency has determined in advance that attendance is in the interest of the agency
- modest refreshments
- Attendance at social events where no fee is charged and gift is not from prohibited source (movie screening)
New Obama Executive Order
Appointee Pledge

• Will accept no gift from lobbyist or registered lobbying organizations
• Will not work for 2 years on any matter substantially related to my former employer, or on any matter on which I lobbied
• Will not accept appointment to agency that I lobbied for 2 years, and upon leaving Administration will not communicate with former agency colleagues for 2 years
• Will not lobby any covered executive branch official or SES appointee for remainder of Administration
New Obama Executive Order
Lobbyist Gift Restrictions

• Eliminates $20 gift exception
• Cannot accept attendance at widely attended gatherings sponsored by registered lobbying organizations (other than 501(c)(3)’s)
• No gifts from political organizations for participation
• Meals/travel reimbursement in connection with a speech or participation in a program is still okay and is NOT considered a gift
• Personal friendship exemption not changed
Office of Government Ethics
Draft Regulations
Lobbyist Gift Restrictions

(Federal Register Vol. 76, No. 177
page 56330, September, 13, 2011)

- Adds new definitions to CFR Part 2635
- Removes many exemptions for all employees for gifts from lobbyists or registered lobbying entities
- Eliminates $20 gift exception for gifts from lobbyists or entities registered under LDA
- Cannot accept attendance at (WAGS) sponsored by registered lobbying organizations
- Cannot accept gifts of attendance at Social Events from lobbyists or organizations registered under LDA
Avoiding Pitfalls

- Ensure a high level of understanding of the law
- Tailor your program to be as user friendly as possible based on your existing structures
- Create a culture of compliance – Make clear your organization places a premium on ethical conduct
- Institute “best practices” including advance approval, full reporting, knowledge of who to call
- When in doubt – Disclose – but think before you act!
  – some registrations can cause challenges later
- Consider how any activity might “read” in the media
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