The Basics of the Lobbying Disclosure Act

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Q: Can you tell me what disclosure or reporting is required if my association engages in lobbying activities?

A: There are federal, state and, in some instances, local disclosure and reporting requirements that organizations must meet if they engage in lobbying.

At the federal level, the Lobbying Disclosure Act of 1995 (LDA) is the operative statute. Under the LDA, *individuals* who are paid to lobby at the federal level must register and file quarterly and semi-annual disclosure reports with the Secretary of the Senate and the Clerk of the House of Representatives. In addition, *organizations*, including associations, that employ lobbyists and that meet certain thresholds also must register and file reports of their lobbying activities.

Tests Differ for Individuals, Organizations

The LDA establishes a three-part test for whether an *individual* must register as a lobbyist: (i) they earn more than $3,000 per quarter from lobbying activities; (ii) they have more than one "lobbying contact"; and (iii) they spend more than 20 percent of their time lobbying for a single client over the three-month period. All three elements of the test must be met. The test for *organizations* is different: An organization must register under the LDA if its total expenses for lobbying activities exceed $12,500 during a quarterly period. Organizations employing in-house lobbyists file a single registration regardless of the number of individuals engaged in lobbying. Registration is typically required within 45 days of meeting the criteria for registration.

The LDA defines lobbying activity as "lobbying contacts and efforts in support of such contacts [at the federal level], including background work." "Lobbying contacts" include any oral or written communications to covered federal executive and legislative branch personnel that are made on behalf of a client relating to the "formation, modification or adoption" of federal legislation, regulations, rules, executive orders, policies, positions, programs, grants, loans, permits or senate confirmations.

Disclosures and Exemptions

There are significant exemptions to the LDA's definition of "lobbying contact." Requests for status meetings, public testimony, speeches, articles, advisory committee work, written and oral comments on federal rulemakings, and petitions for agency action are not considered "lobbying contacts" under the LDA.

The monetary component of the lobbying test is computed based on the lobbying activities of the organization as a whole, not simply on the lobbying activities of those individuals who are "lobbyists."

The LDA also provides that "[i]n the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the 'client' is the coalition or association and not its individual members." Nonetheless, for all associations, the LDA requires further disclosures regarding any non-member organizations that contribute more than $5,000 toward the lobbying activities of the organization in the quarterly period, and of any member that actively participates in the planning, supervision or control of the lobbying activities.

As with the definition of "lobbying contact," the LDA provides important exemptions from the "client" disclosure requirements. In particular, association-member "clients" will not need to be disclosed where the association's members are identified on the association's publicly available website.

Organizations that register under the LDA must file a quarterly report disclosing: (i) the amount of the organization's lobbying income or expenses; and (ii) the lobbying issues (including bill numbers or executive actions) on which the organization engaged. In addition, the LDA requires a semi-annual disclosure relating to any contributions made to members of Congress, the Executive Branch or their staffs. Contributions are broadly construed to cover expenditures relating to any donation, honorarium, meeting, retreat, conference or other event.

Importantly, the definition of what constitutes "lobbying activities" under the LDA is narrower than the definition under the Internal Revenue Code, which requires membership organizations that engage in lobbying activities to notify members of the portion of dues dedicated to lobbying or to pay the lobby tax. Likewise, a narrower set of Executive Branch officials are covered under the IRC definition of "contacts." Organizations should review their obligations under both the IRC and the LDA.

As previously noted, state and local disclosure requirements also may apply. For example, in Illinois, the Lobbying Registration Act requires lobbyists to register with (and make certain disclosures to) the Secretary of State and to undergo ethics training. Similarly, the City of Chicago requires lobbyists to register with (and submit activity reports to) the City's Board of Ethics.

There can be significant civil, and even criminal, penalties for knowingly violating federal, state and local lobbying disclosure laws. Accordingly, associations should conduct regular reviews of their lobbying activities to assess whether registration and disclosures are necessary or being met.

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.