K&L GATES

A Guide to

Political and Lobbying Activities

Updated: February 2019

A SUMMARY OF MAJOR CHANGES TO *A GUIDE TO POLITICAL AND LOBBYING ACTIVITIES*

This January 2019 edition of *A Guide to Political and Lobbying Activities* (the "*Guide*") includes updates to reflect an increased scrutiny of representation of foreign governments, corporations, and other entities in the United States and the possibility of additional legislative reforms in this area. The *Guide* includes a new subsection on the Foreign Agents Registration Act ("FARA") that highlights these updates and the Department of Justice's renewed interest to launch investigations and bring enforcement actions.

It also includes analysis and guidance – limited as it may be due to a still unfolding case – regarding disclosure of certain politically-related contributions to 501(c)(4) tax-exempt entities and possibly other entities as a result of the *CREW v. FEC* case, which held that politically active nonprofits that make substantial independent expenditures must disclose the identification of contributors.

The *Guide* continues to track changes brought about by the Office of Government Ethics' ("OGE") publication of revised gift rules applicable to executive branch employees that became effective in 2017, including changes to the widely attended gatherings exception and various new rules on gift and post-employment restrictions that apply to political appointees who are required to sign President Trump's ethics pledge.

Finally, we note that the Department of Justice ("DOJ") continues to demonstrate heightened attention to lobbying registration (beyond just registration on behalf of foreign entities) and campaign finance issues. Corporations, trade associations, and other tax-exempt organizations need to remain careful in their interactions with candidates, their campaigns, and elected officials, as the DOJ has previously handed down sizable fines to lobbying registrants for skirting registration requirements.

The *Guide* and other political and lobbying activity guidance are available online and will be updated regularly. Go to www.klgates.com and search for "ethics guide."

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K&L GATES POLITICAL LAW PRACTICE

K&L Gates' lawyers and professionals understand the compliance pitfalls that can derail a well-designed and executed lobbying effort or political outreach campaign. As lobbyists ourselves, K&L Gates' political law attorneys are well positioned to design effective, workable compliance strategies, as well as offer strategic thinking to help achieve your goals.

Our political law practice routinely assists major corporations, trade associations, corporate political action committees ("PACs"), political committees, campaigns, political professionals, and political donors with:

- Federal, state, and local campaign finance restrictions, including pay-to-play laws;
- FEC advisory opinions and enforcement actions;
- PAC formation and fundraising, including Super PACs;
- Federal, state, and local lobbying registration and reporting;
- Federal, state, and local compliance with gifts, meals, and travel restrictions;
- Federal, state, and local pay-to-play laws;
- Post-employment rules for government officials;
- Foreign Agents Registration Act ("FARA") registration and reporting; and
- Political ethics compliance and training.

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A NOTE OF CAUTION

This updated *Guide*, prepared by K&L Gates, is intended to provide general guidance by highlighting some of the major restrictions on political and lobbying activities at the federal level.

This *Guide* focuses on the limitations and restrictions applicable to individuals, corporations, and corporate PACs, including special limitations applicable to corporations organized as public charities under Section 501(c)(3) of the Internal Revenue Code. There are also some special rules for trade associations, which are not discussed in this *Guide*. Similar but separate rules apply to unincorporated entities such as partnerships and their non-connected PACs, which are also not discussed in this *Guide*.

This *Guide* is not intended, and should not be relied upon, as legal advice on any particular situation or set of facts. This *Guide* is an overview and is not intended to be an exhaustive or detailed analysis of all the relevant law and issues. Many of the areas – particularly the complicated exceptions – are replete with subtle nuances and unclear interpretations. Accordingly, certain issues may require more thorough and specific examination.

Since violations of relevant ethics restrictions can lead to strained relations, adverse publicity, reputational damage and even civil or criminal sanctions, caution is strongly advised. Further guidance should be sought if there is any doubt about the application of these restrictions. If you have questions about this *Guide* or need political law advice, contact K&L Gates at 202.778.9000, or relevant ethics advisors within the executive branch agencies, FEC, or Congress.

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A GUIDE TO FEDERAL POLITICAL AND LOBBYING ACTIVITIES

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I. POLITICAL FUNDRAISING

This section highlights some of the operative rules that restrict political fundraising activities by a corporation's individual employees or by a corporation's PAC. The restrictions cover the following areas:

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A. INDIVIDUAL HARD MONEY CONTRIBUTIONS & LIMITATIONS

This subsection highlights some of the rules that restrict the offering of political campaign contributions or assistance to federal campaigns by employees of corporations, trade associations, or other organizations.

1. GENERAL RULES

Corporate Contributions Are Prohibited. The funds of a corporation (or an incorporated trade association) *cannot* be donated to a federal political committee (52 U.S.C. § 30118(a)). The corporation may, however, establish and maintain a separate political committee called a PAC (*see* PAC discussion at I-20), which can make contributions to a federal campaign committee or other political committee. Ordinary corporate funds – called treasury funds – *cannot* be contributed directly to federal political campaigns or indirectly through a federal PAC. This remains true despite the Supreme Court's holding in *Citizens United*, after which a corporation may make contributions to an independent expenditure-only committee (a Super PAC) or directly make independent expenditures advocating for or against a candidate, but not direct contributions to a federal candidate.

Individual Contributions. Individual employees of a corporation or trade association can contribute their *personal* money to the corporate or trade association PAC and to federal candidates up to specified limits, but may not be reimbursed by any corporation or trade association.

Contributions by Foreign Nationals, U.S. Citizens, "Green Card" Holders. The federal campaign finance laws prohibit a "foreign national" from making contributions to influence U.S. elections. This means that, among other things, foreign nationals may not contribute to entities such as candidate committees and PACs that are formed to engage in political activities like elections for federal, state, or local offices. A foreign national is also prohibited from making a contribution to a political party committee as well as any other expenditure for the purpose of influencing an election.

Eligible political donors must be either a U.S. citizen or a "green card" holder.

A "foreign national" is "an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence [as defined in the Immigration and Naturalization Act]." In turn, to be "lawfully admitted for permanent residence," an individual must have "been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." 8 U.S.C. § 1101(20). Individuals who meet these definitions hold "green cards." Hence, "green card" holders may make political contributions the same as U.S. citizens. A U.S. national, as defined at 8 U.S.C. § 1101(22), may also make such contributions, which allows residents of American Samoa to make contributions.

Contributions by federal contractors. The federal campaign finance laws also prohibit federal contractors from making federal campaign contributions. The D.C. Circuit Court of Appeals recently upheld this ban against a free speech constitutional challenge. *Wagner v. FEC*, 743 F.3d 1 (2015). This ban also generally applies to contributions from federal government contractors, including corporations with government contracts, to Super PACs. (*Super PACs are discussed in detail in Section I-E.)*

2. WHAT IS A "CONTRIBUTION"?

Federal campaign finance laws consider many different types of activities as "contributions" to a federal political campaign or PAC. Certainly, monetary contributions are included, but so is virtually "anything of value." Accordingly, *many in-kind contributions* (*e.g.*, food, postage, use of equipment, use of meeting space, costs of a fundraiser) *count against applicable limitations, must be structured properly and timely reported to a campaign if required and must be from a permissible contribution source*. There are, however, several exceptions that may require additional analysis. For example, services provided by individuals without compensation working in their spare time outside the office do not count as contributions – this is the "campaign volunteer" exception. In limited circumstances and quantity,

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employees can even use their corporate office space for volunteer work, provided the overhead cost to the company is not increased for that work.

3. LIMITATIONS ON MONETARY OR IN-KIND CONTRIBUTIONS

Limits on contributions by individuals to federal candidates and to other sources (*e.g.,* corporate and other PACs, national party committees, and state and local party committees) are determined using a series of limits, many of which are indexed to inflation.

No limits apply to individual or corporate contributions to Super PACs. The U.S. Supreme Court held that previously applicable biennial aggregate limits were unconstitutional in its decision in *McCutcheon v. Federal Election Commission, 572 U.S. _____ (2014), 134 S. Ct. 1434.*

FOR THE 2019-2020 ELECTION CYCLE

Several of the limits on federal campaign contributions are indexed for inflation. For the 2019-2020 federal election cycle, the FEC will likely announce in February 2019 whether such limits will be increased. The limitations listed below are those that are in place as of the January 2019 revision of this guidebook. Please check for possible increases to these limitations later in 2019. Any increases will be included in an updated electronic version of this guidebook available on the K&L Gates website.

The maximum amounts an *individual* can contribute are as follows:

- To each candidate for the House or Senate: **$2,800 per** election including primary, general, runoff, or special election; *i.e.,* an individual can give $2,800 to a candidate for the primary *and* an additional $2,800 to the same candidate for the general election. The $2,800 per election limit also applies to contributions made after an election for the purposes of debt retirement.
- To each Presidential campaign (which includes both the Presidential and Vice Presidential candidates): **$2,800 each for the primary and general elections** (but no money may be given for the general election if the presidential campaign is receiving public matching funds).
- To each national party "umbrella" committee (RNC, DNC), a single donor may give a total of **$355,000** per year, split as follows**:**
    - $35,500 per year, main account
    - $106,500 per year, convention account
    - $106,500 per year, building account
    - $106,500 per year, legal account
- To each national party congressional committee (NRSC, DSCC, NRCC, DCCC), a single donor may give a total of **$248,500** per year, split as follows:
    - $35,500 per year, main account
    - $106,500 per year, building account
    - $106,500 per year, legal account
- To each federal account of a state/local party committee: **$10,000** per year (note that a state party committee shares its limits with local party committees in that state *unless* a local committee's independence can be demonstrated).
- To each corporate PAC or other traditional PAC: **$5,000** per year.
- To all federal Super PACs: no limit.

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Overview of Federal Political Contribution Limits

Contributor	Recipient				
	House, Senate, or Presidential[7] Candidate Committee	National Party Umbrella Committee (RNC/DNC)[1]	National Party Congressional Committee (NRSC/DSCC/ NRCC/DCCC)[1]	State, District & Local Party Committee[2]	Traditional Political Action Committee (PAC)[3]
Individual[4]	**$2,800*** per election[5]	**$35,500*** per year (main account) **$106,500** per year (convention account) **$106,500** per year (building account) **$106,500** per year (legal account) TOTAL: **$355,000** per year	**$35,500*** per year (main account) **$106,500** per year (building account) **$106,500** per year (legal account) TOTAL: **$248,500** per year	**$10,000** per year limit (combined)	**$5,000** per year (but unlimited to a "Super PAC")
Corporation	Prohibited	Prohibited	Prohibited	Laws vary by jurisdiction	Prohibited (but unlimited to a "Super PAC")
Non-Multicandidate PAC[6]	**$2,800*** per election[5]	**$35,500*** per year (main account) **$106,500** per year (convention account) **$106,500** per year (building account) **$106,500** per year (legal account) TOTAL: **$355,000** per year	**$35,500*** per year (main account) **$106,500** per year (building account) **$106,500** per year (legal account) TOTAL: **$248,500** per year	**$10,000** per year limit (combined)	**$5,000** per year but unlimited to a "Super PAC")
Multicandidate PAC[6]	**$5,000** per election[5]	**$15,000** per year (main account) **$45,000** per year (convention account) **$45,000** per year (building account) **$45,000** per year (legal account) TOTAL: **$150,000** per year	**$15,000** per year (main account) **$45,000** per year (building account) **$45,000** per year (legal account) TOTAL: **$105,000** per year	**$5,000** per year limit (combined)	**$5,000** per year but unlimited to a "Super PAC")

See Notes to Chart on the next page. * - Indexed for inflation in odd-numbered years; these limits could be increased by the FEC for the 2019-2020 cycle – check the latest update of this guidebook found on the K&L Gates website.

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Notes to Chart:

[1] A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits.

[2] A state party committee shares its limits with district and local party committees in that state unless a district or local committee's independence can be demonstrated.

[3] These limits apply to both separate segregated funds (SSFs) (*e.g.*, PACs connected to a corporation, incorporated trade association or other incorporated entity), non-connected political action committees (*e.g.*, PACs affiliated with a partnership or other unincorporated entity), and other unauthorized PACs such as Leadership PACs. Affiliated PACs share the same set of limits on contributions made and received.

[4] Each spouse has a separate limit. A "green card" holder may make political contributions, but a foreign national may not do so. Minors (17 years or younger) may make political contributions, provided that they knowingly and voluntarily make the decision to contribute, that they own the assets contributed, and that the contribution was not made from proceeds of a gift given for the purpose of making a contribution.

[5] Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election and special election.

[6] A PAC automatically becomes a multicandidate committee once it has been registered for at least six months, has received contributions from more than 50 contributors and has made contributions to at least five federal candidates. Within 10 days of meeting these criteria, a non-multicandidate PAC must file a Form IM with the FEC. Failure to so file is a reporting violation subject to fine.

[7] Contribution limits applicable to presidential campaigns assumes that the campaigns do not accept public general election funding.

4. INDEPENDENT EXPENDITURES

Independent expenditures (usually in the form of political advertising, sometimes pro and sometimes con) are expenditures for communications expressly advocating the election or defeat of a clearly identified federal candidate or group of candidates.

Any entity (except, likely, a national bank) may make *unlimited* independent expenditures, but those expenditures must not be made with the cooperation or prior consent or at the suggestion of the candidate, his or her campaign committee, his or her agent, or any political party committee or its agents. In *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010), the Supreme Court lifted a longstanding prohibition on corporations or labor unions funding such independent expenditures. It did not, however, alter the prohibition on corporate or union *direct* contributions to federal candidates or parties. *See* Section I(A)(1).

Committees that make only independent expenditures must register with the FEC if they accept contributions; those contributions may be from an individual, corporation, labor union, or even another committee. *Speechnow.org v. FEC*, 599. F.3d 686 (D.C. Cir., 2010). Certain disclosures on such independent expenditures under FEC law still apply, and those that make independent expenditures, including Super PACs, are limited from "coordinating" with federal political campaigns, candidates, or their agents, under detailed rules issued by the FEC.

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Note also that any individual or entity prohibited from making contributions to a federal political committee--such as a federal contractor or foreign entity--is generally presently prohibited from contributing to a Super PAC.

While unlimited in their amount, independent expenditures are subject to specific reporting requirements based on the amount and timing of an expenditure.

Because the definition of coordination with a candidate is so fact-specific and routinely scrutinized by the FEC and outside entities, we recommend you consult with a K&L Gates lawyer before forming or donating to any committee that makes independent expenditures.

5. ELECTIONEERING COMMUNICATIONS

The FEC regulates so-called "electioneering communications," broadcast advertising that refers to a clearly identified federal candidate. Under the Bipartisan Campaign Reform Act ("BCRA"), corporations, incorporated trade associations and labor organizations were prohibited from paying for such communications very shortly before an election. After a legal challenge, the FEC extended this prohibition to 501(c)(3) organizations as well. However, the Supreme Court in a 2007 opinion effectively struck down the prohibition against these groups running such ads by finding the definitions below too rigid on free speech grounds when applied to certain issue advertisements. *Federal Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007).

An "electioneering communication" is a communication that:

- Refers to a clearly identified federal candidate by name, reference, or image (even if it does not expressly advocate the election or defeat of a candidate);
- Is made via broadcast, cable, or satellite system within 60 days of a general, special, or runoff election or within 30 days of a primary election; and
- Can be received by 50,000 or more persons in the candidate's district (in the case of a House candidate) or the candidate's state (in the case of a Senate candidate).

Note:
This last requirement does not apply to communications referring to a candidate for President or Vice President.

An individual or an organization making such an electioneering communication close to an election is subject to the following restrictions:

- If the direct costs of producing and airing such communications exceed $10,000 in a calendar year, the individual or the corporate or other PAC paying for them must file a disclosure statement. The statement must be filed with the FEC within 24 hours of initially exceeding the $10,000 annual threshold. If and when the person spends more than $10,000 from that point forward, the person must once again file within 24 hours of exceeding $10,000 in expenditures, and so forth throughout the calendar year.
- If the communication is coordinated with a candidate, a candidate's committee, a political party, or one of its committees, or any of their agents, the expenditure counts as a contribution to the candidate or political party which it supports. As a contribution, the expenditure is subject to the limitations and reporting requirements of the campaign finance laws.

The FEC's continuing failure to issue specific guidance following the Supreme Court's decision in Citizens United *makes this area of the law particularly murky. If FEC issues additional rules or guidance, K&L Gates will update the electronic edition of the Guide to Political and Lobbying Activities, which is always available online. Go to www.klgates.com and search for "ethics guide."*

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6. CONTRIBUTIONS RECEIVED IN FEDERAL BUILDINGS

It is generally unlawful for any person to solicit or receive a contribution in any building where federal employees work (18 U.S.C. § 607). Since the Capitol and Senate and House buildings are federal buildings, Members are technically prohibited from receiving contributions in their offices. However, this prohibition does not apply to the receipt of contributions by staff in the Executive Office of the President or certain Senate or House staff if the contributions were not solicited in a manner that directs a contributor to deliver the funds to any federal building. Such contributions must be transferred to a political committee within seven days of receipt.

Ethical Guidance: While there is no apparent prohibition on *giving* of contributions in federal buildings, the House Ethics Manual states that Members and staff should discourage potential contributors from tendering a contribution within a Member's office or in other federal buildings.

7. CONTRIBUTIONS TO NATIONAL POLITICAL CONVENTIONS

Generally, contributions to the official Host Committee, from either corporations or individuals, for each national party convention are unlimited by law. Each official Host Committee is traditionally organized as a 501(c)(3) organization, which can provide tax incentives to donors for both cash contributions and in-kind contributions of goods or services to the Host Committee. Additionally, national political umbrella party committees (RNC, DNC) may now accept up to $106,500 per calendar year from an individual donor, and $45,000 per year from a traditional multicandidate PAC, into a separate account set aside for convention purposes.

8. PENALTIES FOR VIOLATIONS OF CAMPAIGN FINANCE LAWS

Under BCRA, many campaign finance law violations are felonies subject to the federal sentencing guidelines, and can carry tough criminal penalties including jail time. Federal courts may, but are not required to, apply the guidelines in setting sentences for such violations.

While there are a number of specific types of violations of the federal campaign finance laws, and penalties for violations may be increased under the sentencing guidelines depending on a range of factors, the baseline penalties for most types of violations are as follows:

Knowing and willful violations that result in making, receiving, reporting, or failing to report any contribution, donation, or expenditure aggregating between **$2,000** and **$25,000** during a calendar year can result in penalties of:

- Imprisonment for up to one year, and/or
- Criminal fines.

Knowing and willful violations of the campaign finance laws that result in making, receiving, reporting, or failing to report any contribution, donation, or expenditure aggregating **$25,000** or more during a calendar year can result in penalties of:

- Imprisonment for up to five years, and/or
- Criminal fines.

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B. FUNDRAISING ACTIVITIES BY CORPORATE OFFICIALS

This subsection highlights some of the operative rules that restrict corporate officials from assisting federal campaigns by hosting fundraisers or engaging in similar activities.

1. USE OF CORPORATE RESOURCES AND FACILITIES

General Rule: The resources and facilities of the corporation are considered "things of value" and providing them at lower than fair market value can be tantamount to a prohibited corporate campaign contribution. ***Corporate resources and facilities should not be utilized to assist a campaign*** unless the corporation is reimbursed by: (1) the corporate employee using the facilities; (2) any entity which can lawfully give campaign contributions (*e.g.,* a corporate PAC); or (3) the campaign itself (required if the corporate employee or PAC already has given the maximum contribution).

Exception: Corporate resources and facilities can be used if two tests are met:

- they are being utilized by a corporate employee or stockholder for "*individual volunteer activity*" – *e.g.,* they cannot be the result of involuntary instructions from a superior or used to promote the corporation to the candidate; *and*

- their use is "occasional, isolated, or incidental" and the corporation is reimbursed within a commercially reasonable time for any increased overhead or operating costs. *To be "occasional, isolated, or incidental," the use of the corporate facilities may not interfere with the organization's normal activity and should not exceed on average one hour per week or four hours per month.*

Note:
Fundraiser costs such as the cost of the room, catering, etc., are in-kind contributions and cannot be paid for by a corporation. In-kind costs can be paid by an individual (or a PAC), and the amount and source of such in-kind contributions should be disclosed to the campaign.

Also Note:
The FEC may make additional types of "corporate facilitation" permissible in its rule changes to implement the Supreme Court's holding in Citizens United. It remains to be seen whether it will consider such activities under a "contribution"-type analysis, in which case they would still be impermissible, or under an "expenditure"-type analysis, which may open the door to additional non-coordinated activities by a corporation.

Important Note:
The FEC takes these rules on "corporate facilitation" very seriously. The Commission, for instance, assessed Freddie Mac Securities with a $3.8M civil penalty – at the time the largest in FEC history – for its use of corporate resources to host fundraisers and organizing contributions from its employees *(Conciliation Agreement, executed Apr. 17, 2006, MUR 5390). Freddie Mac agreed to pay the fine because it was alleged to have hosted 85 fundraising events that raised approximately $1.7 million for federal candidates using corporate staff and corporate resources over a four-year period. Additionally, it is alleged to have used corporate staff and resources to solicit and forward contributions from company employees to federal candidates. This activity included sending solicitations for individual candidates through corporate secretaries to executives, with a request that the contribution be sent to Freddie Mac's government relations office for a coordinated delivery to the recipient's campaign committee. The FEC determined that the use of Freddie Mac's corporate resources in hosting the fundraisers and collecting the contributions constituted impermissible corporate facilitation.*

Examples: [Also *see* the "dos and don'ts" points found at I-14].

- A corporate CEO cannot host a campaign fundraiser in the corporate board room and through several internal memoranda or e-mails, solicit and invite only senior officials of the corporation. This is not "individual volunteer activity," but rather a prohibited corporate fundraiser.

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- Top executives at a corporation cannot direct their subordinates to assist in campaign fundraising projects or use corporate resources (*e.g.,* list of vendors and customers) to assist in fundraising.

- A corporation cannot allow its corporate limousine to be used to chauffeur a candidate around town over a several day period. This is not "occasional, isolated, or incidental" use of corporate resources.

- A corporate CEO probably can use corporate stationery to invite friends to a fundraiser, provided: (1) the corporation is reimbursed for increased operating costs associated with the stationery and postage; and (2) the time spent drafting, typing, and distributing the letter does not prevent any corporate employee from completing a normal amount of corporate-related work, and in any event, does not exceed on average one hour per week or four hours per month.

- The assistant to a corporate CEO probably can use an office phone to make a few follow-up phone calls to encourage attendance at a fundraiser, provided the calls are incidental (*i.e.,* do not interfere with normal duties and do not amount to more than one hour per week), long-distance phone calls are reimbursed, **and the assistant is providing voluntary service** (*i.e.,* not being instructed by his or her superior). Note that the use of a personal cell phone would likely eliminate compliance concerns.

- A corporation can allow a candidate or his representative to address its stockholder, executive, or administrative personnel (the corporation's "restricted class;" see section C for more information) at the annual corporate convention or at a function hosted at the corporation's office

- A federal candidate, or the candidate's representative, can also make an appearance before all employees of a corporation (not just the executive or administrative personnel), provided that the corporation does not endorse the candidate during his/her appearance and does not solicit campaign funds. If a candidate is permitted to address the corporation's employees, all candidates for the same federal office who request to appear before the corporation's employees must be accorded the same opportunity to appear.

- Partisan phone banks can be established by a corporation, but only to encourage its stockholders and executive or administrative personnel and their families to register, vote, and support specific candidates.

- An individual can sponsor an event in his own home or in a non-commercial community room and spend up to $1,000 in food, beverages, and invitations per candidate per election (without it counting as a contribution), in addition to his $2,800 per candidate per election limit.

- A corporate executive may not solicit members of the restricted class (see section C for more information on the "restricted class") to make a contribution to a federal candidate and then deliver those contributions in an envelope with corporate letterhead and postage paid by the company.

Special Note on E-mail Use:
An executive's use of corporate e-mail should be considered under a similar analysis as use of other corporate resources or facilities. The FEC promulgated Internet communications regulations in April 2006 that provide safe harbors under which "a corporation or labor organization may permit its employees, shareholders, officials, and members to use its computer and Internet facilities for volunteer individual Internet activity, as defined in 11 CFR 100.94, without a contribution resulting, provided that the activity does not prevent an employee from completing the normal amount of work for which the employee is paid or is expected to perform, as specified in 11 CFR 100.54, does not increase the overhead or operating costs of the corporation or labor organization, and the activity is in no way coerced." As an additional safe harbor, "any use of corporate or labor organization facilities, regardless of whether it occurs during or after working hours, is considered 'occasional, isolated, or incidental use' if the use does not exceed one hour per week or four hours per month." Final Rules on Internet Communications, 71 Fed. Reg. 18589, 18610-12 (April 12, 2006). Because some e-mail systems incorporate an employee title and corporate

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identity, care should be taken to disable any "auto signature," and to clearly state that the e-mail is being sent by the employee in an "individual volunteer capacity" and that the corporation is not sponsoring or coordinating the particular event. Further, because an e-mail is in writing, all required fundraising disclaimers must be included (e.g., "contributions are not deductible for tax purposes," etc.).

2. ACTING AS A "CONDUIT" FOR EARMARKED CONTRIBUTIONS

FEC regulations (*see* 11 C.F.R. § 110.6) restrict certain contributions that are "earmarked" or otherwise specifically directed to the candidate through an "intermediary or conduit." Such earmarked contributions are generally prohibited if the conduit is acting in his or her capacity as a corporate representative.

General Rule: Anyone acting as a conduit by soliciting contributions earmarked for a clearly identified candidate must comply with the campaign limitations and FEC reporting requirements. In situations where the conduit exercises direction or control over contributions intended for a candidate, *the contribution shall count against both the original contributor's and the conduit's limitations* ($2,800 per candidate per election). Those acting as conduits must also file special disclosure reports. While one may be considered a conduit based on contributions of any number or amount, the FEC has regulations in place regarding disclosure of those who "bundle" contributions. (*See* the related discussion in the next section.)

Exception: If one is acting as an *authorized fundraising agent* of the campaign, he/she can actively solicit funds for that candidate, provided any funds collected are forwarded to the campaign's treasurer within ten days. It is best if the agency relationship is authorized by the campaign in writing. If not expressed in writing, an agency relationship may be established if there is substantial coordination and a long-term relationship between the individual and the campaign committee (*e.g.,* the individual occupies a significant position within the campaign's organization). (This agency exception to the conduit requirements was upheld in a 1987 FEC ruling involving fundraising for the 1984 Glenn Presidential Campaign, MUR 1690.)

Examples:

A corporate PAC, which already has given the maximum contribution to a candidate, probably cannot send out a letter urging its members to send personal earmarked contributions through the PAC to that same candidate, particularly if:

- A PAC representative will physically deliver the personal earmarked contributions to the candidate.

- A CEO of a corporation who already has given the maximum personal contribution to a candidate probably can, on his or her own personal time, write a letter on corporate stationery to his friends asking them to send a contribution to that same candidate, provided the in-kind costs of the letter (stationery and postage) are reimbursed and his or her friends send the contributions directly to the campaign committee (*e.g.,* the CEO is not collecting his or her friends' checks and delivering them to the candidate).

Note:
If the CEO is an express fundraising agent of the campaign, he or she can collect and deliver personal checks.

- A CEO of a corporation who already has given the maximum personal contributions to a candidate probably can help host a fundraiser and solicit funds from his or her corporate friends if the CEO is an expressly authorized fundraising agent of the campaign or serves as a high-ranking member of the campaign's finance committee. (Remember, however, that the agent must deliver the checks to the campaign treasurer within ten days.)

- A CEO who is not an expressly authorized fundraising agent of the campaign should avoid handling checks of other corporate executives. The CEO can tell his or her fellow executives

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where to send the check, but should not take further steps such as providing an envelope addressed to the candidate's campaign.

Caveat: This area of the FEC law is especially confusing and has been under reexamination for years. In light of the Supreme Court's decision in *Citizens United*, the Republican FEC Commissioners have expressed the view that the Commission cannot now enforce the prohibition on corporate solicitation, despite the fact that the law remains on the books. However, the media has reported on examples of such activities to the embarrassment of several prominent corporations. Caution is accordingly urged in situations where a corporate official may be acting as a "conduit," "intermediary," or "agent."

The two limitations described above – use of corporate facilities and serving as a conduit – work together to restrict the means in which employees of corporations host fundraisers for federal candidates. The FEC has previously concluded that a corporation in raising funds for federal candidates should not collect contributions and cannot use corporate resources to facilitate the making of contributions to a federal candidate, unless it is a truly individual volunteer campaign activity. *See* Prudential Securities Conciliation Agreement, executed Dec. 1, 1994, MUR 3540 (assessing a $550,000 civil penalty); *see also* FEC Advisory Opinions 1987-29, 1986-4, 1982-29, and 1982-2. More recently, in August 2005, the FEC cast new light on and clarified the rules by which corporate executives and lobbyists may collect and deliver contribution checks to federal candidates on behalf of their corporate employer or client**. Lobbyists and corporate executives may continue to deliver corporate PAC contributions, using corporate resources and acting on behalf of the company. However, they may not collect and forward *individual* contributions by corporate executives, using corporate resources and acting in an official corporate capacity.** *See* Statement of Reasons of Chairman Scott E. Thomas and Commissioners David M. Mason, Danny L. McDonald, and Ellen L. Weintraub in the Matter of Richard Borneman; Governmental Strategies, Inc., Aug. 4, 2005, MUR 5573.

3. DISCLOSURE OF "BUNDLING" BY LOBBYISTS

The Honest Leadership and Open Government Act of 2007 ("HLOGA") amended federal election law to require the disclosure – by the receiving campaign committee, leadership PAC, or political party – of certain contributions that are "bundled" by any individual registered to lobby under the Lobbying Disclosure Act of 1995 ("LDA") or any PAC established or controlled by such an individual. The FEC released its final bundling regulations (*see* 11 C.F.R. 104.22) in February 2009, requiring the disclosure of all such contributions made after March 19, 2009.

General Rule: All recipient political committees must report the name, address, employer, and aggregate amount bundled by a lobbyist/registrant or lobbyist/registrant PAC that bundles more than **$17,900** in a semiannual filing period. (This amount is indexed for inflation, and the Commission will adjust it on an annual basis; see electronic updates of this guidebook found on the K&L Gates website for the latest amount.) In addition, political committees that report their contributions on a more frequent basis (*i.e.*, quarterly or monthly) also must report any qualifying contributions according to their regular reporting schedule.

Definition of "Bundled Contribution": A bundled contribution is one that is (1) physically or electronically forwarded from a contributor to the campaign committee by a lobbyist/registrant or lobbyist/registrant PAC or (2) received by the committee from a contributor and credited to a lobbyist/registrant or lobbyist/registrant PAC through "records, designations, or other means of recognizing that a certain amount of money has been raised by" the respective lobbyist/registrant or lobbyist/registrant PAC. (*See* 11 C.F.R. 104.22(a)(6)). Under the regulations, such credit can be provided in several ways including:

- titles that the reporting committee assigns to persons who have raised a certain amount;

- tracking identifiers that the reporting committee assigns and that are included on contributions or contribution-related materials (*e.g.*, cover letters or website solicitation pages) for the purpose of tracking how much a person raises;

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- access (including offers of attendance) to events or activities given to the bundler; and

- mementos (*e.g.*, photographs with the candidate or books autographed by the candidate) given to the bundler.

This list of designations and the means of recognition that will trigger the disclosure requirement is not exhaustive, and the FEC notes that it intended to adopt an expansive view of such matters. The Commission did note, though, that the definition requires some kind of recording or memorialization and does not extend to the mere knowledge of a registrant's bundling activities.

Covered Filing Period: Because political committees report their activities on differing schedules (e.g., monthly, quarterly, and semiannually), the rules provide for multiple "covered filing periods." Even so, all such committees must report any qualifying contributions made in the semiannual periods of January 1 through June 30 and July 1 through December 31.

- **Quarterly Filers:** Reporting committees that file their campaign finance reports on a quarterly basis must also report any qualifying contributions made in the quarters beginning on January 1, April 1, July 1, and October 1 and the applicable pre- and post-election periods in election years. (*See* 11 C.F.R. 104.22(a)(5)(ii)). In non-election years, the rules allow for reporting committees other than those authorized by a candidate to file lobbyist bundling disclosure reports for the semiannual periods alone.

- **Monthly Filers:** For reporting committees that file campaign finance reports on a monthly basis, the covered periods also include each month in the calendar year except, in the case of election years, when the pre- and post-general election periods replace the reporting periods for November and December. (*See* 11 C.F.R. 104.22(a)(5)(iii)). Monthly filers also are given the option to file on a quarterly basis.

It should be noted that this system requires two layers of reporting for quarterly and monthly filers. As a result, even if the bundling activities of a lobbyist/registrant or lobbyist/registrant PAC do not trigger a report during the monthly or quarterly period, they may still reach that point during the semiannual period.

Lobbyist/Registrant PACs: Under the regulations, any PAC that is controlled or was established by a lobbyist or LDA registrant must indicate its status as a registrant PAC on its initial registration using FEC Form 1. This designation is in addition to identifying the type of PAC it is (e.g., corporate, membership organization, trade association).

A PAC is "controlled" by a lobbyist or registrant if the PAC must be disclosed to the Secretary of the Senate or Clerk of the House under Section 203 of HLOGA. This requirement is triggered when a lobbyist: A) had a primary role in establishing the PAC, or B) has a prominent role in directing the governance or operations of the PAC. The requirement is not triggered, however, if a lobbyist or registrant merely provided legal or compliance services.

Determining a Bundler's Status: The regulations place the burden of determining whether a bundler is a lobbyist on the receiving campaign committee, leadership PAC, or political party. To satisfy the regulations, the reporting committee must consult the Internet registries of lobbyists maintained by the Clerk of the House of Representatives, the Secretary of the Senate, and the FEC.

Co-Hosted Fundraisers: Based on concerns that political committees would attempt to avoid the bundling reporting requirements by dividing the total receipts of fundraising events among numerous co-hosts, the FEC examined how to give credit for such events. In the face of comments urging the Commission to either attribute an event's entire proceeds to each co-host involved or to prorate the proceeds evenly, the Commission determined to treat co-hosted fundraisers like any other fundraising activity. Accordingly, political committees must report the actual amounts raised by – and credited to – the involved lobbyist/registrants and lobbyist/registrant PACs. The FEC provided the following examples for the bundling disclosure provisions.

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- **Example 1.** A fundraising event is co-hosted by Lobbyists "A", "B" and "C." The event generates $20,000 in contributions. The reporting committee believes that Lobbyist "A" raised the entire $20,000 and thus credits Lobbyist "A" with the entire $20,000 raised at the event, and does not credit Lobbyists "B" or "C." The reporting committee must disclose the $20,000 that has been credited to Lobbyist "A." The reporting committee need not disclose any information regarding Lobbyists "B" and "C," because neither Lobbyist "B" nor "C" has been credited with any bundled contributions.

- **Example 2.** A fundraising event is co-hosted by Lobbyist "A" and Lobbyist "B", as well as three non-lobbyist hosts. The event generates $20,000 in contributions. The reporting committee gives each host credit for raising $20,000. The reporting committee must disclose the $20,000 of bundled contributions that has been credited to Lobbyist "A" and also report the $20,000 of bundled contributions that has been credited to Lobbyist "B" because the reporting committee has credited the full amount to each lobbyist. The reporting committee may, if it chooses, include a memo entry in the space provided on FEC Form 3L (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) to indicate that, although only a total of $20,000 was raised at the event, that full $20,000 was credited to each of the co-hosts, or any other information that the reporting committee wishes to include.

- **Example 3.** A fundraising dinner is co-hosted by Lobbyist "A" and Lobbyist "B," as well as three non-lobbyist hosts. Each host takes responsibility for filling eight seats at $500 a seat. The fundraiser generates $20,000 in contributions from non-hosts, and the reporting committee credits each host with generating $4,000 in contributions. The reporting committee must disclose the $4,000 of bundled contributions that has been credited to Lobbyist "A," if the reporting committee also has credited Lobbyist "A" with more than $12,000 of other bundled contributions during the relevant covered period, thereby causing Lobbyist "A" to surpass the $17,900 reporting threshold. This same analysis would apply for Lobbyist "B."

- **Example 4.** A fundraising event is co-hosted by Lobbyist "A" and Lobbyist "B," as well as three non-lobbyist hosts. The fundraiser generates $21,000 in contributions and the reporting committee knows that Lobbyist "A" raised $18,000 of the total. The committee credits Lobbyist A with generating $18,000 of the contributions and credits Lobbyist "B," as well as the three non-lobbyist hosts, as having generated $1,000 each. The reporting committee must disclose the $18,000 of bundled contributions that has been credited to Lobbyist "A" because this amount is in excess of the $17,900 reporting threshold. The reporting committee must also disclose the $1,000 in bundled contributions that has been credited to Lobbyist "B" if the reporting committee also has credited Lobbyist "B" with more than $14,100 of other bundled contributions during the relevant covered period, thereby causing Lobbyist "B" to surpass the $17,900 reporting threshold.

- **Example 5.** A fundraising event is co-hosted by Lobbyist "A" and Lobbyist "B," as well as three non-lobbyist hosts. The fundraiser generates $21,000 in contributions and the reporting committee knows that Lobbyist "A" raised $18,000 of the total and that one of the non-lobbyist hosts raised the remaining $3,000. The Committee credits Lobbyist "A" with generating $18,000 of the contributions. The reporting committee must disclose the $18,000 of bundled contributions that has been credited to Lobbyist "A" because $18,000 is in excess of the $17,900 reporting threshold. The reporting committee need not disclose any information regarding Lobbyist "B" because Lobbyist "B" is not responsible for raising any of the $21,000 raised at the fundraiser and Lobbyist "B" has not been credited with any bundled contributions.

Other Issues: The bundling regulations cover several other points related to the disclosure of such contributions, including the following:

- The Commission recognized that some lobbyists/registrants that are otherwise prohibited from making or facilitating contributions may be credited under the bundling rules with having raised contributions. For example, the Federal Election Campaign Act prohibits national banks, corporations, labor organizations, foreign nationals, and Federal government contractors from *making* contributions. Such entities can *bundle*, or raise, contributions, however, and political

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committees that credit such entities with raising contributions must disclose them as they would any other bundled contributions.

- Contributions from the personal funds of a lobbyist/registrant or the spouse of a lobbyist/registrant do not count toward the $17,900 limit requiring disclosure of the individual's bundling activities. Similarly, the contributions of a lobbyist/registrant PAC will not be considered among the contributions that the PAC bundles.

4. DOS AND DON'TS OF HOSTING A FUNDRAISER

To ensure compliance with the FEC regulations described above, a corporation or corporate officials should avoid certain activities when hosting a fundraiser for a federal candidate.

DON'T host the fundraiser at a corporate office. A fundraiser held in the company's boardroom or Washington, D.C. office suggests a corporate fundraiser. Particularly complex in-kind contribution rules can apply if one uses in-house catering for a fundraiser held on corporate premises.

DO. Instead, host the fundraiser at a non-corporate location, such as a Capitol Hill restaurant.

Perhaps the best venue for a fundraiser is one's home (or non-commercial community room) since a personal residence clearly suggests individual, volunteer campaign activity. Plus, fundraising expenses (*e.g.,* cost of invitations and food and beverages) up to $1,000 in connection with hosting a fundraiser in one's home are not considered contributions that count against one's limit.

Finally, don't host a fundraising event in a federal building (such as a Congressional office building); a federal statute generally prohibits the receipt of political contributions in federal buildings (18 U.S.C. § 607). (*See* I-10 for further guidelines.)

DON'T formally solicit corporate employees. Senior executives should not send formal solicitations via memos or letters on corporate stationery or through the corporate e-mail system to subordinate employees of the corporation or outside vendors closely associated with the corporation.

This creates the perception of directing subordinates in the corporation, or others reliant on the corporation, to make a contribution. Plus you are using corporate resources to communicate the solicitation.

DO. Instead, solicit individuals outside the corporation without using corporate resources.

You can ask friends and other business associates who are not employed by your specific corporation or incorporated association to attend the fundraiser, provided it is individual volunteer work.

Or, limit solicitations to individuals who are your equals or your superiors.

You can ask your supervisors or your peer employees to make political contributions, but you must make it clear that your efforts are individual in nature and that any participation is purely voluntary.

Solicitation requests should go on personal stationery or blank paper, or they can be made by e-mail (although you must ensure that your e-mail clearly states that you are acting in a voluntary capacity, and you should disengage any "auto signature").

The cost of secretarial time in producing the invitation letters and postage should be of a volunteer nature and should not be charged to the corporation.

DON'T collect the campaign checks. Solicitation requests should not direct how one makes the campaign contribution, unless you want to provide the campaign's mailing address.

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Do not ask contributors to give a corporate employee their fundraising checks so they can be "bundled" and given to the candidate.

Also, it is best not to facilitate a contribution by providing in the solicitation request an envelope addressed to the candidate's campaign.

DO. Instead, you can suggest that checks be sent directly to the candidate's campaign or that the contributor can bring the check to the fundraising event.

DON'T use corporate resources. Avoid using corporate equipment, such as computers and postage machines, as well as corporate stationery, envelopes, and secretarial help in sending out invitations. Avoid spending substantial time on the office phone making follow-up calls or sending out large numbers of e-mails. Avoid using corporate mailing lists with pre-made labels. Don't allow the corporation to pay for any catering or other costs associated with the fundraiser.

DO. Instead, where possible, use personal resources outside the office to organize the fundraiser.

Use stamps and personal stationery. If you use a postage machine, keep track of the postage costs so that they can be reimbursed as an in-kind contribution.

Use of an office phone or e-mail system during business hours to make a few follow-up calls or inquiries is considered acceptable incidental use. But keep track of any long-distance phone calls so they can be reimbursed as an in-kind contribution.

Overall, spend no more on average than one hour per week, four hours per month at the office organizing fundraisers for federal candidates.

If you end up using some corporate overhead or other resources for hosting a fundraiser, those costs must be reimbursed by the corporate employee or other permissible source (*e.g.,* corporate PAC) and disclosed as an in-kind contribution. Another option is to seek reimbursement from the candidate's campaign.

DON'T engage in collective activities which involve directing subordinates in fundraising projects. Avoid organized efforts by top corporate executives to instruct clerical staff to prepare letters, memos, and other materials which support fundraising. As the Prudential case points out, directing subordinates to undertake fundraising activities does not fall within the "individual, volunteer" exemption, even if a candidate's campaign reimburses the corporation for those costs.

DO. Instead, ensure that your activities are of an individual and volunteer nature by not instructing others within the corporation to organize the fundraiser.

You should *individually* organize and carry out much of the preparation for the fundraiser.

If you opt to use secretarial help, ask your secretary to prepare invitations as if he or she were a campaign volunteer working during off-hours or at a time during the business day when he or she can accomplish the task without hindering the completion of normal work projects (*see* 11 C.F.R. § 114.9(a)(i)).

Special Note: Proposed New Disclosures for Publicly Traded Companies

The Securities and Exchange Commission may still be considering a proposal by a group of law professors to impose new campaign finance disclosure requirements for publicly traded companies. While there are no specifics as to the scope of these potential mandated disclosures, they may go far beyond existing FEC-mandated disclosures to require disclosure of trade association dues and non-profit contributions, in addition to traditional candidate and PAC activity. The SEC's notice that it is considering this proposal has generated nearly half a million public comments. Detractors say that the SEC has little expertise in policing campaign finance disclosures, or making a determination as to what types of political

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spending should be disclosed, while proponents claim that shareholders have the right to know the types of political spending in which public companies engage.

The Securities and Exchange Commission has, at present, removed this proposal from its agenda, especially following Congress's decision to block funding for acting on the proposed rule in the 2016 Consolidated Appropriations Act (PL 114-113, § 707). Moreover, a petition requesting SEC to propose a rule to require publicly traded companies to disclose campaign contributions was withdrawn in May 2016, presumably because of the appropriations provision.

K&L Gates will update the electronic version of the Guide to Political and Lobbying Activities upon the formal proposal or adoption of any new requirements that might be imposed on publicly traded companies. Go to www.klgates.com and search for "ethics guide."

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C. CORPORATE PAC ACTIVITIES

This subsection highlights some of the operative legal requirements that restrict the operations of a corporate PAC.

Note:
Similar but very separate rules apply to PACs operated by trade associations, partnerships, labor associations, labor unions, and coalitions. For example, note that a "non-connected PAC" (i.e., a PAC associated with a partnership or other unincorporated entity) may solicit the general public but may only receive limited support from its sponsoring organization or person (unlike a corporate PAC and its connected organization). Special rules also apply to the operation of and disclosure of activities by other organizations such as some leadership PACs, political party committees or Super PACs. Please consult the FEC or ethics advisors at K&L Gates about the restrictions applicable to these types of PACs. Please do the same if you wish to create a corporate PAC.

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1. RAISING PAC FUNDS

Despite the Supreme Court's decision in *Citizens United*, which permits a corporation to make **independent expenditures** advocating for or against a candidate for political office or unlimited contribution to a Super PAC, a corporation still may not make direct contributions to a federal candidate. The PAC remains the only method by which a corporation, or rather its donor employees and shareholders, may make a contribution to a candidate. A number of special rules apply to the method by which a corporate PAC may raise funds and make contributions, as well as the reporting and recordkeeping requirements related to the PAC's function. Some of these are outlined in this subsection.

1. STRICT REQUIREMENT TO KEEP PAC FUNDS SEPARATE

A corporate PAC (technically known as a separate segregated fund or SSF) must keep all funds raised for the PAC's use separate and segregated from ordinary corporate funds (called treasury funds). Funds contributed to and spent by a PAC are by definition "hard money." Separate restrictions apply to "soft money" contributions by corporations, labor unions and individuals.

Commingling of PAC money with corporate money is expressly prohibited.

2. WHO CAN BE ASKED TO CONTRIBUTE?

A corporate PAC may *not* solicit contributions from the general public. (However, the PAC may accept *unsolicited* contributions from the public, but may not inform any such persons that unsolicited contributions are acceptable.)

A corporate PAC can only solicit funds from the following three groups known as the "restricted class":

- **Stockholders** of the corporation (potentially including participants in an employee ownership program);

- **Executive and administrative personnel** of the corporation and its subsidiaries and other subordinate units; these are individuals who are paid on a salary (rather than an hourly) basis and who have policy-making, managerial, professional, or supervisory responsibilities. Examples include corporate officers, executives, plant managers, division managers and other professionals including lawyers and engineers. It does not include employees represented by a labor organization unless those employees are also managers, salaried foremen, or retired employees, unless any of them are stockholders; and

- **Families** (which only include spouses, parents, and children living in the same household) of both corporate stockholders and executive and administrative personnel.

Twice a year, and under a strict custodial arrangement, a PAC and its parent corporation can solicit its non-executive and non-administrative personnel, their families, and labor organizations.

3. FUNDRAISING RESTRICTIONS

Only certain contributions can be solicited and accepted by a corporate PAC.

Contributions must be voluntary:

- contributions cannot be the product of threats, job discrimination, fees, dues, or misunderstandings;

- a contributor must be made aware that his or her refusal to contribute will not result in any financial or other reprisal; and

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- a contribution amount may be suggested, but the solicitation must state that more or less may be given or nothing at all, and that a contribution of any amount or a refusal to contribute will not benefit or disadvantage the contributor.

Contributions to a multicandidate PAC cannot exceed certain limits:

- more than $5,000 from any one contributor per calendar year (which includes individuals, groups, and other PACs);
- more than $100 in cash (actual currency), aggregate, from one person; and
- more than $50 from an anonymous donor.

Contributions cannot be received from prohibited sources, such as:

- treasuries of national banks, corporations, or unions;
- foreign nationals who do not have permanent residency in the United States; and
- direct contributions from federal government contractors. This does not apply, however, to *personal* contributions of employees, partners, shareholders, or officers of businesses with government contracts nor to separate PACs established by corporations with government contracts.

Solicitations must inform the solicitee of the following:

- the PAC's political purpose;
- contributions are voluntary;
- a solicitee may refuse to contribute without reprisal (and, if a contribution amount is suggested, indicate that it is only a suggestion and a solicitee may contribute more or less, or nothing at all without reprisal);
- contributions are not tax deductible; and
- if the PAC funds are used to support state candidates too, indicate that contributions to the PAC will be used to support both federal and state candidates.

Note:
Even if these disclaimers are made in an oral solicitation, it is advisable to provide a written solicitation with these disclaimers to the solicitee.

Twice-yearly solicitations must adhere to the following restrictions, among others:

- the solicitation must be in writing and mailed to the solicitee's home address;
- the solicitee must return any contributions to a custodian to preserve his or her anonymity; and
- payroll deduction is not allowed.

4. FUNDRAISING METHODS

Any representative of the PAC or the PAC's affiliated corporation can solicit funds. The following are several permissible ways of soliciting funds for a corporate PAC (although as a *practical* matter many corporations rely on only one or a few methods):

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Personal solicitations, either face-to-face or via telephone.

Mail or Email solicitations, with computerized labels and an enclosed, pre-addressed, stamped return envelope.

Internal publications, such as an in-house newsletter, *provided* it is circulated only to those in the restricted class.

An internal publication with widespread circulation to those outside the restricted class cannot solicit in any way, *i.e.,* it cannot publicize the PAC, provide information on how to contribute, or even commend employees who have contributed.

However, in FEC advisory opinions, PAC solicitations were permitted in widely circulated in-house magazines, provided:

- the articles included an explicit caveat stating that PAC contributions will be screened, with those from persons outside the restricted class returned; and

- both the number and percentage of non-solicitable persons receiving the publication were insignificant (*i.e.,* 3% or less).

This remains an uncertain area and further advice should be sought if such a PAC solicitation is contemplated.

Payroll deduction/check-off plans (only for employees within the restricted class), in which an individual expressly authorizes the periodic deduction of PAC contributions from his/her paycheck. If the PAC contributions are combined with other payroll deductions, such as membership dues, there are certain procedures the PAC must follow in depositing and transmitting the checks. Employees can also pay using a credit card, provided the funds are quickly transferred to a separate PAC fund and not commingled with corporate monies.

Promotional entertainment, in which the parent corporation sponsors a fundraising event (*e.g.,* a party, raffle, or sale of promotional items) as an inducement to make contributions to the corporate PAC. The full purchase price of the entertainment (*e.g..,* raffle ticket) counts as the PAC contribution. The PAC also must reimburse its parent corporation for any entertainment costs which exceed one-third of the contributions collected.

Note:
The PAC may want to consider hosting fundraisers in appealing places like a nice restaurant.

Fundraising through a collecting agency, provided the PAC remains fully responsible for ensuring that special rules are observed.

Recognizing PAC participation: The PAC may want to consider holding policy issue briefings with a publicly elected official (*e.g.,* a Member of Congress) or similar events for those employees who have participated in the PAC.

Charitable match: The corporation may match a contribution to its PAC with a corporate donation to a charity selected by the PAC contributor. Neither the corporation nor the PAC contributor may take a charitable tax deduction though.

2. GIVING PAC CONTRIBUTIONS

This subsection highlights some of the operative legal requirements restricting the giving of political contributions from corporate PACs to federal candidates.

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1. ONLY PAC FUNDS MAY BE USED TO CONTRIBUTE TO POLITICAL CAMPAIGNS

Non-multicandidate PACs may contribute up to $2,800 per candidate per election. This amount is indexed for inflation, and increases at the beginning of every odd-numbered year. Ordinary corporate funds – called treasury funds – *cannot* be contributed directly to federal political campaigns or indirectly through a PAC.

Corporations wishing to make contributions may *only* do so by establishing a corporate PAC (technically known as a separate segregated fund or SSF) to which contributions other than ordinary corporate monies may be given by certain groups of individuals.

The following corporate political contributions are prohibited because they are not PAC funds:

Corporate credit: Failure of a PAC to repay in a timely fashion debt owed to a corporation becomes a contribution from the corporation and is therefore prohibited.

Discounts: Corporate discounts to PACs are prohibited (for the amount of the discount).

Compensation for services: Corporate payment for service rendered to a PAC is generally a prohibited contribution. Two exceptions:

- A parent corporation may pay for the establishment, administration, and solicitation expenses of its PAC; and

- A parent corporation may provide legal and accounting services for certain purposes on behalf of its own connected PAC.

Reimbursement of prohibited corporate contributions does not mitigate the violation of law. If a parent corporation makes a prohibited contribution and is later reimbursed for the amount by its PAC, the contribution is still considered unlawful.

2. LIMITS ON PAC CONTRIBUTIONS

Until a corporate PAC becomes classified as multi-candidate, it may contribute only $2,800 per candidate per election. A non-multicandidate PAC may also contribute $35,500 per year to each national party committee (along with the additional limits to the "new" party accounts), and $10,000 per year to each state/local party committee. There is no overall aggregate limit on non-multicandidate PAC contributions. The limits on contributions to candidates and national party committees are indexed for inflation in odd-numbered years.

A PAC becomes multi-candidate once it meets three criteria, at which time it must file a Form 1M with the FEC:

- Be registered with the FEC for at least six months;

- Receive contributions from more than fifty persons during the PAC's life (not within a given year); and

- Contribute to five or more federal candidates.

Within 10 days of meeting these three criteria, a PAC is required to file a form 1M alerting the FEC that it has become a multi-candidate PAC.

A multi-candidate corporate PAC can make contributions up to the following limits:

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- To each **individual federal candidate:** $5,000 for each separate election (*i.e.,* the primary, the general, and any runoff or special elections);

- To each **national party committee:** $15,000 per year (along with the additional limits to the "new" party accounts);

- To each **state/local party committee:** $5,000 per year; and

- To each **PAC** not affiliated with the parent corporation or to any other PAC: $5,000 per year.

Certain types of disbursements are considered non-political and therefore are not political contributions which count against the limits. Examples of such non-political disbursements include loan repayments, transfers to affiliated corporate PACs, and payment of PAC administrative expenses.

3. PERMISSIBLE KINDS OF PAC CONTRIBUTIONS

In addition to a simple monetary contribution to a federal political campaign, the following are permissible PAC contributions. It is important to note that all these kinds of contributions count against the limits and need to be disclosed on PAC reporting forms filed with the FEC.

In-Kind Contributions. A corporate PAC may donate goods and services to candidates and their campaign committees. Examples of in-kind services a PAC could provide for a candidate include: consulting, polling, advertising, printing services, or catering or postage costs incurred in connection with hosting a fundraiser.

Loans. A PAC may loan money to a candidate, or it may endorse or guarantee a bank loan. The loan or amounts guaranteed count against the contribution limits.

4. OTHER CATEGORIES OF PAC CONTRIBUTIONS

Independent Expenditures. Independent expenditures (usually in the form of political advertising, sometimes pro and sometimes con) are expenditures for communications expressly advocating the election or defeat of a clearly identified federal candidate or group of candidates**.**

A PAC may make unlimited independent expenditures but, in addition to the requirements above, the contribution must not be made with the cooperation or prior consent or at the suggestion of the candidate, his or her campaign committee, his or her agent, or any political party committee or its agents.

Note:
While a PAC may still make independent expenditures, following the Supreme Court's decision in Citizens United, it likely is not the most effective type of committee for this type of political activity. PACs generally require more registration, reporting, and fundraising requirements than other committees, so you should explore your goals and options when considering how to fund an independent expenditure campaign.

The following is a list of relevant rules about a PAC's use of independent expenditures.

- **Public notice required** – An independent expenditure advertisement must conspicuously identify the PAC as the sponsor.

- **Reporting** – Even though no candidate limits are applicable, a PAC must still report all independent expenditures.

- **Allocation** – When an independent expenditure is made on behalf of several candidates, the PAC must allocate the costs among the candidates in proportion to the benefit (or detriment) each candidate receives.

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- **Individual Limits** – Contributions to PACs which are making independent expenditures solely on behalf of a single candidate cannot exceed the standard $5,000 individual contribution limit. However, PACs that *solely* make independent expenditures (known as "Super PACs") may accept unlimited contributions.

Additionally, so-called "hybrid" committees have been permitted by the FEC, which would allow a traditional PAC and a super PAC to operate under the same trade name and use much of the same infrastructure. However, the FEC has declined to permit these within a corporate or labor union connected PAC.

3. ADMINISTRATIVE REQUIREMENTS

This subsection highlights some of the operative legal requirements for the administration of a corporate PAC. There are an elaborate series of record keeping and report filing regulations. Note that, while PAC treasurers will generally be subject to FEC action only in their official capacity, the FEC has stated that it will proceed against treasurers in their personal capacity if it finds that they have knowingly and willfully violated the law, recklessly failed to fulfill specific duties, or intentionally deprived themselves of facts giving rise to a violation.

The FEC has provided a series of internal financial controls for PACs. In the event of misappropriation of PAC funds, the FEC plans not to seek to impose liability on PACs that have these controls in place.

1. RECORD KEEPING

General Requirement: The treasurer of a corporate PAC – but not the treasurer of the parent company – is responsible for keeping copies of each statement and report, together with pertinent backup records, for three years after the record or statement is filed. However, since the statute of limitations on any enforcement action is five years from a violation, we strongly recommend that you keep records for at least five years.

Standard of Care: In performing recording duties, the PAC treasurer (or authorized custodian) must exercise "best efforts" to obtain required contribution and disbursement records.

Receipts: The following PAC receipts should be recorded:

- Total contributions received.
- Identity of receipt –
    - For individual contributions of $50 or less collected at fundraiser: record date and total amount of contributions received;
    - For any contributions (general or at fundraiser) over $50: record date received and donor's name and address; and
    - For any contributions (general or at fundraiser) aggregating over $200 per year: record amount, date received, donor's name, address, occupation, and name of employer.
- All PAC transfers received from affiliated PACs.

Disbursements: The following PAC disbursements should be recorded:

- Total disbursements which must be drawn by check or similar draft on the campaign depository.
- Petty cash disbursements (which may not exceed $100 per transaction).

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- Identity of disbursement –
    - For each disbursement: identify amount, name, and address of payee and purpose;
    - For any disbursement exceeding $200: keep receipt, invoice, or canceled check; and
    - For any disbursement to candidates regardless of amount: record date, office sought by candidate, and kind of election (*e.g.,* primary or general).
- All PAC monies transferred to affiliated PACs.

2. Filing Reports

General Requirement: The PAC treasurer is required to file periodic reports with the FEC on the financial activity of the corporate PAC until it terminates.

Standard of Care: The PAC treasurer must make "best efforts" to obtain and report the required information. If a PAC is unable to obtain information after making "best efforts," it should note the fact on its report where the information is omitted.

How to File: A PAC must electronically file all reports and statements with the FEC if it raises or expends more than $50,000 in any calendar year, or expects to do so. Even if it is below the $50,000 threshold, a PAC may want to electronically file for administrative convenience.

Where to File: Reports must be filed with the FEC if the PAC is contributing to both House and Senate candidates. If the PAC is only giving to candidates for a particular house, then the PAC reports need be filed only with that particular house.

When To File:

- During an **election year** –
    - **Quarterly reports;**
    - **Pre-election reports** must be filed 12 days before any election (primary or general), if the PAC made contributions or expenditures, not previously reported, in connection with that election;
    - **Post-election reports** within 30 days after the general election; and
    - **Year-end reports** by January 31 of the following year.
- During a **non-election year** – two semiannual reports.
- For **special elections,** only PACs making contributions in connection with the special election must file reports.

Note:
If the reporting requirements are too confusing because of multiple primary dates, PACs can file monthly reports (which is a common practice in election years). If you file monthly, rather than quarterly, you also do not have to track each state's primary election dates for purposes of possibly having to file pre-primary election reports.

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D. FEDERAL AND STATE PAY-TO-PLAY LAWS

This subsection highlights some of the limitations and prohibitions applicable to companies that do business with federal, state and local governments, as well as their PACs, their officers and employees, when making political contributions.

1. THE BASIC PROHIBITION ON FEDERAL CONTRACTORS

A contractor to the federal government is prohibited from making a contribution to a federal political committee. For decades, this prohibition has had little impact, as most contractors are corporations, and corporations are separately prohibited from making political contributions to federal candidates. However, this prohibition also generally extends to additional types of federal political committees to which corporations may otherwise contribute, including independent expenditure-only committees, or Super PACs. *(Super PACs are discussed in detail in Section I-E.)*

Note that this blanket prohibition does not prevent a federal contractor from operating a federally connected political action committee to collect employee contributions and distribute those contributions to candidates and committees.

2. FEDERAL PAY-TO-PLAY CONSIDERATIONS FOR SECURITIES DEALERS, INVESTMENT ADVISERS

Municipal Securities Rulemaking Board (MSRB) Rules G-37 and G-38

MSRB Rules G-37 and G-38 address "pay-to-play" practices among brokers, dealers and municipal securities dealers. In February of 2016, the MSRB expanded rule G-37 to include registered municipal advisors. The expanded rule became effective on August 17, 2016.

MSRB Rule G-37 prohibits brokers, dealers and municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers, and requires brokers, dealers and municipal securities dealers to disclose certain political contributions, as well as other information. (See definitions of the key terms below.) **The expanded Rule G-37 prohibits municipal advisors from engaging in municipal advisory business with a municipal entity for two years if certain political contributions have been made to officials of the municipal entity.**

MSRB Rule G-38 prohibits payments to non-affiliated persons for solicitations of municipal securities business.

Application of the Rules

MSRB Rule G-37 generally applies to brokers, dealers and municipal securities dealers, municipal finance professionals, municipal advisors, municipal advisor professional (MAP) and PACs controlled by the dealer or any municipal finance professional.

MSRB Rule G-37 prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer, (ii) any municipal finance professional associated with such dealer or (iii) any PAC controlled by the dealer or any municipal finance professional. The expanded rule prohibits a municipal advisor from engaging in municipal advisory business with a municipal entity to two years after any contribution to an official of the municipal entity made by: (i) the municipal advisor; (ii) a MAP; or (iii) any PAC controlled by the municipal advisor or the MAP.

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The rule includes a prohibition on soliciting and coordinating contributions from any affiliated entity of the broker, dealer or municipal securities dealer, municipal advisor or MAP, or PAC to a political party of a state or locality where the broker, dealer, municipal securities dealer, municipal advisor, or MAP is engaging or is seeking to engage in municipal securities or advisory business.

Finally, MSRB Rule G-37 prohibits any broker, dealer or municipal securities dealer, any municipal finance professional, any municipal advisor or MAP from doing anything indirectly that, if done directly, would result in a violation of the other provisions of the rule.

MSRB Rule G-38 generally prohibits any broker, dealer or municipal securities dealer from providing, or agreeing to provide, directly or indirectly, payment to any person who is not an affiliated person of the broker, dealer or municipal securities dealer for a solicitation of municipal securities business on behalf of such broker, dealer or municipal securities dealer; provided, however, that certain “transitional payments” made with respect to solicitation activities undertaken prior to August 29, 2005 (the effective date of MSRB Rule G-38) are permitted if certain conditions are satisfied. In effect, all paid solicitation activities by non-affiliated persons on behalf of dealers were required to cease as of August 30, 2005.

Key Definitions for MSRB Rules G-37 and G-38

“**Contribution**" means any gift, subscription, loan, advance or deposit of money or anything of value made: (i) for the purpose of influencing any election for federal, state or local office; (ii) for payment of debt incurred in connection with any such election; or (iii) for transition or inaugural expenses incurred by the successful candidate for state or local office.

“**Issuer**" means a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one or more states that issues municipal securities (as described in section 3(a)(29) of the Securities Exchange Act of 1934, as amended).

An "**official of an issuer**" means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (i) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (ii) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

"**Solicitation**" is generally defined as any direct or indirect communication with an issuer for the purpose of obtaining or retaining municipal securities business.

Exceptions

There is a *de minimis* exception to Rule G-37 for contributions to officials of issuers made by municipal finance professionals or MAP entitled to vote for such officials, provided such contributions, in the aggregate, do not exceed $250 by each such municipal finance professional to each official of such issuer, per election.

Disclosure Requirements

Brokers, dealers, municipal securities dealers, and municipal advisors are required to disclose certain information regarding contributions to the MSRB on a quarterly basis on Form G-37, and such information is made publicly available.

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SEC Rule 206(4)-5

The Securities and Exchange Commission (the SEC or Commission) adopted Rule 206(4)-5 (the SEC Rule) under the Investment Advisers Act of 1940 (the Advisers Act) to address pay-to-play practices under which contributions by investment advisers to state and local government officials may be seen as improperly influencing the award of government contracts to manage assets of government entities. The SEC Rule was modeled on MSRB Rules G-37 and G-38, which are described above.

Application of the Rule

The SEC Rule applies to an SEC-registered investment adviser or an investment adviser that is exempt from registration in reliance on the exemption available under Section 203(b)(3) of the Advisers Act (a "foreign private adviser"), or that is an "exempt reporting adviser" relying on the exemption under Section 203(l) or 203(m) of the Advisers Act (a "venture capital adviser" or a "private fund adviser," respectively). The SEC Rule generally is inapplicable to smaller advisers that are registered with state securities authorities.

Rule 206(4)-5(a)(1) generally prohibits an adviser subject to the rule from receiving compensation for providing advice to a government entity within two years after a contribution to an official of the government entity has been made by the adviser or by any of its covered associates. The SEC Rule does not ban or limit the amount of political contributions that can be made by an adviser or its covered associates, but rather, imposes a "time out" on the ability of an adviser to receive compensation for conducting advisory business with a government entity for two years after certain contributions are made to an official of a government entity.

The SEC Rule applies in equal force to pooled investment vehicles in which government entities invest, such as hedge funds, private equity funds or collective investment trusts relying on Sections 3(c)(1), 3(c)(7) or 3(c)(11) of the Investment Company Act of 1940, as amended; provided, however, that the SEC Rule applies to investments by a government entity in a registered investment company only if the investment company is an investment option of a participant-directed plan or program of a government entity, such as a Section 403(b), 457 or 529 plan.

The SEC Rule also prohibits an adviser and its covered associates from coordinating or soliciting any person or PAC to make (i) any contribution to an official of a government entity to which the adviser is providing or seeking to provide advisory services or (ii) any payment to any state or local political party where the adviser is providing or seeking to provide advisory services to a government entity. The intent of this restriction is to prevent an adviser from circumventing the SEC Rule by, for example, "bundling" a large number of small employee contributions or making contributions indirectly through a state or local political party.

Rule 206(4)-5 prohibits an adviser subject to the SEC Rule, or any of the adviser's covered associates, from providing or agreeing to provide, directly or indirectly, payment to any person to solicit government entities for advisory services on behalf of the adviser unless such person is (i) a regulated person that itself is subject to prohibitions against engaging in pay-to-play practices or (ii) an executive officer, general partner or managing member (or, in each case, a person with a similar status or function) or an employee of the adviser. The compliance date for the third-party solicitor ban was extended by the SEC until nine months after the compliance date of the final municipal advisor registration rules. The compliance date for the municipal advisor registration rules was July 1, 2014.

Finally, Rule 206(4)-5(d) prohibits an adviser subject to the SEC Rule and its covered associates from doing anything indirectly that, if done directly, would result in a violation of the other provisions of the SEC Rule.

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Key Definitions for SEC Rule 206(4)-5

Official means any person (including any election committee of the person) who was, at the time of a contribution, an incumbent, candidate or successful candidate for elective office of a government entity, if the office (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity, or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. For example, executive officers or legislators whose official position gives them the authority to influence the hiring of an investment adviser generally would be "government officials" under the SEC Rule, while a public official who is tasked with performing an audit of the selection process but has no influence over hiring outcomes would not be an official of a government entity for purposes of the SEC Rule.

Government entity includes any state or political subdivision of a state, its agencies and instrumentalities, any pool of assets sponsored or established by any of the foregoing (including a defined benefit plan and a state general fund), and any participant-directed investment program or plan sponsored or established by any of the foregoing, such as a Section 403(b), 457 or 529 plan.

Contribution means any gift, subscription, loan, advance, or deposit of money or anything of value made for (i) the purpose of influencing any election for federal, state or local office, (ii) payment of debt incurred in connection with any such election, or (iii) transition or inaugural expenses of the successful candidate for state or local office.

Payment is defined more broadly than "contribution" to mean any gift, subscription, loan, advance or deposit of money or anything of value.

A **covered associate** of an adviser means (i) any general partner, managing member or executive officer, or other individual with a similar status or function, (ii) any employee who solicits a government entity for the adviser and any person who supervises, directly or indirectly, such employee, and (iii) any PAC controlled by the adviser or by any such persons described in clauses (i) or (ii). A contribution by a limited partner of a limited partnership adviser, a non-managing member of a limited liability company adviser or a shareholder of a corporate adviser is not covered unless such person is also an executive officer or solicitor (or supervisor thereof), or the contribution is an indirect contribution by the adviser, executive officer, solicitor or supervisor.

Executive officer is defined to mean an adviser's president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer of the adviser who performs a policy-making function, or any other person who performs similar policy-making functions for the adviser.

A **solicitation** generally includes any communication made under circumstances reasonably calculated to obtain or retain an advisory client unless the circumstances otherwise indicate that the communication does not have the purpose of obtaining or retaining an advisory client.

A **regulated person** is defined to include a broker-dealer that is registered with the SEC and is a member of a registered national securities association that has a rule (i) that prohibits members from engaging in distribution and solicitation activities if certain political contributions have been made and (ii) that the SEC finds both to impose substantially equivalent or more stringent restrictions on broker-dealers than the SEC Rule imposes on advisers and to be consistent with the SEC Rule's objectives. In August 2016, the SEC approved the Financial Industry Regulatory Authority's ("FINRA") pay-to-play rules to regulate the activity of FINRA member firms that engage in distribution or solicitation activities for compensation with

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government entities on behalf of investment advisers that provide or are seeking to provide investment advisory services to such government entities. The FINRA pay-to-play rules are discussed further below.

"Look-back" Provision

The SEC Rule includes a "look-back" provision that attributes to an adviser contributions made by a person prior to becoming a covered associate of the adviser. This "look-back" provision, similar to that in MSRB Rule G-37, is intended to prevent advisers from circumventing the SEC Rule by influencing the selection process by hiring persons who have made contributions. The "look-back" period is generally two years. However, for any natural person who becomes a covered associate and who does not, after becoming a covered associate, solicit clients on behalf of the adviser, the “look-back” period is shortened to six months.

Exceptions

De Minimis Contributions. The SEC Rule permits individuals to make aggregate contributions, without triggering the two-year “time out,” of up to $350 per election to an elected official or candidate for whom the individual is entitled to vote, and up to $150 per election to an elected official or candidate for whom the individual is not entitled to vote.

Exceptions for Certain Returned Contributions. The SEC Rule provides for an exception to the two-year "time out" for a returned political contribution. The exception is available for aggregate contributions that do not exceed $350 to any one official per election, if certain conditions are met.

Recordkeeping Requirements

In connection with the adoption of the SEC Rule, the SEC also amended Rule 204-2 under the Advisers Act, the recordkeeping rule, to require the maintenance of certain records by registered investment advisers to permit verification of compliance with the SEC Rule.

CFTC Regulation 23.451

Commodity Futures Trading Commission (“CFTC”) adopted Regulation 23.451, the CFTC’s “pay-to-play” rule (“CFTC Rule”), in February 2012. The CFTC Rule restricts swap dealers from engaging in certain activities with a governmental special entity, if the swap dealer (or a covered associate of the swap dealer) made or solicited contributions to an official of that governmental special entity during the preceding two years, with limited exceptions. In adopting its rule, the CFTC expressed an intent to harmonize the CFTC Rule with MSRB Rules G-37 and G-38 and the SEC Rule, as many swap dealers are already subject to such rules. As a result, the application and terms of the CFTC Rule to swap dealers are quite similar to the MSRB Rules and SEC Rule described above.

SEC Rule 15Fh-6

The SEC adopted Rule 15Fh-6 in April of 2016 for security-based-swap (SBS) dealers as a sister rule to the CFTC’s pay-to-play rule for swap dealers. The rule restricts SBS dealers from engaging in certain activities with a municipal entity, if the SBS dealer (or a covered associate of the SBS dealer) made or solicited contributions to an official of that municipal entity during the preceding two years, with limited exceptions. In adopting its rule, the SEC expressed an intent to harmonize the rule with the CFTC regulation, listed above, as many swap dealers are already subject to such rules. The rule took effect July 12, 2016. The compliance date will be the date on which an SBS dealer is required to register.

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FINRA Rules 2030 and 4580

In August 2016, the SEC approved FINRA Rules 2030 and 4580 (collectively, the "FINRA Rules") to regulate the pay-to-play practices of FINRA member firms ("member firms"). Rule 2030 is modeled on SEC Rule 206(4)-5. The rule imposes new limits on the ability of member firms to conduct distribution or solicitation activities for compensation with government entities on behalf of investment advisers that provide or are seeking to provide investment advisory services to such government entities if certain political contributions are made. Rule 2030 also imposes limits on the ability of member firms to solicit and coordinate political contributions. In addition, Rule 4580 requires member firms to maintain certain books and records that will enable FINRA to assure compliance with Rule 2030. The new rules do not apply to a member firm when it is engaging in activities that would cause it to be registered as a municipal advisor. The FINRA Rules became effective on August 20, 2017.

Rule 2030

Two-Year Ban and Prohibited Contributions

Rule 2030 prohibits, subject to the exceptions described below, member firms from conducting distribution or solicitation activities for compensation with government entities on behalf of investment advisers that provide or are seeking to provide investment advisory services to such government entities within **two years** after a contribution to an official of the government entity is made by a member firm or "covered associates." This includes individuals who become covered associates within two years after such contribution is made. Moreover, member firms and covered associates are prohibited from soliciting or coordinating any person or PAC to make contributions to such a government official or payments to a state or local political party of a government entity with which the member firm is conducting distribution or solicitation activities on behalf of an investment adviser.

For purposes of Rule 2030:

"Covered associate" means: (i) any general partner, managing member or executive officer of a member firm; (ii) any associated person of a member firm (including the associated person's supervisor) who engages in distribution or solicitation activities with a government entity for such member firm; and (iii) a PAC controlled by a member firm or a covered associate.

"Official" of a "government entity" includes an incumbent, candidate or successful candidate for elective office of a government entity (including an election committee), if the office (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity, or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.

"Contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made for (i) the purpose of influencing any election for federal, state or local office, (ii) payment of debt incurred in connection with any such election, or (iii) transition or inaugural expenses of the successful candidate for state or local office.

Covered Investment Pools

Under Rule 2030, member firms that conduct distribution or solicitation activities with a government entity on behalf of "covered investment pools" in which a government entity invests or is solicited to invest are treated as if the member firms were engaging in such activities on behalf of the investment adviser to the covered investment pool directly. Covered investment pools are registered investment companies and private investment funds that rely on the exemptions in Sections 3(c)(1), 3(c)(7), or 3(c)(11) of the Investment Company Act of 1940 (the "1940 Act") (e.g., hedge funds, private equity funds, venture capital funds, and collective investment trusts).

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Exemptions

De minimis exception. Covered associates who are natural persons may contribute up to **$350** per **election** to government entity officials for whom the covered associate is entitled to vote, and may contribute up to $250 per election to any other officials. Primary and general elections are considered separate elections.

New Covered Associates. Rule 2030 provides an exemption for member firms if a natural person made a contribution more than six months before becoming a covered associate of a member firm, so long as the covered associate does not conduct distribution or solicitation activities with a government entity on behalf of the member firm.

Returned Contributions. Rule 2030 also provides an exemption from the rule's restrictions for covered members if the restriction is the result of a contribution made by a covered associate and: (i) the member firm discovers the contribution within four months of it being made; (ii) the contribution is not greater than $350; and (iii) the contribution is returned within sixty days of discovery by the member firm. Member firms with 150 or fewer registered representatives may not rely on this exception more than two times per calendar year. All other member firms may rely on this exception no more than three times per calendar year. Additionally, member firms may not rely on this exception more than once for contributions by the same covered associate, regardless of the time period involved.

Rule 4580

Recordkeeping Requirements

Rule 4580 requires member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers that provide or are seeking to provide investment advisory services to such government entities to maintain certain books and records that will enable FINRA to assure compliance with Rule 2030. In particular, member firms are required to maintain records of certain pertinent information about the following: (i) the member firm's covered associates; (ii) each investment adviser on whose behalf the member firm has engaged in distribution or solicitation activities with a government entity within the previous five years (though not before the effective date of the FINRA Rules); (iii) every government entity with which the member firm has conducted distribution or solicitation activities for compensation on behalf of an investment adviser, or which are or were previously investors in a covered investment pool on behalf of which the member firm has conducted distribution or solicitation activities with a government entity on behalf of the investment adviser to such covered investment pool, within the previous five years (though not before the effective date of the FINRA Rules); and (iv) all contributions made by the member firm or its covered associates.

3. STATE & LOCAL VARIATIONS OF PAY-TO-PLAY PROHIBITIONS

In addition to the rules described above, many states and localities have adopted laws and regulations that affect not only how investment advisers may solicit investment advisory business, but also how **state and local government contractors** or **prospective government contractors** may politically participate.

Solicitation of advisory business from a governmental entity (or solicitation of an investment in a fund sponsored by the investment adviser) may trigger state or local lobbyist registration obligations for an investment adviser and/or its employers. The registration obligation can be triggered by the solicitation activity itself, by spending a prescribed amount of time or money engaging in the solicitation activity, or by the making of a specified amount of political contributions. If the appropriate registrations are not made when required, an investment adviser might be precluded from charging a fee to a plan or other governmental entity, and other penalties may apply. Also, states and localities may have their own rules limiting political contributions and/or the provision of gifts and entertainment to public officials. In addition, some states or localities or particular government plans or other entities may preclude the use of third-party solicitors or the payment of contingent compensation.

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These restrictions can apply at the state level. However, specific government retirement plans or other government entities (such as a state treasurer's office or a state board of investment) may also have adopted their own policies in addition to any applicable state- or local-level requirements. There is no uniformity among jurisdictions as to who is covered by pay-to-play or similar restrictions against seeking to obtain government business by making campaign or other contributions to elected officials.

Applicable requirements appear in state and local statutes and regulations and often include formal and informal positions taken by municipalities, cities, counties and the state or local pension plans themselves. Sometimes positions appear in minutes of meetings of public officials or standardized contractual provisions or may only be clarified by direct communications with governing bodies. Many of these laws, regulations and rules are in the process of being updated or interpreted by the agencies responsible for enforcing such laws, and such laws remain subject to change.

State disclosure requirements are often broader than those under the SEC Rule and other rules described above. Investment advisers doing business, or seeking to do business, with state plans may be required to make disclosures to state boards of ethics or state elections enforcement commissions or other agencies, in addition to making disclosures to the plans with whom they wish to do business, and the information disclosed may be publicly available (for example, posted online) in some circumstances.

If you or your organization falls into one of these several types of entities whose political activities may be limited, your organization should consider implementing a compliance program with the intent to monitor and achieve compliance with the various state and local requirements concerning pay-to-play practices and other related obligations.

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E. Independent Expenditure-only Committees ("Super PACs")

This subsection highlights some of the operative legal requirements that guide the operations of an independent expenditure-only committee, also known as a "Super PAC." Notably, Super PACs are limited to making independent expenditures for candidates. As a condition of accepting unlimited contributions from permissible sources, they may not make direct contributions to federal candidates.

1. Raising Funds for an Independent Expenditure-only Committee

After the Supreme Court's decision in *Citizens United*, and consistent with a host of decisions in lower courts and Federal Election Commission Advisory Opinions, a committee may be formed for the sole purpose of combining resources from individuals and corporations to be used exclusively for independent expenditures. These expenditures may be made to advocate directly for or against a federal candidate, but may not be "coordinated" with a candidate or campaign, as discussed below.

Note:
Super PACs are increasingly popular and are attracting significant media attention to their activities, even when within the confines of federal election law. As with all sections of this guide, we recommend that you consult counsel specializing in political activity prior to establishing or contributing to one of these committees.

2. The Role of Super PACs in the Electoral Process

As Super PACs grow in importance and percentage of the total political spending, private donors and corporations interested in political outcomes are developing new ways to use these tools. Many Super PACs have been used to support a single candidate and are raising millions of dollars in reportable contributions. Virtually every major presidential candidate has a Super PAC dedicated to spending for his or her campaign. Some Super PACs are designed to support a caucus or coalition of federal candidates. And yet, many others have no stated purpose or are raising little money.

The most straightforward way for corporations to use Super PACs is to establish their own committee to solicit unlimited contributions, similar to their traditional connected PAC operations. Thus far, very few corporations are overtly establishing these types of committees. However, because of the limited disclosures required when establishing a new committee, a corporation (or groups of individuals associated with such corporations) may simply choose to not name the Super PAC in a distinctive way or identify itself as the driving force behind a new Super PAC. Alternatively, an entity may choose to establish a tax-exempt corporation that has the ability to make independent expenditures but – pursuant to tax laws – must also engage in activities that are not exclusively related to elections.

So far, Super PACs have been most effective at pooling the resources of individual major donors for independent expenditures. Some politically minded corporations have also been contributing to Super PACs, though in far fewer numbers than private individuals. Because they can accept unlimited sums of contributions from individuals or corporations, **Super PACs seem to be taking on the role traditionally played by the national political party**, but on a more decentralized level. As each major national political candidate – and many party caucuses, as well as Senate and House candidates – has a Super PAC, these organizations are able to develop a party-like infrastructure on a candidate-specific basis for the purpose of producing and placing advertisements, polling, and get-out-the-vote efforts.

While these committees are prohibited from "coordinating" (as described below) with candidates and traditional party committees, the FEC does not prohibit Super PACs from coordinating their activities with each other, or with other types of outside groups. For instance, as these entities continued to coordinate their efforts throughout the cycle, and as numerous candidate-specific committees coalesced into united opposition or support of a single candidate, a significant portion of political spending in the 2012, 2014, 2016, and 2018 cycles in fact originated from these new types of committees.

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3. Overlapping Requirements with Established Corporate PACs

Super PACs are not a creation of statute or FEC regulations but have instead been formed through FEC Advisory Opinions. Because of this, organization and filing requirements for Super PACs are nearly the same as any other federal political committee. Funds raised for a Super PAC must be kept in a separate bank account (consistent with a prohibition on "commingling"), and disclosure reports on donors and expenses must be filed at regular intervals with the FEC.

4. Eligible Sources of Contributions and Limits

Like those federal committees not affiliated with a corporation ("non-connected PACs"), a Super PAC may solicit and accept contributions from the general public. It may also solicit and accept contributions from corporations, including 501(c)(4) corporations, 501(c)(5) labor unions, and 501(c)(6) trade associations. However, foreign nationals and other foreign entities may not make contributions to a Super PAC and government contractors are currently generally prohibited from making such contributions. Although there will likely be additional litigation and not all the contours of the rule are clear, in 2017 the FEC fined a corporation currently performing a federal contract $200,000 for a contribution to a Super PAC that supported Hillary Clinton's 2016 presidential campaign.

5. Limits on Contributions and Expenditures

Contributions to a Super PAC may be solicited and accepted in *unlimited* amounts from any otherwise eligible member of the general public.

A Super PAC may also hold a fundraiser featuring a Member of Congress or candidate for federal office. That officeholder or candidate may only *directly solicit* contributions that would be permissible for a traditional PAC, meaning from an individual or federal committee (not a corporation) and up to $5,000. However, a Super PAC may still accept contributions of any amount that result from the fundraiser.

> **A Super PAC is limited to making <u>independent expenditures</u> for candidates. As a condition of accepting unlimited contributions from permissible sources, it may not make direct contributions to federal candidates.**

6. Ways for a Corporation to Participate

A corporation may make a direct contribution using its general treasury funds to a Super PAC. As discussed above, those contributions may be in unlimited amounts, subject to the restrictions discussed above if a candidate for federal office or federal officeholder solicits those contributions.

An individual, corporation, trade association, or other corporate entity may also establish a Super PAC limited to making independent expenditures in addition to its existing traditional PAC. Under this scenario, a corporation may *directly* pay the costs of the Super PAC's administration and fundraising. (*See* FEC AO 2010-9).

7. Administrative and Disclosure Requirements

This subsection outlines some of the operative legal requirements for the administration of a Super PAC, along with permissible uses of contributions it receives.

<u>Disclosures by the Super PAC to the FEC:</u> As with traditional federal committees, **a Super PAC must disclose the identity (whether an individual or corporation) of a contributor**, the address, and the aggregate amount contributed, for any contribution from a source donating $200 or more in a calendar year. For individuals who contribute, the Super PAC must make its best efforts to also collect and disclose information on the contributor's employer and occupation.

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Filings are made at the same intervals as a traditional federal political committee and at that committee's election – either semi-annually (during non-election years) and quarterly (during election years) with pre-primary filings or monthly with no pre-primary filings.

In addition to disclosing contributions received, **a Super PAC** – or any entity making these types of communications – **must file a report with the FEC regarding its independent expenditure activity**.

- **48 hour reports:** Upon spending $10,000 for independent expenditures with for a given election that is at least twenty days away, the entity making the independent expenditure ("IE") must file a report with the FEC disclosing certain information about the IE, including the payee, the purpose of the expenditure, the name of the candidate supported or opposed, and the amount of the expenditure, within 48 hours of the first public distribution of that expenditure.

- **24 hour reports:** Within 20 days of an election (and with a lower threshold of $1,000 for a given election), those reports must be filed within 24 hours of the first public distribution of that expenditure.

Similarly, a Super PAC may be required to file a disclosure with the FEC if it makes an "electioneering communication." This is defined as a broadcast, cable or satellite communication that: (1) refers to a clearly identified candidate for federal office; (2) publicly distributed prior to an election for the office the candidate is seeking; and (3) is targeted to the relevant electorate (for a House race: congressional district; for a Senate race: state). Once an entity makes electioneering communications that aggregate more than $10,000 in a calendar year, it must file a "24-hour report" on FEC Form 9 by the day after the first date any new communication is publicly distributed or, in most cases, when additional money is spent on an electioneering communication.

Independent Expenditure Defined: As noted above, a Super PAC is prohibited from making direct contributions to a federal political candidate or campaign, but it may make "independent expenditures." **The FEC defines an expenditure as "independent" if it is not coordinated with a federal candidate, campaign, or party.** A coordinated communication results in an in-kind contribution to the beneficiary candidate or party, which would be prohibited if made by a Super PAC.

In turn, to prevent "coordination," a Super PAC must make sure that an IE complies with highly detailed FEC regulations and enforcement actions. **The FEC applies a three-prong test to determine whether an IE is coordinated; all three must be met in order for the Commission to consider a communication to be coordinated.**

- **To satisfy the "payment" prong**, the IE must be paid for by someone other than the candidate, the candidate's campaign, or a political party.

- **To satisfy the "content" prong** the IE must (1) expressly advocate for or against a federal candidate; (2) be an electioneering communication, as defined above, and distributed shortly before an election; (3) republish or distribute official campaign materials; or (4) be a "public communication" (as defined in 11 C.F.R. 100.26) that refers to a clearly identified candidate and is distribute within the relevant time periods prior to an election.

- **To satisfy the final "conduct" prong,** the IE must be:

  (1) made at the request or suggestion of the candidate or party;

  (2) made or distributed with the material involvement of the candidate or party;

  (3) made, produced or distributed after substantial discussions with the candidate or party;

  (4) made by an entity with a "common vendor" to produce or distribute the communication (11 C.F.R. 109.21(d)(4)); **or**

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(5) made or informed by an entity who had previously been an employee or independent contractor of a campaign or party committee, within the relevant time limits.

Note:
The FEC's application of these rules is a highly fact-specific determination and can vary on seemingly minor nuances in the facts. Additionally, the Department of Justice appears to be taking an active role in enforcing these coordination laws, perhaps in response to criticisms that the FEC is only lightly enforcing this area of the law. In early 2015, the Department of Justice obtained a guilty plea from a campaign operative who illegally coordinated $325,000 in spending between a Super PAC and a congressional campaign he ran. The Department of Justice claimed it was the very first criminal conviction for violating campaign finance coordination laws. While the facts in this case appeared egregious, it demonstrates that the Department of Justice is monitoring this area of the law, and is prepared to enforce it, even with criminal charges. Prior to planning an independent expenditure or engaging in Super PAC activities, you should consult with your campaign finance attorney.

8. "Dark Money" and Changes in Disclosure?

Since the Supreme Court's decision in Citizens United, there has been significant public discussion regarding "dark money" – essentially, undisclosed resources fueling independent expenditures used in federal elections. In September 2018, however, the District Court for the District of Columbia invalidated an FEC regulation that had allowed for one of the major routes by which "dark money" entered election campaigns.

In *Citizens for Responsibility and Ethics in Washington v. Federal Election Commission and Crossroads GPS* ("CREW v. FEC"), an FEC regulation was invalidated that had allowed nonprofits permitted to engage in political activity to make independent expenditures without having to disclose the source of their funding unless contributions were earmarked for specific communications. With the regulation vacated, **politically active nonprofits that make more than $250 in independent expenditures in a given calendar year must now disclose "the identification of each person whose contribution(s) in excess of $200 … was made for the purpose of furthering any independent expenditure"** (as set out in 52 U.S.C. § 30104(c)(2)(C)). At this time, it remains uncertain when the FEC will more formally issue regulations in accordance with the ruling. In addition, the district court ruling is on appeal. This guide will be updated online to reflect outcomes of the ongoing litigation or new regulatory measures.

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II. LOBBYING DISCLOSURE & DEDUCTIBILITY

This section highlights some of the operative rules governing the disclosure of federal lobbying activities. These rules cover the following four areas:

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A. Lobbying Disclosure

This subsection highlights some of the operative legal requirements for disclosing efforts aimed at influencing the formulation, modification, or adoption of legislation by Congress or policy positions of federal executive branch agencies. For restrictions governing lobbying involving the making, awarding, or renewal of federal grants, contracts, or loans, *see* Subsection C. For a description of which lobbying costs are not deductible as ordinary and necessary business expenses, *see* Subsection D.

1. GENERAL LAW

The Lobbying Disclosure Act of 1995 ("LDA") (P.L. 104-65), as amended by the Honest Leadership and Open Government Act of 2007 (P.L. 110-81), sets forth the law regarding disclosure of lobbying activities.

Under the LDA, individuals who "lobby" the Congress or senior executive branch officials are required to:

- Register with the Clerk of the House of Representatives and the Secretary of the Senate;
- File quarterly reports of expenditures which contain a list of which houses of Congress and executive agencies were contacted and, if practicable, a description of issues and legislation addressed by the lobbyist(s);
- File semiannual reports detailing certain political contributions and expenditures and certifying that the lobbyist has read and understands the House and Senate gift rules and has not knowingly violated those rules; and
- Keep appropriate records.

2. WHO MUST REGISTER

Key Definitions: As the terms are defined below, all **lobbyists** who make **lobbying contacts** with officials covered by the LDA must register with the Clerk of the House and/or Secretary of the Senate.

A **"lobbyist"** is a person who makes, or is expected to make, at least two lobbying contacts and spends at least *20%* of his/her time engaged in lobbying activities on behalf of a client or employer over a three-month period. **Note:** *The two contacts can take place over any time frame, even years apart.*

A **"lobbying contact"** is defined as "any oral or written communication to a covered legislative or executive branch official with regard to the formulation, modification, or adoption" of federal legislation, rules, regulations, policies, programs, executive orders, or the administration of a federal program (including federal contract, grant, or license).

"Lobbying activities" are defined to include all "lobbying contacts and efforts in support of such contacts, including the preparation and planning of activities, research and other background work that is intended at the time it is performed for use in making such contacts, and coordination with the lobbying activities of others."

Note on Grassroots and State Lobbying Activity:
If the filer is using LDA definitions as a basis for completing the disclosure report, grassroots and state lobbying activity should generally not be included in LDA reports as reportable lobbying activities. Grassroots activity on its own does not have to be disclosed as lobbying activities. However, a corporation should consider including in its lobbying income on its semiannual LDA reports expenses paid for grassroots activities that directly support or are closely coordinated with its reportable lobbying activities and contacts on the same issue. Such expenses may include the postage for letters sent by its

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employees to Congress on an issue, a seminar to educate its employees about an issue before Congress or an agency, and coordination of a letter-writing campaign.

Note on Reporting Using Internal Revenue Code Definitions:
The LDA allows those filing LDA reports regarding lobbying efforts on their own behalf to have a choice of methods to be used in quantifying the lobbying activities. These entities may use either the definitions of lobbying in the LDA itself or definitions found in section 162(e) of the Internal Revenue Code ("IRC"). Entities may change the method from year to year but must use a consistent definition for all quarterly LDA reports within a single calendar year. There are several significant differences between the definitions of "lobbying" between the LDA and IRC. See Appendix G. Depending on the organization, the choice of definition can have a real impact on the amount reported. For instance, section 162(e) includes some lobbying of state and local officials and some grassroots activities within its definition of lobbying. See Subsection D for a more complete discussion of the IRC definition of lobbying.

"Covered executive branch officials" include:

- the President;
- the Vice President;
- officers and employees in the Executive Office of the President;
- officials serving in a level I-V position of the Executive Schedule (*e.g.*, those with titles that include words such as secretary, commissioner, director, etc.);
- schedule C positions; and
- senior military officers at the Brigadier General or Rear Admiral level or above.

"Covered legislative officials" include:

- Members of Congress;
- elected or appointed officers of either house of Congress; and
- any employee of either the House or Senate, including personal office, committee, leadership, working group, or legislative caucus staff.

Note:
If you are unsure whether an official is covered, there are several options for determining the issue. First, consider inquiring directly with the official or the official's office. The LDA requires an official to indicate whether he or she is covered. Second, consult the United States Government Policy and Supporting Positions, or "Plum Book," which is published every four years and identifies Presidentially appointed positions. Third, ask your K&L Gates lawyer about the official's status.

Minimum Thresholds: The LDA sets minimum ("*de minimis*") threshold levels that may exclude some persons from registering.

For retained "outside lobbyists," registration on behalf of a particular client is not required if the total income from the client for lobbying activities does not exceed, or is not expected to exceed, $3,000 during any quarterly period. This amount is indexed for inflation, and could be increased in early 2019 (check the electronic version of this guidebook).

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For organizations having *in-house lobbying operations*, registration is not required, unless lobbying expenses exceed, or are expected to exceed, $13,000 during any quarterly period. This amount is indexed for inflation, and could be increased in 2019.

Exceptions: In addition to the "*de minimis*" exceptions discussed above, the LDA exempts the following activities from the registration requirements:

- Lobbying by public officials acting in their official capacity;
- Media contacts;
- Communications to a responsible agency official in connection with: a judicial proceeding or civil law enforcement inquiry; a filing or proceeding that the government is required to maintain or conduct on a confidential basis; written agency procedures regarding an adjudication; written comments filed on the record in public proceedings; or a written petition for agency action made on the public record;
- Communications made in a speech, article, or publication intended for general public consumption;
- Communications made on behalf of a foreign government or political party that are disclosed separately under the Foreign Agents Registration Act of 1938;
- Requests for meetings or status reports, or similar administrative requests, if there is no attempt to influence legislative or executive branch officials;
- Testimony submitted to a Congressional committee or participation on formal advisory committees;
- Written information provided in response to an oral or written request by a covered legislative or executive branch official or that which is required by subpoena, civil investigative demand, or otherwise compelled by statute;
- Comments submitted in response to an invitation published in the *Federal Register* or *Commerce Business Daily*, or other similar publication, soliciting communications from the public;
- Communications made by a church or religious organization that is exempt from filing an income tax return;
- Communications not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;
- Information protected under the Whistleblower Protection Act of 1989; and
- Communications between formally recognized self-regulatory organizations and the Securities and Exchange Commission ("SEC") or the Commodity Futures Trading Commission.

Examples:

The following are examples of activities that would be considered *lobbying contacts* for purpose of disclosure:

- Meeting with a Member of Congress or Senator or his or her staff to encourage him/her to support or oppose a specific amendment or to cosponsor a bill or resolution. A call, fax, email, or

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other method of communicating such a lobbying message would also constitute a reportable lobbying contact.

- Meeting with a senior executive branch official in connection with a proposed rule being developed by that agency.

- Writing an unsolicited letter to a Member of Congress to express your company's view on a piece of pending legislation.

The following are examples of disclosable *lobbying activities* that support lobbying contacts:

- Researching and drafting a one-pager that will be used in a meeting with a Congressional aide on pending legislation.

- Research used in preparing a background paper on a policy issue that will be given to a senior executive official.

- A scripting or strategy session to hone the message that will be communicated to a Member of Congress on a bill.

- Drafting an amendment, report language, or a letter that will be shared with a Congressional staff aide as an example of how to address a policy issue.

- Consulting with your employer or client on the planning or coordination for a series of meetings with Congressional staff aides or executive agency officials on the issuance of a federal policy.

- Orchestrating grassroots letter-writing or phone campaigns that result in lobbying contacts being made.

- Strategizing and executing public relations, think tank or charitable organization activities in furtherance of lobbying contacts.

On the other hand, the following are examples of activities probably *not* considered lobbying under the LDA:

- Monitoring the progress of legislation, provided such monitoring does not assist in the preparation for making a lobbying contact.

- Coalition-building and public relations activities that in no way support "lobbying contacts."

- Preparing for or giving testimony before a Congressional committee.

- The mayor of a city or similar public official requesting federal funds for the city's public housing programs.

- Providing written information on the operations of your company to assist a federal agency or the Congress in developing a position on legislation, *provided* the information responds to a request for such information.

The following are examples that further illustrate when registration under the LDA is required:

- A Washington, D.C. trade association has an annual budget of $100,000 for lobbying activities. Two staff members of the association – the executive director and the director of Congressional affairs – plan to spend more than 20% of their time engaged in making lobbying contacts and

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lobbying activities. The association should register and list separately the executive director and the director of Congressional affairs on its registration form. (*See* diagram at II-8).

- Although a company does not have a Washington, D.C. office, it does have a governmental affairs representative who is based in Seattle. This representative plans to visit Washington, D.C. a few times during the next three months to make contacts with the Congress and key executive agency personnel. Assuming the estimated cost of these contacts – including all travel expenses as well as all time spent preparing for and following up from these visits – is expected to be at least $13,000 and this represents at least 20% of the representative's time, the governmental affairs representative should register in the name of her company. (*See* diagram at II-8).

- A law firm has been retained by a client to help protect its interests as an executive agency develops a formal policy position. Two attorneys in the firm plan to do most of the work for the project. The first, a partner, plans to send several unsolicited letters to the agency head and to meet a few times with the agency's staff on behalf of the client. The second, an associate, will accompany the partner on the staff visits and will research and draft the letters and background briefing materials that will be shared with the agency. No other non-lobbying activities will be performed by these two attorneys on behalf of this client. The expected fees and expenses from this client over the next three months are $10,000 for this project. The law firm should file on behalf of its client and list both the partner and the associate on the registration form since the $3,000 threshold for a retained lobbying firm has been exceeded and both lawyers will spend at least 20% of their time for this client involved in lobbying activities. (*See* diagram at II-9).

- A lobbying firm has been retained at $10,000 per month by a major coalition to help enact legislation. Several members of the firm will be involved in this project, including those who will coordinate the coalition's meetings, draft the coalition's legislation and briefing papers that will be shared with Capitol Hill, and meet with Members of Congress and staff to support the legislation. The lobbying firm should register on behalf of the coalition and on behalf of every firm member who expects to spend at least 20% of his or her time devoted to <u>this coalition</u> engaged in lobbying contacts and activities outlined above (*e.g.,* coordination, drafting, and Congressional contacts). Note, even if a firm member only spends 5% of his or her total time over the next three months working for this coalition, s/he must be listed on the registration form if s/he makes at least two lobbying contacts and her lobbying activities <u>for this client</u> represent at least 20% of his or her time spent working for that client. (*See* diagram at II-9).

- A group of corporations seeking to delay implementation of the stringent new internal-reporting requirements in the Sarbanes-Oxley Act hires a Washington, D.C. lobbying firm to pursue its interests with the SEC. Two firm partners and an associate plan to do most of the work on the project, which would not involve any formal rulemaking. The two partners will meet with very senior SEC officials on behalf of the client. The third, an associate, will research the legal requirements of Sarbanes-Oxley and prepare materials to be presented to the SEC officials. This effort is the only work that the firm will do on behalf of the client, which is to pay the firm $2,500 a month over the next three months. The law firm should file on behalf of its client and list both partners and the associate on the registration form. The project will exceed the $3,000 quarterly threshold for a retained lobbying firm, and all three members of the firm will spend at least 20% of their time for this client involved in lobbying activities. (*See* diagram at II-9).

The two decision diagrams on the following pages may assist employees of corporations or associations and retained outside lobbyists in determining whether registration is required under the LDA for lobbying activities.

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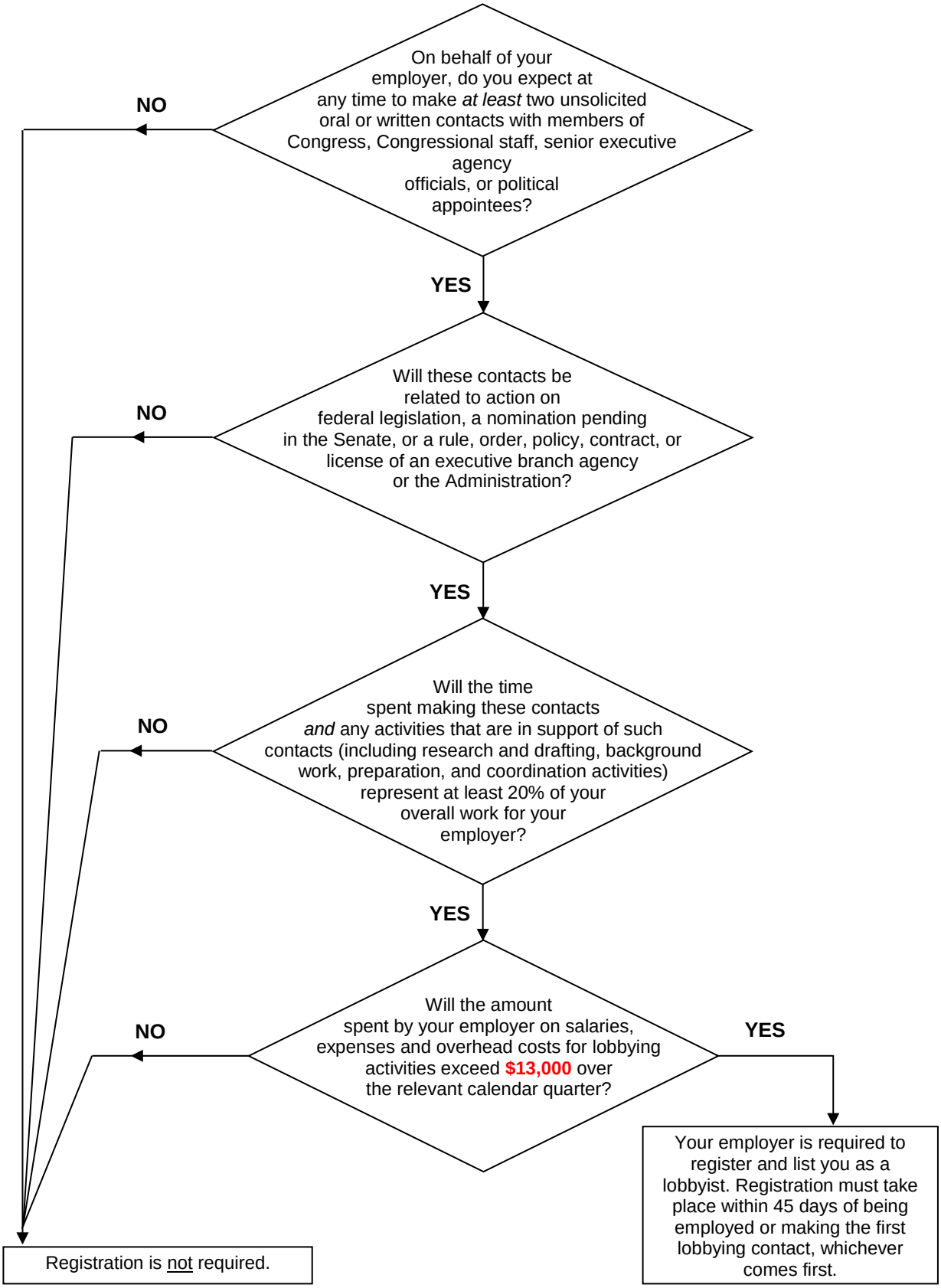
Test Number 1 for Lobby Disclosure - For "in-house" lobbyists:



Note: Organizations that have already filed an LD-1 should add new lobbyists on the next LD-2 quarterly report even if the due date of the next LD-2 exceeds 45 days.

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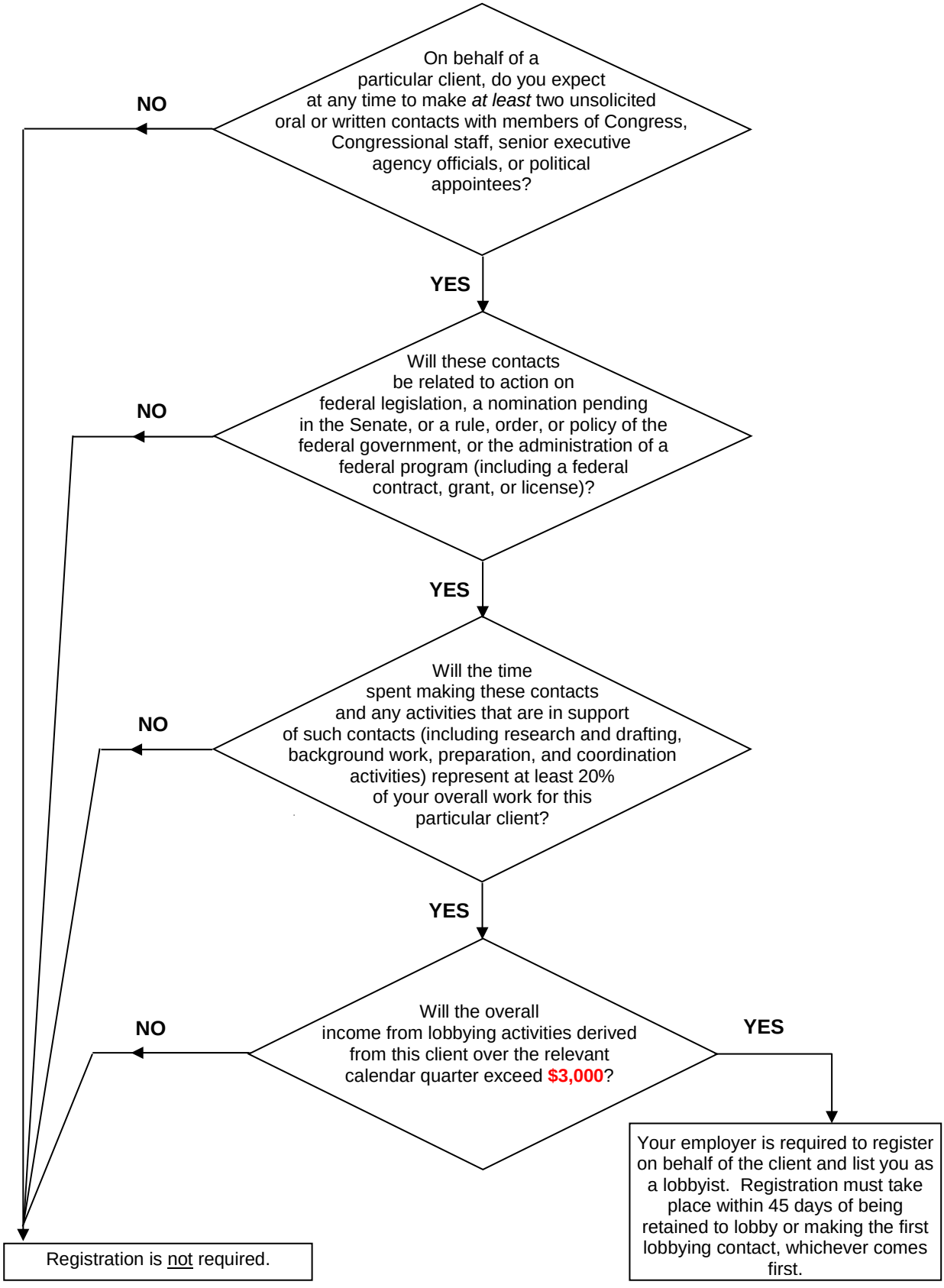
Test Number 2 for Lobby Disclosure - For retained ("outside") lobbyists:



Note: Organizations that have already filed an LD-1 should add new lobbyists on the next LD-2 quarterly report even if the due date of the next LD-2 exceeds 45 days.

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3. REGISTRATION AND REPORTING

If one is lobbying, as defined above, the following three reports must be filed by the lobbyist's employer.

Note:
All lobbying disclosure reports must be filed electronically with the House and Senate. For details on how to file electronically, visit *lobbyingdisclosure.house.gov*.

a. Preliminary Registration Statement. A Form LD-1 must be filed with the Clerk of the House and/or the Secretary of the Senate within 45 days after making or agreeing to make a lobbying contact, whichever comes first.

Basic information on the lobbyist. Under the LDA, each initial registration must contain all pertinent information about the lobbyist or lobbying organization, including the registrant's name, address, principal place of business, and telephone number. A general description of the registrant's business or activities should accompany the initial filing. Furthermore, the statement must contain the name, address, and principal place of business of the client whose engagement triggered the filing requirement. If an affiliated organization other than the client contributes more than $5,000 toward the effort, and supervises or controls lobbying activities, information must be provided about that entity in the same manner as if it were the lobbyist's client.

In addition to disclosure of affiliates that "supervise or control" lobbying activities, organizations and other groups must also identify any member contributing more than $5,000 for lobbying activities in a quarterly period and "actively participates" in the planning, supervision, or control of such lobbying activities.

Guidance by the Clerk of the House and Secretary of the Senate provides that "active participation" would include "participating in decisions about selecting or retaining lobbyists, formulating priorities among legislative issues, designing lobbying strategies, performing a leadership role in forming an ad hoc coalition, and other similarly substantive planning or managerial roles, such as serving on a committee with responsibility over lobbying decisions," but would not include "merely donating or paying dues to the client or registrant, receiving information or reports on legislative matters, occasionally responding to requests for technical expertise or other information in support of the lobbying activities, attending a general meeting of the association or coalition client, or expressing a position with regard to legislative goals in a manner open to, and on a par with that of, all members of a coalition or association – such as through an annual meeting, a questionnaire, or similar vehicle."

Areas of interest. The registration statement must contain a description of the general areas of interest to the client and the activities planned on its behalf. To the extent practicable, the specific issues to be addressed (or which have already been addressed) by the lobbyist should also be included.

Names to list on the registration form. An organization having one or more employees need only file one registration form per client. However, the name of each employee of a lobbying firm who acts as a lobbyist on behalf of the client (*i.e.,* meets the 20% test) must be listed on line 10 of the registration form. In addition, the registration must expressly note whether any of the lobbyists listed were employed in the legislative branch or served in the executive branch in a policy-making position during the preceding 20-year period and, if so, identify the employee's former title and office.

A copy of the lobbying registration form (Form LD-1) is found at Appendix C. Four pages of accompanying instructions to assist in filling out the form are also included. **Note:** *This registration form must be filed electronically with both the Clerk of the House and the Secretary of the Senate.*

b. Quarterly Reports. In addition to the registration statement, a lobbyist's employer must submit a quarterly report (Form LD-2) to supplement the initial LDA filing. Such reports are to be filed within 20 days after the close of each quarterly period beginning on January 1, April 1, July 1 and October 1 (*i.e.,* by January 20, April 20, July 20, and October 20).

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The quarterly reports must update the information provided in the initial registration statement. They must also contain the following:

- An explanation of each general area in which the lobbyist has engaged in lobbying activities on behalf of his/her client(s).
- A list of issues addressed by the lobbyist, including bill numbers and specific references to executive branch actions to the extent practicable.
- A statement identifying the federal agencies and/or houses of Congress that were contacted during the course of the lobbying engagement for the covered period of time. Note that a list of the specific individuals or offices contacted is not required.
- A list of the employees of the registrant who acted as lobbyists on behalf of the client.
- A description of any foreign persons or entities having decision-making authority that expended more than $5,000 in the lobbying effort.
- A list of affiliated entities similar to those required by the LD-1. (*See* above.)
- A "good faith" estimate of the total amount of lobbying income from the client (for outside lobbying firms) or lobbying expenditures by the employer (for in-house and any outside retained lobbyists), as well as direct expenses incurred on the client's or employer's behalf *(e.g.*, travel or events). A good-faith test for an employer to estimate the lobbying expenditures of its employees is as follows:

A careful estimate of the percentage of time each employee spends lobbying	**x** (multiplied by)	The employee's salary and overhead cost	**+** (plus)	The percentage of time spent by other employees (who do not lobby) in support of such lobbying	**x** (multiplied by)	Each such employee's salary and overhead cost	**+** (plus)	Any third-party direct lobbying costs (*e.g.,* outside lobbying firm(s) retained by the employer or lobbying costs of trade associations of which the employer is a member)

Under this estimate, the amount of lobbying income reported by a company's outside lobbying firm(s) should be included in the company's estimate of its own lobbying expenditures for the relevant semiannual period.

Amounts to be disclosed. With respect to estimating income and expenses properly chargeable to the client for lobbying activities, the LDA provides that such estimates in excess of $5,000 be rounded to the nearest $10,000. If the amounts expended are less than $5,000, the registrant need only report that income and expenses were less than $5,000.

Option to use tax-deductibility standard. For-profit organizations that conduct lobbying efforts in-house may estimate their expenditures using the definition of "lobbying contact" used in the LDA (*i.e.,* any

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oral or written communication to covered legislative or executive officials with regard to the formulation or adoption of federal legislation, rules or policies, and all preparatory activities which support such contacts). In the alternative, such entities may use the definition of "lobbying" in section 162(e) of the IRC (*i.e.,* any contacts made with legislative and very senior executive branch officials with the intent to "influence legislation" and any preparation related to such contacts). *See* the discussion on deductibility of lobbying expenses starting at II-27.

Option for tax-exempt organizations. Tax-exempt organizations conducting lobbying activities have the option of using the definition of "lobbying contact" found in the LDA, or using the definition in section 4911(d) of the IRC, which includes grassroots efforts ("any attempt to influence legislation [by affecting] the opinions of the general public . . . or through communications with a legislative body or government official"). In lieu of undertaking a separate analysis of the cost of the effort, 501(c)(3) organizations may file a copy of their Internal Revenue Service (IRS) Form 990 (Annual Return for Tax-Exempt Organizations), which requires an estimate of lobbying expenditures, notwithstanding the requirements under the LDA.

Note:
Registrants electing to estimate using the respective IRC definitions of lobbying must disclose that fact in their quarterly filings.

A copy of the quarterly reporting form (Form LD-2) is found at Appendix D. Note the disclosure reporting forms must be filed electronically with the Clerk of the House and the Secretary of the Senate. For information on e-filing requirements, please *see* the Clerk of the House and Secretary of the Senate's websites or contact K&L Gates.

Note*: The Justice Against Corruption on K Street Act of 2018, signed into law and effective on January 3, 2019, requires that LD-1 and LD-2 registrants disclose past convictions for bribery, extortion, embezzlement, illegal kickbacks, tax evasion, fraud, conflicts of interest, false statements, perjury, and money laundering, along with a description of the offense.*

As of late January 2019, the House Clerk's office and Secretary of the U.S. Senate had not yet released updated forms to allow for the Act's required reporting, but both advised that filers would be notified when forms were updated. When forms are released, registrants should amend their LD-1 and LD-2 filings submitted after January 3, 2019 (such as LD-2 forms for the 4th quarter of 2018), but only if any of the lobbyists registered have been convicted of any of the crimes noted above. If there are no such convictions, no action is required.

Please check the online version of this Guide in the future for updates.

c. <u>Semiannual reports</u>. All lobbyists and registrants must file semiannual reports (Form LD-203) detailing certain political donations and expenditures and certifying knowledge of, and compliance with, the House and Senate gift rules. The semiannual reports cover the periods of January 1 through June 30 and July 1 through December 31, and they are due by the following July 30 or January 30.

Political and Other Donations. The following information regarding certain contributions and payments made by the filer (either the registrant or the individual lobbyist), as well as any political committee established or controlled by the filing entity, must be disclosed on Form LD-203:

- For donations of $200 or more to any federal candidate or officeholder, leadership PAC, or political party committee, the date, recipient, and amount of the donation.

- For any funds paid for an event to honor or recognize a covered executive or legislative branch official: the date, the name of all honorees, and amount paid.

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- For any funds paid to an entity that is named for a covered legislative branch official, or to an entity or person in recognition of such official: the date, the name of all honorees, and amount paid.

- For any funds paid to an entity established, maintained, or controlled by a covered executive or legislative branch official or to an entity designated by such official: the date, recipient, the name of the covered official, and amount paid.

- For any funds paid for a meeting, retreat, conference, or other similar event held by, or in the name of one or more covered legislative branch or covered executive branch officials: the date, the name of all honorees, and amount paid. (**Note:** *Information that has already been disclosed by another entity required to report under 52 U.S.C. § 30104 does not need to be reported.*)

- For donations of $200 or more to each Presidential library foundation and each Presidential inaugural committee: the date, the name of honoree, and amount of the donation.

Note:
In addition to the donations detailed above, any lobbyist who sits on the board of a non-connected or partnership PAC must also individually list the date, recipient, and amount of the donations made by the relevant PAC. (Lobbyists who are members of connected PACs are not subject to this reporting requirement.)

The Secretary of the Senate and the Clerk of the House have provided the following examples for these disclosure provisions.

- **Example 1.** In State "A," a group of constituents involved in widget manufacturing decide to honor Senator "Y" and Representative "T" with the "Widget Manufacturing Legislative Leaders of 2013" plaques. Registrant "B" is aware that "Y" has checked with the Senate Select Committee on Ethics regarding her ability to accept the award and attend the coffee, and "T" has checked with the House Committee on Standards of Official Conduct. "B" pays caterer "Z" $500 and Hotel "H" $200 to partially fund the event. "B" would report that it paid $500 to "Z" and $200 to "H" on November 20, 2013 for the purpose of an event to honor or recognize "Y" and "T" with the plaques.

- **Example 2.** After checking to discover if the activity is permissible, Lobbyist "C" contributes $300 on June 1 to Any State University toward the endowment of a chair named for Senator "Y." "C" would report the information above noting that the payment was made to Any State for the endowment of "Y's" chair.

- **Example 3.** Senator "Y" has been asked to speak at a conference held in Washington, D.C., sponsored by a professional association of which Registrant "B" is a member. "B" makes a donation of $100 to Charity "X" in lieu of the association paying a speaking fee (i.e., a contribution in lieu of honoraria). "B" would disclose a contribution of $100 on the date of the payment, with the notation the payment was made as a contribution in lieu of honoraria to an entity designated by "Y."

- **Example 4.** In State "A," there is a large regional conference on "Saving Our River," sponsored by three 501(c)(3) organizations. Senator "Y" and Representative "T" are given "Champions of Our River" awards at a dinner event that is part of the conference. Registrant "B" contributes $3,000 specifically for the costs of the dinner event, paying one of the sponsors directly. At the time of the specific or restricted contribution, "B" was aware that "Y" and "T" would be honorees. "B" would disclose a payment of $3,000 on the relevant date payable to the sponsor with the notation that "Y" and "T" were honored.

- **Example 5.** Registrant "B," an industry organization, hosts its annual gala dinner and gives a "Legislator of the Year" award to Representative "T." Revenues from the gala dinner help fund

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Registrant "B's" activities throughout the year. Registrant "B" must report the cost of the event, the payee(s), and that the event honored Representative "T." The fact that the event helped raise funds for the organization does not change the reporting requirement, though it could be noted in the filing.

- **Example 6.** Registrant "B," an industry organization, has an annual two-day "Washington fly-in" for its members. Among the events for its members is an event on "The Importance of Industry G to the U.S. Economy." Senator "T" is listed on the invitation as a speaker at the event. Based on these facts alone, Registrant "B" would not need to report the event under this section. For a covered official to speak at such an event would not, in and of itself, form the basis for concluding that the official is to be honored or recognized. Supplemental facts might require reporting the cost of the event. For example, if Senator "T" were given a special award, honor, or recognition by the organization at the event, the cost of the event would have to be reported, even if the invitation did not indicate that such would be given.

- **Example 7.** Senator "Y" and Representative "T" are "honorary co-hosts" of an event sponsored by Registrant "R" to raise funds for a charity, which is not established, financed, maintained, or controlled by either legislator. "Y" and "T's" passive allowance of their names to be used as "co-hosts," in and of itself, is not sufficient to be considered "honored or recognized." The purpose of the event is to raise funds for Charity V, not to honor or recognize "Y" or "T." Nor are these facts, in and of themselves, sufficient to treat the event as being held "by or in the name" of "Y" or "T." Supplemental facts might require reporting the cost of the event.

- **Example 8.** Registrant "R" sponsors an event to promote "Widget Awareness." "The Honorable Cabinet Secretary Z" is listed on the invitation as an "attendee" or "special invitee" but will not receive an honor or award at the event. Based on these facts alone, "R" would not need to include the costs of this event on "R's" disclosure under this section. Mere listing of "Z's" anticipated attendance at an event the purpose of which is to promote Widget Awareness, in and of itself, is not sufficient to be considered "honored or recognized." Use of the phrase "The Honorable" in this context is consistent with widely accepted notions of protocol applicable to referencing certain very senior government officials. Supplemental facts might require reporting the cost of the event. For instance, if "Z" received a special award, honor, or recognition by "R" at the event, "R" would have to report the costs of the event noting that "Z" was being honored or recognized.

- **Example 9.** Registrant "B" buys a table at a dinner event sponsored by a 501(c)(4) organization to honor Representative "T" but Registrant "B" is not considered a sponsor of the event under House and Senate gift rules. Lobbyist "C" pays the $150 individual ticket cost to attend the dinner, but is not considered a sponsor of the event under House and Senate gift rules. The purchase of a table or ticket to another entity's event, in and of itself, is not sufficient to be considered paying the "cost of an event." Supplemental facts might require reporting the cost of the event. For example, if (1) "B" or "C" undertake activities such that "B" or "C" becomes a sponsor of the event for House and/or Senate gift rule purposes; or (2) "B" or "C" purchase enough tickets/tables so that it would appear that they are paying the costs of the event and/or would not appear to be just ticket or table-buyers, then "B" or "C" would need to report the costs incurred by "B" or "C" (as the case may be) for the event, noting that Representative "T' was the honoree.

- **Example 10.** Lobbyists "C" and "D" serve on the board of a non-connected PAC as member and treasurer, respectively. As board members, they are in positions that control direction of the PAC's contributions. Since both are controlling to whom the PAC's contributions are given, they must disclose applicable contributions of the PAC on their semiannual reports. In regard to a Separate Segregated Fund (SSF) (i.e., a connected PAC), in order to avoid duplicative reporting a lobbyist may report that he or she is a board member of an SSF in lieu of reporting the SSF's applicable contributions, so long as the SSF's contributions are reported in a disclosure filed with the Clerk and the Secretary.

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Certification. The final portion of the LD-203 contains a certification that the lobbyist has read and is familiar with the House and Senate gift and travel rules and has not knowingly violated the rules. Because of the certification provision, all registrants must file the LD-203 regardless of whether they have made any qualifying donations.

It is also a violation of the LDA *for registered lobbyists (and organizations that employ them) to provide gifts or travel to Congressional Members and staff that cannot be accepted under the Congressional rules, thus subjecting lobbyists to the LDA's criminal and civil sanctions.*

Compliance Programs. Certifying compliance on behalf of an entity likely requires corporation, trade associations and other business entities to initiate compliance plans that include notification to employees of the new rules, training on the new rules, a system of internal discipline for breaches of the rules, and a system for auditing and reviewing the program. Consult with legal counsel for more information on an appropriate compliance program for your organization.

4. DISCLOSURE OF "BUNDLING" BY LOBBYISTS

The Honest Leadership and Open Government Act of 2007 ("HLOGA") amended federal election law to require the disclosure – by the receiving campaign committee, leadership PAC, or political party – of certain contributions that are "bundled" by any individual registered to lobby under the Lobbying Disclosure Act of 1995 ("LDA") or any PAC established or controlled by such an individual. The FEC requires the disclosure of all such contributions made after March 19, 2009.

General Rule: All recipient political committees must report the name, address, employer, and aggregate amount bundled by a lobbyist/registrant or lobbyist/registrant PAC that bundles more than **$17,900** in a semiannual filing period. (This amount is indexed for inflation, and the Commission will adjust it on an annual basis; see electronic version of this guidebook for the latest amount.) In addition, political committees that report their contributions on a more frequent basis (*i.e.*, quarterly or monthly) also must report any qualifying contributions according to their regular reporting schedule.

Definition of "Bundled Contribution": A bundled contribution is one that is (1) physically or electronically forwarded from a contributor to the campaign committee by a lobbyist/registrant or lobbyist/registrant PAC or (2) received by the committee from a contributor and credited to a lobbyist/registrant or lobbyist/registrant PAC through "records, designations, or other means of recognizing that a certain amount of money has been raised by" the respective lobbyist/registrant or lobbyist/registrant PAC. (*See* 11 C.F.R. 104.22(a)(6)). Under the regulations, such credit can be provided in several ways including:

- titles that the reporting committee assigns to persons who have raised a certain amount;
- tracking identifiers that the reporting committee assigns and that are included on contributions or contribution-related materials (*e.g.*, cover letters or website solicitation pages) for the purpose of tracking how much a person raises;
- access (including offers of attendance) to events or activities given to the bundler; and
- mementos (*e.g.*, photographs with the candidate or books autographed by the candidate) given to the bundler.

This list of designations and the means of recognition that will trigger the disclosure requirement is not exhaustive, and the FEC notes that it intended to adopt an expansive view of such matters. The Commission did note, though, that the definition requires some kind of recording or memorialization and does not extend to the mere knowledge of a registrant's bundling activities.

Covered Filing Period: Because political committees report their activities on differing schedules (*e.g.*, monthly, quarterly, and semiannually), the rules provide for multiple "covered filing periods." Even so, all

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such committees must report any qualifying contributions made in the semiannual periods of January 1 through June 30 and July 1 through December 31.

- **Quarterly Filers:** Reporting committees that file their campaign finance reports on a quarterly basis must also report any qualifying contributions made in the quarters beginning on January 1, April 1, July 1, and October 1 and the applicable pre- and post-election periods in election years. (*See* 11 C.F.R. 104.22(a)(5)(ii)). In non-election years, the rules allow for reporting committees other than those authorized by a candidate to file lobbyist bundling disclosure reports for the semiannual periods alone.

- **Monthly Filers:** For reporting committees that file campaign finance reports on a monthly basis, the covered periods also include each month in the calendar year except, in the case of election years, when the pre- and post-general election periods replace the reporting periods for November and December. (*See* 11 C.F.R. 104.22(a)(5)(iii)). Monthly filers also are given the option to file on a quarterly basis.

It should be noted that this system requires two layers of reporting for quarterly and monthly filers. As a result, even if the bundling activities of a lobbyist/registrant or lobbyist/registrant PAC do not trigger a report during the monthly or quarterly period, they may still reach that point during the semiannual period.

Lobbyist/Registrant PACs: Under the regulations, any PAC that is controlled or was established by a lobbyist or LDA registrant must identify itself as a "controlled committee."

A PAC is "controlled" by a lobbyist or registrant if the PAC must be disclosed to the Secretary of the Senate or Clerk of the House under Section 203 of HLOGA. This requirement is triggered when a lobbyist: (1) had a primary role in establishing the PAC, or (2) has a prominent role in directing the governance or operations of the PAC. The requirement is not triggered, however, if a lobbyist or registrant merely provided legal or compliance services.

Determining a Bundler's Status: The regulations place the burden of determining whether a bundler is a lobbyist on the receiving campaign committee, leadership PAC, or political party. To satisfy the regulations, the reporting committee must consult the Internet registries of lobbyists maintained by the Clerk of the House of Representatives, the Secretary of the Senate and the FEC.

Co-Hosted Fundraisers: Based on concerns that political committees would attempt to avoid the bundling reporting requirements by dividing the total receipts of fundraising events among numerous co-hosts, the FEC examined how to give credit for such events. In the face of comments urging the Commission to either attribute an event's entire proceeds to each co-host involved or to prorate the proceeds evenly, the Commission determined to treat co-hosted fundraisers like any other fundraising activity. Accordingly, political committees must report the actual amounts raised by – and credited to – the involved lobbyist/registrants and lobbyist/registrant PACs. The FEC provided the following examples for the bundling disclosure provisions.

- **Example 1.** A fundraising event is co-hosted by Lobbyists "A," "B," and "C." The event generates $20,000 in contributions. The reporting committee believes that Lobbyist "A" raised the entire $20,000 and thus credits Lobbyist "A" with the entire $20,000 raised at the event, and does not credit Lobbyists "B" or "C." The reporting committee must disclose the $20,000 that has been credited to Lobbyist "A." The reporting committee need not disclose any information regarding Lobbyists "B" and "C," because neither Lobbyist "B" nor "C" has been credited with any bundled contributions.

- **Example 2.** A fundraising event is co-hosted by Lobbyist "A" and Lobbyist "B," as well as three non-lobbyist hosts. The event generates $20,000 in contributions. The reporting committee gives each host credit for raising $20,000. The reporting committee must disclose the $20,000 of bundled contributions that has been credited to Lobbyist "A" and also report the $20,000 of bundled contributions that has been credited to Lobbyist "B" because the reporting committee has

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credited the full amount to each lobbyist. The reporting committee may, if it chooses, include a memo entry in the space provided on FEC Form 3L (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) to indicate that, although only a total of $20,000 was raised at the event, that full $20,000 was credited to each of the co-hosts, or any other information that the reporting committee wishes to include.

- **Example 3.** A fundraising dinner is co-hosted by Lobbyist "A" and Lobbyist "B," as well as three non-lobbyist hosts. Each host takes responsibility for filling eight seats at $500 a seat. The fundraiser generates $20,000 in contributions from non-hosts, and the reporting committee credits each host with generating $4,000 in contributions. The reporting committee must disclose the $4,000 of bundled contributions that has been credited to Lobbyist "A," if the reporting committee also has credited Lobbyist "A" with more than $12,000 of other bundled contributions during the relevant covered period, thereby causing Lobbyist "A" to surpass the $17,900 reporting threshold. This same analysis would apply for Lobbyist "B."

- **Example 4.** A fundraising event is co-hosted by Lobbyist "A" and Lobbyist "B," as well as three non-lobbyist hosts. The fundraiser generates $26,000 in contributions and the reporting committee knows that Lobbyist "A" raised $20,000 of the total. The committee credits Lobbyist "A" with generating $20,000 of the contributions and credits Lobbyist "B," as well as the three non-lobbyist hosts, as having generated $2,000 each. The reporting committee must disclose the $20,000 of bundled contributions that has been credited to Lobbyist "A" because this amount is in excess of the $17,900 reporting threshold. The reporting committee must also disclose the $2,000 in bundled contributions that has been credited to Lobbyist "B" if the reporting committee also has credited Lobbyist "B" with more than $15,600 of other bundled contributions during the relevant covered period, thereby causing Lobbyist "B" to surpass the $17,900 reporting threshold.

- **Example 5.** A fundraising event is co-hosted by Lobbyist "A" and Lobbyist "B," as well as three non-lobbyist hosts. The fundraiser generates $26,000 in contributions and the reporting committee knows that Lobbyist "A" raised $20,000 of the total and that one of the non-lobbyist hosts raised the remaining $6,000. The Committee credits Lobbyist "A" with generating $20,000 of the contributions. The reporting committee must disclose the $20,000 of bundled contributions that has been credited to Lobbyist "A" because $20,000 is in excess of the $17,900 reporting threshold. The reporting committee need not disclose any information regarding Lobbyist "B" because Lobbyist "B" is not responsible for raising any of the $26,000 raised at the fundraiser and Lobbyist "B" has not been credited with any bundled contributions.

Other Issues: The bundling regulations cover several other points related to the disclosure of such contributions, including the following:

- The Commission recognized that some lobbyists/registrants that are otherwise prohibited from making or facilitating contributions may be credited under the bundling rules with having raised contributions. For example, the Federal Election Campaign Act prohibits national banks, corporations, labor organizations, foreign nationals, and Federal government contractors from *making* contributions. Such entities can *bundle*, or raise, contributions, however, and political committees that credit such entities with raising contributions must disclose them as they would any other bundled contributions.

- Contributions from the personal funds of a lobbyist/registrant or the spouse of a lobbyist/registrant do not count toward the $17,900 limit requiring disclosure of the individual's bundling activities. Similarly, the contributions of a lobbyist/registrant PAC will not be considered among the contributions that the PAC bundles.

5. SANCTIONS AND ENFORCEMENT

The Honest Leadership and Open Government Act of 2007 added a criminal penalty of up to five years imprisonment and/or fines for a knowing violation of any part of the LDA. In addition, the civil penalty for

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a knowing violation of the lobbying disclosure reporting and other requirements is increased from $50,000 to $200,000. The Secretary of the Senate and Clerk of the House review potential violations of filing and reporting requirements, attempt to correct defective filings and, when appropriate, refer cases to the U.S. Attorney's Office.

The Department of Justice has recently begun enforcing violations of the LDA and HLOGA against entities which make late or defective filings, or do not file at all. In late 2011, the DOJ entered into a settlement agreement with WayPoint Consulting in what is believed to be the first-ever LDA enforcement case. WayPoint agreed to pay a total penalty of $45,000 to settle allegations by the United States that despite its status as an LDA registrant, the company failed to timely file the required quarterly and semiannual reports. Two additional settlement agreements for a total of $80,000 in fines and penalties followed in 2012 against firms who repeatedly late-filed their required quarterly and semi-annual reports. Most recently, in 2015, the Department of Justice enforced a **$125,000 civil penalty against the lobbying firm The Carmen Group** for repeated failure to file lobbying and contribution disclosure reports.

In June 2013, the Department of Justice began pursuing its first non-settlement agreement civil case against Biassi Business Services Inc. alleging 124 knowing reporting violations and 41 knowing failures to timely fix a defective filing **with a potential fine of up to $33 million.** The United States ultimately secured a **$200,000 default judgment** against the company. Additionally, in 2014, the Office of Congressional Ethics made its first ever referral to the Department of Justice for potential criminal violations of the LDA.

6. IDENTIFICATION OF CLIENTS TO COVERED OFFICIALS

The LDA requires any person or entity making an *oral* lobbying contact to identify, at the request of the legislative or executive branch official being lobbied, the client for whom the lobbyist is working. Upon request, the lobbyist must also disclose whether the client is a foreign entity, or if a foreign entity is significantly involved in the effort (*i.e.,* contributes more than $10,000 to the effort and exercises control over its activities). The lobbyist is also required to state whether he/she is properly registered under the LDA.

With respect to *written* lobbying communications, the lobbyist is required to identify foreign clients for whom the contact is made. Written communications shall also state whether the person making the lobbying contact has registered under the LDA.

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B. Disclosure of Activities Through the Foreign Agents Registration Act ("FARA")

Recent headlines related to investigations of Russian meddling in U.S. elections have shined the spotlight on the Foreign Agents Registration Act ("FARA") (22 U.S.C. § 611 et seq.). The harsh light has raised questions about this law, which has had little historical enforcement, and that the Department of Justice ("DOJ") had largely administered on the basis of voluntary compliance.

FARA generally covers the representation of foreign principals or domestic entities controlled or directed by foreign interests. Entities typically engaged in FARA-covered activities include law, public relations, and other consulting firms. FARA's application could be extremely broad and this section is meant only to give a brief introduction to the law and some of its more relevant elements for what might be considered traditional lobbying.

Those interested in representing foreign interests should consult with K&L Gates attorneys or other counsel before doing so.

1. GENERAL LAW

The purpose of FARA, first enacted to combat Nazi propaganda in the late 1930s, is to inform the public of the activities of agents working for foreign principals to influence the U.S. government or the public regarding policies of the U.S. or "the political or public interests, policies, or relations of a foreign country or foreign political party." Generally, the law requires agents of foreign principals who are engaged in certain activities to register and regularly report elements of their activities.

A **"foreign principal"** includes any foreign government, political party, non-U.S. citizen located outside the U.S., or any entity organized under the laws of or having its principal place of business in a foreign country. However, as set out below, unless the foreign principal is a foreign government or political party, FARA registration may be avoided by registering under the Lobbying Disclosure Act ("LDA").

Any person who acts as an **"agent"** or representative at the request or under the direction or control of a "foreign principal" to represent the interests of the foreign principal in political activities, or as a political consultant, public relations counsel, publicity agent, or financial agent, or represents the principal before the U.S. government, could be subject to registration and reporting under FARA. The statutory definitions of terms such as "political consultant" and "publicity agent" are broad and include more activities than may be implied by the plain language.

Further, unlike the LDA, there are no *de minimis* thresholds for exclusion under FARA: One is considered an agent upon agreement to be so regardless of whether there is any payment or other benefit and regardless of the amount of time spent as an agent.

Assuming FARA registration is triggered, the law requires foreign agents to register within 10 days of engagement and prior to engaging in any covered activities. The FARA registration is filed with the DOJ and includes extensive information on the registrant and the foreign principal.

2. KEY DEFINITIONS

a. AGENT OF A FOREIGN PRINCIPLE

Under FARA "agent of a foreign principle," means:

any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled,

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financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person—

- engages within the United States in political activities for or in the interests of such foreign principal;
- acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- within the United States represents the interests of such foreign principal before any agency or official of the government of the United States.

The definition also includes any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as it is defined above.

b. ADDITIONAL STATUS DEFINITIONS

Many of the terms used above are also defined by the statute and should be reviewed as they encompass a wider degree of status and activity than may be conferred by the plain meaning of the terms.

- The term "**political activities**" means any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

- The term "**political consultant**" means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.

- The term "**public-relations counsel**" includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.

- The term "**publicity agent**" includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.

- The term "**information-service employee**" includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country.

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3. EXCEPTIONS

The statute identifies a number of exceptions to registration, the most relevant of which for the purposes of this general summary are summarized below.

a. **PRIVATE AND NONPOLITICAL COMMERCE.**

This exception allows entities to carry on ordinary business activities that are "private and nonpolitical." DOJ regulations clarify that activities of the agent shall be considered "private," even though the "foreign principal is owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government."

b. **COMMERCE INVOLVING LIMITED POLITICAL ACTIVITIES.**

The DOJ regulations thus clarify that "a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the "bona fide" commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party." Thus, even if the agent is lobbying the Congress or the executive branch on behalf of a corporation controlled by a foreign government, one can make the case that the agent will not trigger registration if the agent is not promoting the public or political interests of the government or a political party and is not directed by either.

Example: You are asked to represent the ABC Power Company, which is partially owned by the French government. Your representation is limited to helping ABC publicize its power technologies to prospective US utilities in the hope of creating more business sales for ABC. The power technologies in no way promote a public policy objective of the French government or political party. This representation would qualify as promoting a "bona fide" commercial interest, and accordingly should not require a FARA registration.

c. **LOBBYING DISCLOSURE ACT.**

Unless the foreign principal is a foreign government or political party, representatives of foreign interests may avoid registration and reporting under FARA by registering under the LDA. See Section II.A of this Guide for a description of LDA registration and disclosure. LDA registration and reporting is generally viewed as significantly less burdensome than FARA.

Furthermore, as noted by the legislative history and confirmed by the Secretary of the Senate in its LDA guidance, the *de minimis* thresholds need not be met for LDA registration to serve as a proper FARA exemption. Rather the agent-lobbyist must only have engaged in some "lobbying activities" as explained in the guidance:

- The LDA reflects a determination that FARA standards are appropriate for lobbying on behalf of foreign governments and political parties but that LDA disclosure standards should apply to other foreign lobbying. An agent of a foreign commercial entity is exempt under FARA if the agent has engaged in lobbying activities and registers under the LDA (2 U.S.C. § 1603). An agent of a foreign commercial entity not required to register under the LDA (such as those not meeting the *de minimis* registration thresholds) may voluntarily register under the LDA.

- This LDA exception apparently applies to entities that are in part controlled or directed by a foreign government or political party so long as the entity is not controlled or owned in major part by such a government or political party. Recently disclosed advisory opinions from the DOJ appear to determine that 40% financial ownership and control of two of five

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board seats did not constitute control or ownership in major part while 51.5% ownership of a corporation by a foreign government would constitute such control.

Although near-term amendment is not likely, several legislative proposals have been introduced in the Congress to significantly modify this exception or delete it altogether. Thus, while it is a useful and "bright line" exception, it may not be available forever. This guide will be updated at www.klgates.com to reflect any legislative amendments.

d. **OTHER EXEMPT ACTIVITIES**. FARA also exempts foreign agents engaged in bona fide religious, scholastic, fine arts, academic, or scientific activities.

Important note: FARA regulations and practice make these and other exceptions, e.g. for persons qualified to practice law, very narrow. For example, regulations further define and narrow the exception for bona fide commerce and other activities noted above.

4. DISCLOSURE

The FARA registration is filed with the DOJ and includes information on the registrant and the foreign principal. Once registered, the registrant must file supplemental disclosure reports every six months to DOJ that provide extensive descriptions of the registrant's activities performed on behalf of the foreign principal (e.g., disclosure of meetings with U.S. government officials), an accounting of payments from the foreign principal, copies of any materials that are likely to be disseminated, and other information such as all political contributions made by the agent during the relevant period. **FARA reporting is much more detailed and burdensome than filings under the LDA.**

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C. Political Intelligence

1. GENERAL LAW

On April 4, 2012, the "Stop Trading on Congressional Knowledge Act of 2012" ("STOCK Act") was signed into law. Among other changes, the STOCK Act makes clear that insider trading rules apply to key executive branch employees, Members of Congress and congressional staffers. In the case of the legislative branch, it prohibits Members of Congress and congressional staffers from making certain financial and investment decisions, e.g. stock trades, based on material non-public information received through their official duties. It also provides that any person receiving such information from a Member of Congress or congressional staffer is also prohibited from relying on such information to make trades or other prohibited investments.

The STOCK Act was amended in 2013 to remove online access to the records for trades by anyone other than the president, vice president, member of Congress, and congressional candidates. This means that the records for trades by congressional staffers, aides and employees will no longer be disclosed online.

2. GAO REPORT

As part of the STOCK Act, the Government Accountability Office ("GAO") was obligated to prepare a report regarding the role of political intelligence in the financial markets and the disclosure of the use of political intelligence in investment decisions. Political intelligence was defined as information obtained from covered executive branch employees, Members of Congress and congressional employees and provided in exchange for compensation to those who intend to use it to inform investment decisions. The GAO released this report, which discussed the complications of designing a disclosure mechanism for political intelligence. In particular, the GAO noted that there was a fundamental "lack of consensus" regarding even how to define the practice, in addition to who would file and who would manage such a process.

This report was released during a period of increased media and government scrutiny of political intelligence practices under the STOCK Act. For instance, the SEC appears to be investigating a DC-based lobbying firm and a brokerage firm for dissemination of information related to a forthcoming Medicare determination. Around that same time, The Washington Post published a series of articles on firms that specialize in providing political intelligence to their clients.

3. WHAT ACTIVITY IS COVERED

Companies and individuals who frequently interact with Members of Congress and congressional staff must be cautious about trading on non-public political intelligence or passing this information on to others who might trade on that information. Most political intelligence likely involves information that is not secret, nor sufficiently concrete, nor sufficiently significant to constitute material non-public information, i.e. information that might cause a person to trade based solely on that information alone.

However, given the significant criminal and civil penalties that apply in cases that do involve trading on material non-public information or passing it to those who will, those involved in collecting political intelligence should always ask themselves certain questions:

- Is it truly secret?
- Is it fact or judgment?
- Is it information that could cause markets to react?
- What will the person to whom it is to be disclosed do with it?

When in doubt about the answers to such questions, consult political ethics counsel.

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4. SANCTIONS

Trades resulting from political intelligence may result in government investigations. For example, in mid-2018, several individuals, including a DC lobbyist, were convicted by a jury of illegally using non-public government information to engage in insider trading.

Robust internal policies and procedures against such trades and information sharing can reduce the risk of an investigation. Contact K&L Gates for information on how to develop these policies and procedures.

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D. Lobbying Restrictions Regarding Contracts & Grants

This subsection highlights some of the legal requirements that restrict corporate efforts aimed at influencing *executive branch agency and Congressional* decision making on the *making, award, or renewal of federal contracts, grants, cooperative agreements, or loans*. For lobbying behavior involving the development of legislation by Congress or policies of executive agencies, *see* II-2.

1. GENERAL LAW

Section 1352 of 31 U.S.C., also known as the "Byrd Amendment," has two important aspects.

First, it prohibits a recipient of a federal contract, grant, loan, or cooperative agreement (hereinafter, "federal awards") from using appropriated federal funds to influence, or attempt to influence, executive and legislative branch personnel with respect to the award, extension, continuation, renewal, amendment, or modification of a federal award, subject to certain exceptions discussed below. 31 U.S.C. § 1352(a)(1)-(2). A person or company certifies that it has not violated this prohibition on the use of appropriated funds when it submits an offer on a contract in excess of $100,000. 48 C.F.R. § 3.802(b); *see also* 48 C.F.R. §§ 52.203-11, 52.203-12.

Second, the Byrd Amendment requires a declaration, using Form LLL, when non-appropriated funds have been, or will be, expended on outside individuals (*i.e.,* non-contractor employees) to influence or attempt to influence executive or legislative branch personnel with respect to the federal award requested or received. 31 U.S.C. § 1352(b).

2. WHAT ACTIVITY IS COVERED

Covered Individuals: The Byrd Amendment's prohibition on the use of appropriated funds, as well as its filing requirement, applies to "influencing or attempting to influence" federal awards. 31 U.S.C. § 1352(a)(1); *see* also 48 C.F.R. § 3.802(a). Nowhere in the Amendment are the terms "lobbying," "lobbyist," or "consultant" defined. As such, activities subject to the Byrd Amendment may be carried out by a company's officers, directors, partners, employees, lawyers, associations, and even friends and relatives—as well as those individuals who hold themselves out as "lobbyists," so long as they are paid to do so for the purpose of influencing a federal award. The prohibition on the use of appropriated funds applies to all such individuals. However the Byrd Amendment's filing requirement is inapplicable to "regularly employed officers or employees" of a company who are paid "reasonable compensation."

Covered Federal Awards: The Byrd Amendment covers any form of lobbying for a federal contract, grant, loan, loan insurance and guarantee, and cooperative agreement, including any "extension, continuation, renewal, amendment, or modification" of a prior federal award. 31 U.S.C. § 1352(a)(2); *see* also 48 C.F.R. § 3.802(a). By implication, it includes Congressional activity seeking directed appropriations for a specific program or contract, e.g., earmarked funding.

3. EXCEPTIONS TO PROHIBITION ON USE OF APPROPRIATED FUNDS

"Appropriated Funds" Defined: "Appropriated funds" are not defined in the Byrd Amendment or its implementing regulations. Guidance from the Office of Management and Budget ("OMB"), however, makes it clear that "to the extent a person can demonstrate that the person has sufficient monies other than Federal appropriated funds, the Federal Government shall assume that these other monies were spent for any influencing activities" subject to the Amendment. 55 Fed. Reg. 24540, 24542 (1990). That means that as long as a company has income from non-government sources, the government will presume that those monies were used to pay for any lobbying activities.

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"Appropriated Funds" Do Not Include Profit: Furthermore, the Byrd Amendment does not affect a company's right to pay for "lobbying" activities out of the part of a government payment that represents profit, or other non-government proceeds. The Conference Report states, "[i]n the case of a payment, or progress payment, received by a contractor for performance of a contract, the portion of the payment properly allocable to the contractor's profit is not appropriated funds." H.R. Rep. No. 264, 101st Cong., 1st Sess. (1989) at 97 ("H.R. Rep. No. 264"). OMB's guidance on the Amendment mirrors this view, stating "[p]rofits and fees earned under Federal contracts … are not considered appropriated funds." 55 Fed. Reg. 24540, 24542 (1990).

4. ACTIVITIES NOT COVERED BY PROHIBITION ON USE OF APPROPRIATED FUNDS

Prohibition Does Not Apply to Activities Not Directly Related to a Particular Contract: Excepted from the Byrd Amendment's prohibition on the use of appropriated funds are agency and legislative activities not directly related to a Federal award performed by a company's employees (who have worked at the company for at least 130 days and are compensated at a reasonable rate). 31 U.S.C. § 1352(d)(1)(A); 48 C.F.R. § 3.802(c)(1)(i). With respect to this exception, the Amendment's implementing regulations clarify that the following activities are not subject to the Byrd Amendment's prohibition:

- Providing any information specifically requested by an agency or Congress. 48 C.F.R. § 3.802(c)(1)(ii).

- Discussing with an agency the qualities and characteristics (including individual demonstrations) of a company's products or services. 48 C.F.R. § 3.802(c)(1)(iii)(A).

- Technical discussions and other activities regarding the application or adaptation of a company's products or services to an agency's use. 48 C.F.R. § 3.802(c)(1)(iii)(B).

Prohibition Does Not Apply to Professional or Technical Services: The Byrd Amendment's prohibition does not apply to "[a]ny reasonable payment" to a consultant or "payment of reasonable compensation" to contractor employees for "professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal, or application … or for meeting requirements imposed by or pursuant to law as a condition for receiving that federal contract." 31 U.S.C. § 1352(d)(1)(B); *see also* 48 C.F.R. § 3.802(c)(2)(i). This exception is not limited to regular employees.

For example, an attorney can prepare legal documents to accompany a bid or proposal submission, but "communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his/her client's proposal, but generally advocate one proposal over another, are not allowable under this section because the lawyer is not providing professional legal services." 48 C.F.R. § 3.802(c)(2)(ii).

Prohibition Does Not Apply to Pre-Solicitation Discussions of a Product or Service: Pre-solicitation discussions are not considered attempts to influence a specific award, and thus are not subject to the Byrd Amendment's prohibition against the use of appropriated funds.
See 48 C.F.R. § 3.802(c)(1)(iv); 55 Fed. Reg. 24540, 24542 (1990) (stating that discussions of a product or service, and its uses or adaptations, are not subject to the Byrd Amendment prior to release of a solicitation by an agency). For example, the following are permissible to the extent they are done prior to the formal solicitation of any covered federal action:

- Providing any information not specifically requested, but necessary for an agency to make an informed decision about initiation of a covered federal action. 48 C.F.R. § 3.802(c)(1)(iv).

- Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission. *Id.*

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- Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act. *Id.*

Prohibition Does Not Apply to Certain Post-Award Activities: Routine post-award communications are also excepted from the Amendment's prohibition. OMB's guidance states, "routine and ongoing post-award activities to administer grants and contracts … are not influencing activities." 55 Fed. Reg. 24540, 24541 (1990).

Prohibition Does Not Apply to Claims and Settlements Against the Federal Government: The Byrd Amendment's prohibition does not apply to "claims and settlements against the Federal Government." H.R. Rep. No. 264 at 97 (stating that "[a]ctivities related to [claims and settlements against the federal government] are not prohibited").

Prohibition Does Not Apply to Exempt Department of Defense ("DOD") Contracts: DOD contracts exempted by notification to the Congress in writing by the Secretary of Defense are not subject to the Amendment's prohibition. 31 U.S.C. § 1352(e); 48 C.F.R. § 3.805.

5. EXCEPTIONS TO REPORTING REQUIREMENTS

Employee Lobbying Need Not Be Reported: The Byrd Amendment provides that its reporting requirements do not apply to "payments of reasonable compensation made to regularly employed officers or employees of a person requesting or receiving" a federal award.
31 U.S.C. § 1352(d)(2)(A).

Minimum Thresholds: Payments where the contract, grant, or cooperative agreement does not exceed $100,000 ($150,000 in the case of a loan, loan insurance or guarantee) are not subject to the Amendment's reporting requirements. 31 U.S.C. § 1352(d)(2)(B)-(C); *see* also 48 C.F.R. § 3.803.

6. REPORTING REQUIREMENTS

If non-appropriated funds are expended on non-company employees for uses that would be prohibited if paid for with appropriated funds (*i.e.,* influencing or attempting to influence federal awards), or are committed for loan insurance or loan guarantees, then any entity that "initiates agency consideration" or receives the award (including, in the case of contracts, any subcontract) must file a Form LLL with the agency (in the case of a subcontract, with the prime contractor or next-tier subcontractor, who must file it with the agency).
See 31 U.S.C. § 1352(b); 48 C.F.R. § 3.803. Also *see* Appendix F for a copy of the Form LLL.

The Form LLL must be filed: (1) with "each submission … that initiates agency consideration" of the company for the award of a contract; (2) upon receipt of the contract (if there has been no prior filing); and (3) quarterly, if there has been an "event that materially affects the accuracy of the information" reported in a previously filed declaration. 31 U.S.C. § 1352(b)(4). There is a material change if there is: (1) a cumulative increase of $25,000 or more in the amount a company expects to pay to attempt to influence government action; (2) a change in the identity of the persons lobbying on the company's behalf; or (3) a change in the officers, employees or Members of Congress contacted in the lobbying effort. 48 C.F.R. § 3.803(b).

The Form LLL requires, among other things: (1) the name of any registrant under the LDA who has made lobbying contacts on behalf of the company with respect to the federal contract, grant, loan, or cooperative agreement; and (2) a certification that the person making the declaration has not made, and will not make, any payment prohibited by the Byrd Amendment. 31 U.S.C. § 1352(b)(2); 48 C.F.R. § 3.802(b)(1).

Again, reasonable payments to regularly-employed officers or employees of a company need not be reported.

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7. SANCTIONS

Sanctions may involve the imposition of civil penalties of $10,000 to $100,000 for each prohibited expenditure made from government-appropriated funds. 31 U.S.C. § 1352(c)(1); *see also* 48 C.F.R. § 3.803(b). Additionally, failing to file or amend a required declaration (Form LLL) is subject to a civil penalty of $10,000 to $100,000 for each failure. False declarations may also subject an entity to criminal liability. 31 U.S.C. § 1352(c)(2)(A).

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E. Lobbying Deductibility

This subsection highlights the law which, for tax years beginning after 1993, bars deductions for expenses related to communicating with Congress, certain state legislative bodies and executive branch offices for the purpose of influencing legislative or administrative matters. The Tax Cuts and Jobs Act, enacted in late 2017, eliminated previously existing exceptions for such activities related to local governments, making additional expenses non-deductible.

1. GENERAL LAW

The Omnibus Budget Reconciliation Act of 1993 ("OBRA") contained a provision eliminating the deductibility of lobbying expenses, which were previously deductible as ordinary and necessary business expenses under section 162 of the Internal Revenue Code. Section 13222 of OBRA (P.L. 103-66) removed the deductibility of expenses incurred for two types of lobbying activities: (1) influencing federal, state, or local legislation ("legislative lobbying"); and (2) communicating directly with a "covered" executive branch official to try to influence his or her official duties ("administrative lobbying"). Any efforts in support of such activities (*e.g.,* research, writing, strategizing, etc.) are also non-deductible. The tax rules in effect before 1993 already denied business deductions for grassroots lobbying and participation in political campaigns.

***Legislative Lobbying: Activities undertaken to influence federal, state or local legislation are not deductible* under the Internal Revenue Code and the applicable IRS regulations:**

Influencing Legislation: The IRS defines "influencing legislation" very broadly to mean "any attempt to influence any legislation through a lobbying communication; and all activities such as research, preparation, planning and coordination, including deciding whether to make a lobbying communication … even if [the communication is] not yet made." Treas. Reg. §1.162-29(b)(1)(i)-(ii).

Lobbying Communication: For the purposes of determining deductibility, a "lobbying communication" is defined as any communication made to a Member, his or her staff, any other legislative branch official or "any government official or employee who may participate in the formulation of legislation" that: (1) refers to "specific legislation" (*e.g.,* legislative proposal not yet introduced, bill, resolution, etc.) and reflects a view on such legislation; or (2) clarifies, amplifies, modifies, or provides support for views reflected in a prior lobbying communication.

Note:
What is <u>not</u> considered "legislative lobbying"? (1) Any background reading or intelligence gathering that is too attenuated to be considered influencing legislation. (2) Monitoring legislation (unless it ripens into a lobbying project). (3) Direct contact with a legislative branch official, his or her staff or other legislative branch employee on a federal or state regulatory matter or in an effort to influence the actions or position of a "covered" executive branch official.

***Administrative Lobbying: Any direct contacts with the following "covered" federal executive branch officials to try to influence their actions or positions are non-deductible* under the Internal Revenue Code and the applicable IRS regulations:**

- The President, Vice President, cabinet members, and the immediate deputies of cabinet members;
- Every non-agency employee in the Executive Office of the President and the two most senior officers of each of the other agencies in the Executive Office of the President; and
- Every individual serving in a position in level I of the Executive Schedule under 5 U.S.C. § 5312.

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Note:
What is not considered "administrative lobbying*"? (1) Any background reading or intelligence gathering that is too attenuated to be considered influencing a "covered" official's actions or position. (2) Monitoring regulations or other administrative action (unless it ripens into a lobbying project). (3) Direct communication with a non-covered executive branch official to influence his or her actions or position. (If the official may participate in formulation of legislation and the communication concerns "specific legislation" or follows up on a prior "lobbying communication," this would be "influencing legislation" and would not be deductible.)*

Under the applicable IRS regulations, *costs associated with the following may NOT be deducted* from a taxpayer's adjusted gross income:

- Direct contact with any federal Congressional official (including staff) or federal executive branch official "who may participate in the formulation of legislation" to influence legislation.

- Direct contact with any State legislative official or State executive branch official "who may participate in the formulation of legislation" to influence legislation.

- Any research, preparation, planning or coordination related to any lobbying communication.

- Deciding whether or not to lobby on a specific issue (unless no lobbying communication is subsequently made).

- Research and preparation prior to meeting with "covered" government officials.

- Background activities engaged in for the purpose of making or supporting a lobbying communication.

- Educating "covered" government officials (including "briefings") on an issue if a specific solution to that issue is advocated.

- Traditional lobbying activities such as meetings, receptions or meals of which the goal is to persuade "covered" government officials to take specific positions on issues of importance to the taxpayer.

Grassroots activities or political campaign activities are always non-deductible.

The following *examples* help clarify costs which are non-deductible:

- A corporate board member flies in from Dallas for an all-day series of meetings with Members of Congress to request their support for a legislative proposal. This is the most basic form of lobbying. All costs incurred, including travel and the salary of the executive for this day, are non-deductible.

- An employee prepares a briefing kit to be used in a meeting with a Congressional staff member to urge the aide's boss to vote against an amendment. The employee also meets with other company employees and makes contacts within the industry to prepare for the meeting. All of this is "preparation" for lobbying and under the rules is non-deductible, even though the lobbying meeting only involved Congressional staff.

- An employee monitors a piece of legislation but never actually contacts or even considers contacting a government official about it. This is not lobbying since there was never an attempt to influence legislation. If this monitoring, however, ripens into a lobbying project, it may become preparation for lobbying and may need to be recaptured as non-deductible.

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- An employee of a corporation's Washington, D.C., office regularly meets with a trade association to develop a specific legislative proposal of immediate interest to the company that is forwarded to Congress and to discuss the strategy for passing the legislation. The costs incurred in these meetings (including salary and overhead cost of the employees involved) are non-deductible lobbying expenses.

2. *DE MINIMIS* EXPENSES

IRS regulations create a *de minimis* rule for individuals who **spend less than 5% of their time lobbying.** This rule appears to be created for company officials who engage in lobbying only in rare cases. Under the regulation, an individual who spends less than 5% of his or her time lobbying during the year may deduct expenses associated with lobbying. The company or trade association must use "reasonable methods" to determine that the 5% threshold is not met.

This general rule, however, is swallowed by a giant exception. "Direct contact lobbying" must be counted even for individuals who do not reach the 5% threshold. For example, a chief executive officer of a major corporation who only spends 2% of his time lobbying would still lose deductibility for expenses related to his direct contact lobbying. The regulations define direct contact expenses as "a meeting, telephone conversation, letter or other similar means of communications with a legislator … or [very senior] executive branch official … as well as the hours that person spends in connection with direct contact lobbying, including time spent traveling."

The *de minimis* rule provides only limited relief for companies and trade associations. Because most CEO-level lobbying is direct contact lobbying, the benefit of the rule is diminished significantly. However, the *de minimis* rule may allow an escape for some company and trade association employees engaged in occasional tracking and research on legislation (but no contacts) who would otherwise be covered.

3. COST ALLOCATION

Treasury Regulations, § 1.162-29, identify three accounting methods an organization may use to allocate lobbying costs. It should be noted, however, that the IRS regulations specifically permit any reasonable method of allocation to be used in allocating costs between lobbying and non-lobbying expenses. A brief summary of each method follows:

The Ratio Method: The company or trade association divides its lobbying labor hours by its total labor hours. The result of that formula is the percentage of expenses related to lobbying. This percentage is then multiplied by the company's total cost of operation. The result of that equation is the internal lobbying expense. The cost of outside lobbying (i.e., retained consultants) is then added for a final total. The ratio formula used to determine non-deductible lobbying expenses is written this way:

<u>lobbying labor hours</u> x total costs of operations + outside lobbying costs
total labor hours

Example: A corporation has 50,000 total labor hours and 5,000 lobbying hours in 1994. 5,000 is divided by 50,000 to determine that 10% of the corporation's time is spent lobbying. Ten percent is multiplied by the corporation's total cost of operations ($1 million, for example) to reach a total internal lobbying expense ($100,000 in this example). Add to that the corporation's outside lobbying expenses ($25,000 in this example), and the corporation's total non-deductible lobbying expenses are $125,000. In this example, the formula listed above would look like this:

<u>5,000</u> (x $1,000,000) + $25,000 = $125,000
50,000

The Gross-Up Method: This method begins with the corporation's "labor costs allocated to lobbying activities." These are "basic labor costs" which are defined as "wages or other similar costs of labor, including, for example, guaranteed payments for services." Also included in this amount should be the

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portion of wages, etc. paid to administrative staff used in support of lobbying activities. It does not include "pension, profit-sharing, employee benefits, and supplemental unemployment benefit plan costs, as well as other similar costs." The basic labor cost figure is then multiplied by 175% to factor in an estimation of other employee benefits (e.g., pensions). Finally the cost of outside lobbying is added to get a total non-deductible lobbying allocation. The formula reads like this:

All labor costs allocated to lobbying activities x 175% + outside lobbying costs

Example: A corporation had $100,000 in labor costs allocated to lobbying expenses. That figure would be multiplied by the 175% factor and would total $175,000. Add in, say, $25,000 in outside lobbying costs and the total amount of non-deductible lobbying expenses is $200,000. The formula then reads like this:

$100,000 x 175% + $25,000 = $200,000

The "Alternative" Gross-Up Method: This allocation method permits organizations to use those labor costs directly related to lobbying as a base. (Unlike the Gross-Up Method, this number should exclude secretarial, administrative, and support personnel tangentially involved in the lobbying activity.) The direct labor cost is then multiplied by 225%. The resulting amount is considered a non-deductible lobbying expense under section 162(e) of the Internal Revenue Code.

Direct labor costs x 225% + outside lobbying expenses

Example: A company has $100,000 in labor costs allocated to lobbying expenses. Of this amount, $75,000 is attributable to those persons actually engaged in lobbying, while $25,000 is attributable to secretarial support. Under the Alternative Gross-Up Method, $75,000 would be multiplied by 225% for a total of $168,750. Assuming that the organization also spent $25,000 for outside lobbying expenses, the total amount disallowed as a business deduction would be $193,750.

$75,000 x 225% + $25,000 = $193,750

4. SPECIAL RULES FOR TAX-EXEMPT ORGANIZATIONS

OBRA provides a flow through to disallow a deduction for the portion of the member's dues allocable to lobbying activities. Under these rules, tax-exempt organizations (other than IRC 501(c)(3) organizations) must notify their membership of a reasonable estimate of the portion of the dues applied to non-deductible lobbying activities. Tax-exempt organizations must also report the total amount of their lobbying and political expenses to the IRS (IRS Form 990).

If a tax-exempt organization fails to provide notice to its membership or if the notices underestimate the amount or proportion of dues used for lobbying activity, the organization will be subject to a tax on the difference between the actual amount spent to fund lobbying and its reasonable estimate. The IRS may waive this proxy tax if the organization agrees to increase its reasonable estimate for the next tax year by the amount of its underestimate.

5. RECORD KEEPING

The deductibility law requires companies and trade associations to record expenses, including staff time, related to lobbying expenses.

The IRS rule, however, does not specify the particular method a taxpayer should use to maintain its records or cost of lobbying activities. The rule states that the taxpayer should look to section 6001 of the Internal Revenue Code for guidance on the record keeping required. Section 6001 requires a taxpayer to keep records necessary for it to apply its "reasonable" method of allocating costs to lobbying activities. The final rule further indicates that each taxpayer should use methods "appropriate" for its trade or business.

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The IRS rejected comments from some that its rule should explicitly state that taxpayers are not required to maintain particular records of lobbying activities, such as daily time reports, daily logs, or similar documents. The final rule instead concludes that the IRS should not provide guidance concerning record keeping in addition to that already provided in section 6001.

Note:
If you need more specific guidance on how to keep records of lobbying expenses, contact K&L Gates' ethics lawyers.

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III. CONGRESSIONAL ETHICS

This section highlights some of the operative ethical rules which restrict political/lobbying activities with Members of Congress and their staffs. The restrictions cover the following four fundamental areas:

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A. Gifts & Entertainment

This subsection highlights some of the operative rules and ethical considerations that restrict the offering of gifts or entertainment to Members of Congress and their staffs.

1. GENERAL GIFT RULES

According to Senate and House rules, neither Members of Congress nor their staffs may accept any gift unless permitted by the ethics rules of the respective chamber. In this context, however, the House and Senate, through their respective internal rules, have defined what constitutes gifts. Namely, "gifts" are defined broadly to include "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance or other item having monetary value. The term includes gifts of services, training, transportation, lodging or meals …".

Several exceptions to this general rule exist, both for lobbyists and those who employ or retain them and for non-lobbyists and entities that neither employ nor retain lobbyists.

The Honest Leadership and Open Government Act of 2007, enacted in September 2007 (P.L. 110-81), significantly amended the Senate's gift rules to make them consistent with the rules passed by the House in January 2007. In short, the rules divide gift-givers into two categories: lobbyists, foreign agents and entities that employ or retain lobbyists or foreign agents; and non-lobbyists. Lobbyists, foreign agents, and entities that retain or employ lobbyists and foreign agents are generally prohibited from giving gifts to Members of the U.S. House and their staff; and non-lobbyists may provide gifts up to the relevant dollar limit, discussed below. Numerous exceptions apply to both categories of gift-givers.

Extreme care should be exercised when relying upon any exceptions to these rules. The Congressional ethics committees do not view these exceptions in a technical or legalistic fashion. Rather, they look to the "spirit" of the rules. Thus even if an exception may technically apply, other considerations may also apply, including whether there is any appearance of impropriety in giving the gift.

For Non-Lobbyists, the General Rule Is a Gift Limit, Not a Ban: Members and staff may not accept any single gift of $50 or more, and all gifts from the same source must total less than $100 in aggregate value in the same calendar year. Small gifts of less than $10 are not aggregated for purposes of this $100 annual limitation. However, guidance from the Congressional ethics committees notes that repeatedly accepting gifts valued at less than $10 from a single source violates the "spirit of the rule" and hence would be impermissible.

For Lobbyists, Foreign Agents, and Entities that Employ or Retain Lobbyists and Foreign Agents, gifts are <u>prohibited</u> unless specifically excepted: House and Senate Members and their staff may not accept gifts from registered lobbyists, foreign agents, or entities that employ or retain registered lobbyists or foreign agents, even if the gift is below the previous $50/$100 safe harbor noted above. Gifts are still permitted from <u>any</u> source if one of the *gift rule exceptions* discussed below applies.

2. RULES OF CONSTRUCTION

The Senate Ethics Committee has developed some rules of construction for the gift limitation. These informal rules were embraced by the House as well when the House changed its previous gift ban to the limitation in January of 1999.

Gifts count against both the individual and employer. A gift received from an individual when working on behalf of an organization (*e.g.,* a law firm or corporate DC office), and when not otherwise excepted under the gift rules, counts against the annual $100 gift limitation of both the individual and the organization.

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Buying down gifts is not allowed. Members and staff cannot "buy down" the value of a gift to bring it within the under $50 individual gift limit. However, gifts that are "naturally divisible" (*e.g.,* tickets for a sporting event) may be accepted one item less than the $50 limit. Again, this rule of construction is only relevant to non-lobbyists.

Generally look to the face value for tickets. The "face value" of a ticket to a sporting event, a performance, or other event is generally the best way to determine its valuation for purposes of the Congressional gift limit. The matter of sky boxes, executive suites, and club seats, however, raises a complication.

- The Senate has determined that the face value of sky box/executive suite/club seats is acceptable in determining their valuation. Senate rules dictate that if the ticket has no face value, the value of the ticket is equivalent to the ticket with the highest face value for the event, unless the ticket holder can show the Senate Ethics Committee, in advance of the event, that the ticket is equivalent to another ticket with a face value.

- The House, however, treats these tickets differently. Tickets are valued at face value, or, if a ticket has no face value, at the highest cost of a ticket with a face value for that event.

Multiple gifts at one time count as one gift. A Member or staffer receiving multiple items at any one time should value the aggregate of all of the items as the gift.

Spouses and dependents. A gift to a spouse or dependent is generally considered a gift made directly to the Member or staffer and applies to that Member or staffer's dollar limitation if the gift was made because of the Member or staffer's position. However, where a meal is provided to a Member or staffer and his or her spouse or dependent at the same time and place, only the value of the meal provided to the Member or staffer is treated as a gift for determining its valuation under the gift limitations.

Tax and gratuities are excluded from the valuation. Taxes and tips are excluded in determining the value of any gift.

Note on Record Keeping:
The House and Senate rules do not require any record keeping or reporting by sources giving gifts. But Members and staff are required to make a "good faith effort" to comply with the provision. Organizations that have several employees making gifts to Members and staff may want to put a tracking system in place to avoid situations in which the same Member or staff aide is offered gifts in excess of the $100 annual limitation. And lobbyists that are registered as lobbyist employers under the LDA should have compliance systems in place to make a semi-annual statement of compliance with these gift rules on an LD-203 form.

Examples: The following examples illustrate the application of the House and Senate gift limitation for non-lobbyists and those entities that neither employ nor retain lobbyists:

- A Senator or House Member can accept two free meals from two different employees of the ABC Corporation that are both valued at $40 ($40 is below $50 and $40 + $40 is less than $100), so long as ABC Corporation neither employed nor retained lobbyists. But the same Senator or House Member cannot accept a third $40 meal from another ABC Corporation employee during the year ($40 + $40 + $40 exceeds $100).

- Under the rules, a Member cannot pay $11 so that the net value of a $60 ticket to a Redskins game is below the $50 limit. This would be an impermissible "buying down" of the ticket. But the Member could accept three separate $15 tickets to a baseball game ($15 x 3 is less than $50), but he would be forced to pay or decline a fourth $15 ticket.

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- A Senate or House aide can accept a regular ticket (*e.g.,* not a suite or club seat) with a face value of $48 for a basketball game at the Verizon Center, but he can't accept parking, food or beverages that exceed $2 at the same game from the same source.

- The cost of a single gift cannot be shared by more than one giver. For instance, three different individuals cannot each pay one-third the $120 cost for a Senator's dinner at a posh DC restaurant to keep the value of the meal below $50.

3. EXCEPTIONS

There are a number of exceptions to *both* the Senate and House gift limitations*. Unless a gift falls into one of the specific exceptions stated below, it is subject to the limitations applicable to both houses of Congress.* The exceptions, although applicable to both the House and Senate (and generally may be claimed by lobbyists and entities who employ or retain them), have many nuances and in some cases are slightly different in the House and Senate.

- Anything for which the Member or employee pays the market value or promptly returns. A lobbyist with a member or congressional staff could also participate in the trip itself, so long as he/she does not travel on the same plane, car from the airport, etc.

- Qualified federal campaign contributions or contributions for election to state or local governments. Also exempted is free attendance to fundraising events sponsored by political organizations.

- Gifts from relatives.

- Gifts provided to Members or staff that are based on personal friendship (unless the gifts are provided because of the recipient's official position in the government). *See* discussion below of this exception.

- Contributions to legal defense funds, unless they are provided by registered lobbyists.

- Gifts from other Members or employees of the House of Representatives or Senate.

- Benefits provided as a result of outside business or employment activities, provided they have not been enhanced because of the recipient's position in the government.

- Pensions and other benefits coming from continued participation in qualified plans maintained by former employers.

- Informational materials (*e.g.,* books and videotapes).

- Awards or prizes given to competitors in contests open to the general public.

- Honorary degrees.

- Home state products intended for promotional purposes, provided they meet the detailed requirements of this exception.

- Training as well as accompanying food and refreshments, if such training is in the interests of the House of Representatives or Senate.

- Bequests or inheritances.

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- Any items, the receipt of which is authorized specifically by statute, such as gifts and meals that are provided under the Foreign Gifts and Decorations Act.

- Anything paid for by the state, local, or federal government. **Note:***The Senate generally includes Indian tribes within the scope of this exception, but the House does not.*

- Personal hospitality (although registered lobbyists may not rely on this exception).

- Free attendance at a widely attended event, *provided* the invitation comes from the sponsor of the event. *See* discussion below of this exception.

- Benefits available to the general public, such as bank loans.

- Commemorative gifts (*e.g.,* plaques or trophies).

- Items of little intrinsic value, such as caps, greeting cards, T-shirts, as well as any item under $10 in fair market value.

- Food or refreshments of nominal value *not* offered as part of a meal and offered in a group setting

- Anything for which, in an unusual case, a waiver is granted by the House or Senate Ethics Committees.

- Attendance at a bona fide constituent event (available to Senate Members and staff only). A bona fide constituent event is one: (1) that occurs in the Member's home state; (2) is sponsored by constituents or a group that consists primarily of constituents (at least 5 constituents must attend); (3) does not feature meals exceeding $50; (4) that has no lobbyists in attendance; and (5) attendance is appropriate to official duties or ceremonial function.

Note:
The House has granted exceptions for meals or local transportation incident to a visit to a business site. This extends to a de minimis amount of food or transportation as a courtesy (e.g., a meal in the company cafeteria while touring a facility).

4. EXAMPLES OF COMMONLY USED EXCEPTIONS

a. <u>Attendance at Widely Attended Events</u>:

- Guidance memoranda and advisory letters from both the House and Senate conclude that an event would be deemed "widely attended" if (1) there is a "reasonable expectation" that at least 25 non-congressional persons will attend; and (2) attendance at the event is "open to members throughout a given industry or profession, or if those in attendance represent a range of persons interested in a given matter."

- The House has granted a general waiver to the 25 non-congressional attendee rule for two special events: (1) *education events* sponsored by universities, foundations, or similar non-profit, non-advocacy organizations, and (2) *events with constituent organizations,* provided it is regularly scheduled and open to all the members of the group.

A Member or employee of the Senate or House of Representatives may accept an offer of free attendance to a widely attended event if he/she satisfies either of the following criteria:

- The Member or employee is speaking or performing a ceremonial function, or

- Attendance is appropriate to the performance of official duties or representative function of the Member or employee.

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If the Member or employee meets the criteria, he/she can accept free attendance at such an event, *provided* the invitation originates from the event sponsor.

Note:
The definition of "event sponsor" is uniquely defined in House and Senate rules. An event sponsor must have a leading role in organizing an event, not just paying for it.

He/she can also accept a waiver of fees, *local* transportation outside DC, food, refreshments, entertainment, and instructional materials which are furnished to all attendees as an integral part of the event. Additionally, a House Member or employee may accept an unsolicited offer of free attendance for an accompanying person as well. In the Senate, an accompanying person may attend if others in attendance will generally be similarly accompanied or such attendance is appropriate to assist in the representation of the Senate. **However, the recipient may *not* accept entertainment, food, or refreshments collateral to the event.**

The following examples help define the widely attended events exception.

- The local Chamber of Commerce invites a U.S. Senator to its monthly breakfast meeting of its members. Even though less than 25 individuals from throughout the community may attend the monthly breakfast, the Senator may attend and eat breakfast because the event is regularly scheduled and an event with a constituent organization and is appropriate to the performance of the Senator's duties.

- A large trade group is holding its annual meeting in Washington, D.C. The group invites a Member of Congress sitting on a relevant committee to be the keynote speaker at a dinner during the conference that at least 100 people are expected to attend. The Member may give the speech and eat dinner because he is performing a substantial service by delivering a keynote speech to a large non-congressional audience.

- A new amphitheater is opening in a Member's district. The symphony invites a number of local officials, as well as the Member, to attend the inaugural concert and be recognized for her efforts to make the new amphitheater a reality. The Member may attend because it is consistent with her official duties.

- A Member of Congress has announced that she will step down at the conclusion of her term. In honor of her long and distinguished career in public service, one of her corporate constituents wishes to host a dinner for her. The company plans to invite hundreds of others to attend, including a large number of other Members of Congress. The Members and staff may attend.

- A staff aide with a House committee may attend a small group discussion over lunch at a university on important foreign policy issues even if only 15 people are present. This is an example of an educational briefing. Although Senate employees may not rely on the same exception, the Senate – and not the House – recognizes a similar exception under training (*see* below).

- A small corporate sponsored legislative briefing over dinner for a few Congressional staffers to develop lobbying strategies is not an educational briefing and does not fall within the widely attended gathering exception.

- A Member of Congress is asked to have dinner at an expensive restaurant with ten representatives of selected high technology companies from one state to hear presentations regarding their concerns on telecommunication legislation. The Member cannot accept the free meal because the event is not widely attended since no other Members are invited, and the company representatives in attendance are less than 25 and reflect a narrow segment of the industry.

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b. Gifts Based on Personal Friendships: In considering whether gifts are based on personal friendships, the rules explain that one should consider the following factors:

- The history and duration of the friendship;
- Previous exchanges of gifts;
- Whether the donor personally paid for the gift or sought a tax deduction or reimbursement from her employer for the gift; and
- Whether similar gifts were given to other Members or employees.

For gifts with values of less than $250, it is up to the recipient to determine whether they are based on personal friendships or professional status. For gifts from friends worth more than $250, however, a waiver of the House or Senate Ethics Committees is required. No approval is required for gifts from relatives.

The following examples help define the personal friendship exception:

- Smith was Representative Jones' college roommate. Every year since they were freshmen, Smith and Jones have exchanged gifts on their birthdays. Two years ago, Smith became a registered lobbyist. She has continued to send Jones gifts on her birthday. To the best of Jones' knowledge, Smith pays for the gifts personally and does not seek to expense them. Jones may continue to accept the gifts because of the long-standing personal friendship with Smith, as evidenced by the previous exchange of gifts, and the fact that the birthday gift was not declared as a tax deduction.
- Smith is a corporate representative and registered lobbyist for the U.S. Gadget Corporation. To demonstrate the quality of the gadgets her company produces, Smith sends a free sample to Jones, as well as every Member of Congress. The gadgets are not permissible under any other exception. None of the Members may accept the gadgets since these gifts are not the product of personal friendships.
- Ever since Senator Green was elected to Congress 15 years ago, she has gone to lunch with Johnson, who is a registered lobbyist. During these lunches, they discuss legislative issues. Johnson always pays for the meals using her corporate credit card. Aside from these lunches, the two never socialize. The lunches do not fall within the friendship exception. Although they have known each other for 15 years, their relationship is not a "personal friendship."

c. Charity Events: A Member or employee of the Senate or House may accept an unsolicited offer of free attendance from the *sponsor* of a charity event, including the entrance fee, local transportation, food, refreshments and entertainment. In the Senate, Members and staffers may accept reimbursement for travel and lodging only if the event separately qualifies under the travel rules (*see* discussion starting at III-10). The Senators or Representatives may also bring a spouse or a child, if invited to do so.

The following examples help define the charity events exception.

- A charitable organization is having its annual dinner to raise funds for its charitable activities. Tickets to the event are $500 per person, but the sponsoring organization has offered complimentary tickets to a number of Senators, Representatives and their spouses. The Senators, Representatives and their spouses may attend.

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- A large corporation buys a table at an annual charity dinner. Senators and Representatives may *not* accept the invitation offered by the corporation of free tickets (valued at $1,000 per ticket) since the corporation is not the sponsor of the event.

d. **Home State and Commemorative Gifts:** A Member of Congress may accept donations of products from the district or State that the Member represents that are intended primarily for promotional purposes, such as distribution or display. Those for distribution must be of minimal value to any single recipient. Examples include candy bars, apples, and peanuts. Members of Congress also may receive commemorative items such as plaques or trophies. Such items should be substantially commemorative (an expensive pen, for example, should be inscribed or engraved so that its commemorative nature is apparent). In addition, an item of significant utilitarian value (a television, for example) may not under any circumstances be accepted. Finally, the rules contemplate that a commemorative item be presented in person to the Member.

5. ADDITIONAL NOTES ON LOBBYISTS

- Registered lobbyists are not permitted to contribute to legal defense funds of Members or employees.

- Registered lobbyists may not make contributions to a charitable organization designated or recommended by a Member or staffer unless such contributions are in lieu of honoraria. Similarly, lobbyists may not contribute to charities controlled by Members or their staffs.

- Individuals registered as lobbyists and outside lobbying/law firms may not personally pick up the costs of Congressional retreats, conferences, or Congressional travel for fact-finding trips or speaking engagements. An outside lobbyist's client or an in-house lobbyist's employer, however, can pay for these costs, provided they comply with the travel restrictions.

- Registered lobbyists cannot use the "personal hospitality" exception to the gift rule unless the lobbyist is personal friends with the Member or staff aide and is not reimbursed by his or her lobbying firm or client.

6. MISCELLANEOUS EXAMPLES

The following examples illustrate how these rules apply. For examples on the application of the $10, $50, and $100 limitation and the common exceptions (*e.g.,* widely attended events, personal friendship), *see* 4.a. and 4.b. above.

- **Lobby Lunch:** Under House and Senate rules, lunch or dinner paid for by a lobbyist is a gift, and thus prohibited unless it falls within a recognized exception such as a meal provided at a widely attended event. If the meal is paid for by a non-lobbyist or an entity that neither retains nor employs lobbyists, then it would be considered a gift subject to the $100 annual limitation and the prohibition regarding receipt of individual gifts valued at $50 or more.

- **Food Delivered to Member's Office:** Under the House rules, food deliveries to a Member's office count against the limits of individual staffers in that office, rather than against the Member's limit. **Note:** *This gift would be prohibited in the House if the source was a lobbyist, foreign agent, or an entity that employs or retains either. In the Senate, such food deliveries count against the Member's limit (and not each of his or her staffers' separate limits).*

- **Hospitality Dinner:** A dinner in one's private home (as opposed to a restaurant) *could* fall under the "personal hospitality" exemption but becomes a gift if the costs are reimbursed by one's employer. A Member or Congressional staff aide, however, cannot accept a hospitality dinner from a registered lobbyist unless the lobbyist is a personal friend (*see* friendship exception discussed under 4.b.).

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- **Fundraising Events:** Under House and Senate rules, attendance at a campaign fundraising reception or dinner is permitted.

- **Meals provided during Congressional delegations overseas by foreign governments:** Such meals are authorized under the Foreign Gifts and Decorations Act and, therefore, are exempted from the gift limitation.

- **Baseball caps:** Providing a baseball cap or hard hat with a company's logo is a gift of nominal value and therefore permissible.

- **Coffee and Doughnuts:** The House and Senate have recently released guidance noting that Members and staff may not have access to food in a one-on-one setting from lobbyists and entities that employ or retain them (such as a cup of coffee or a doughnut). However, these items may be offered as part of "a business meeting, reception, or similar gathering." Drinks and hors d'oeuvres may be accepted at a reception, and other food items of a nominal value, such as a "continental-style" breakfast, may be accepted at a briefing. Food and drink of nominal value may also be accepted at "an organized event, media interview, or other appearance where such items are customarily provided to speakers, panelists, and participants."

- **Briefing materials:** Providing Congressional staff with copies of reports, briefing kits, and videotapes of an informational nature is permitted.

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B. TRAVEL

1. GENERAL RULES

In general, House and Senate rules allow Members and staff to travel at the expense of private sources to meetings, speaking engagements, fact-finding missions and similar events *in connection with their official duties*. Funding of such activities is deemed to be a *reimbursement* to the Congress and not a gift to the Members or staff accepting travel. Like the gift rules detailed above, the travel rules generally prohibit accepting travel from entities that employ or retain lobbyists. A few exceptions apply.

In connection with privately paid travel sanctioned under the Senate rules, Members and staff may accept *necessary* transportation, lodging, food, refreshments, conference fees, and materials.

Transportation, lodging, food, refreshments, and other benefits may be accepted in connection with campaign events, job interviews, outside business and employment activities, or other unofficial activities (*e.g.,* religious activities). Similarly, food, refreshments, and entertainment may be accepted in connection with receipt of honorary degrees.

2. RULES THAT ALWAYS APPLY

Costs must be necessary: Only "necessary" travel and related food and lodging costs can be provided to a Member or his or her staff during either service performance travel (*e.g.,* giving a keynote speech) or fact-finding missions. Other ancillary expenses and entertainment costs cannot be paid for, unless they satisfy the gift requirements.

Lobbyist may not pick up costs: Individuals registered as lobbyists and outside law/lobbying firms may not pay for any costs incurred during the trip (*e.g.,* lunch, cab fare, etc.), *even* if they are later reimbursed. Such costs should be paid directly by an outside registered lobbyist's client or an in-house registered lobbyist's employer, or paid by the staffer and reimbursed by the client or employer.

Spouses: Congressional rules clarify that a spouse (or other family member) can accompany a Member or staff on any trip where privately paid travel is permitted. Again, only "necessary" travel and expenses can be provided for the spouse or family member.

Travel paid for by foreign governments: Such travel may be accepted if authorized under the Foreign Gifts and Decorations Act or the Mutual Educational and Cultural Exchange Act.

Travel paid for by a charity: A Member or staffer may accept reimbursement for travel and lodging if the event separately qualifies under the travel rules herein. If the event does not qualify, they must pay their own travel and lodging expenses. A Member of Congress and employee of the House or Senate may accept an unsolicited offer of free attendance from the sponsor of the charity event, including the entrance fee, local transportation, food, refreshments and entertainment. He or she may also bring a spouse or a child, if invited to do so.

Local travel: Members and staff may not be reimbursed for travel expenses within 35 miles of the Capitol, or within 35 miles of their nearest home district office (House) or home state office (or staffer's home duty station) (Senate). This rule supersedes all other rules; for example, Members and staff must pay for any transportation costs incurred in fact-finding trips within 35 miles of the Capitol. There is a limited exception in the House permitting a Member or his or her staffer to be reimbursed for travel expenses within 35 miles of their district office if Members or staffers from at least two other Congressional districts are also in the traveling party.

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Overall ceiling on length of travel: Even if the free travel falls within the permissible parameters, its duration cannot exceed prescribed limits set by the Ethics Reform Act of 1989 (unless there is prior written approval).

Senate:

- **Domestic Travel** – limit is *three* consecutive days/two nights (*excluding* travel time).
- **Foreign Travel** – limit is *seven* consecutive days/six nights (*excluding* travel time).
- Unlike the House rule, a domestic or foreign trip does not begin until arrival at the first business destination. Departure from the last point of business must occur within three days (for domestic travel) or seven days (for foreign travel). All necessary expenses must then cease being paid, but return travel beyond this time may be accepted.

House (assuming travel is otherwise permissible under the rules described below):

- **Domestic Travel** – limit is *four* consecutive days of travel expenses (*including* travel days). For purposes of this limit, the clock begins running when the trip starts and ends when the return trip begins. A House Member or staffer, then, must cease accepting all necessary expenses four days after starting a domestic trip.
- **Foreign Travel** – limit is *seven* consecutive days (*excluding* travel days to and from the U.S.).

Note:
Domestic travel includes the 48 contiguous states on the mainland. Any travel beyond the U.S. mainland is considered foreign travel.

Note:
Interpretation of the travel rules can be particularly complex. For specific situations, one is advised to consult the House or Senate Ethics Committees or K&L Gates.

3. APPLYING TRAVEL RULES TO LOBBYISTS, FOREIGN AGENTS, AND THOSE WHO EMPLOY OR RETAIN THEM

As noted above, the rules of both the Senate and House prohibit Members and staff from directly accepting travel or reimbursements for travel from registered lobbyists. The House and Senate rules expand this prohibition to entities that employ or retain lobbyists or foreign agents. Unless otherwise noted, assume below that foreign agents and entities that employ or retain them are included whenever the guide refers to lobbyists and entities that employ or retain them.

Exceptions:

- Entities that employ lobbyists may only incur the costs for Members and staff for one-day events, such as conventions or meetings, including an overnight stay. The House and Senate ethics committees may approve a two-night stay when it is "practically required" for participation in the one-day event, but this is on a case-by-case basis. In any case, Members and staff may not accept travel from entities that employ and retain lobbyists if a registered lobbyist accompanies the traveler on any segment of the trip or plays more than a *de minimis* role in planning, organizing, requesting, or arranging the trip. The House Ethics Committee has clarified that *de minimis* means the lobbyist's involvement in the trip is "negligible or otherwise inconsequential" to the overall planning of the trip. For this example, the House Committee's guidance states that the lobbyist selecting the destination, drafting the trip agenda or initiating contacts to suggest trip invitees would not be *de minimis* involvement.

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- In the **House,** public colleges and universities that employ or retain lobbyists are exempted and may provide reimbursement for travel to Members and staff. In addition, registered lobbyists may accompany Members and staff on these trips and may participate in the planning, organizing, requesting, or arranging of the trip based on advisory guidance issued by the House Ethics Committee in more than a *de minimis* way.

- In the **Senate,** 501(c)(3) non-profit corporations may provide reimbursement for travel to Senators and staff, regardless of whether they employ or retain lobbyists.

Pre-Clearance and Post-Travel Disclosure:

- The Member or staff must submit the certification detailed in subsection 5 to the respective ethics committee before the trip and obtain prior approval for the trip from the committee. Such requests must be filed at least 30 days before the trip begins with the respective ethics committee. Forms must also be filed with the relevant committee after the trip's conclusion detailing the costs of the travel.

The new House and Senate travel disclosure forms appear at Appendices H and I.

4. EXAMPLES

- **Inspection Tour:** An inspection tour of an offshore oil drilling platform by a Member on an energy committee and sponsored by an oil company that employs lobbyists is only allowable under the rules if it fits an exception noted above, even though it represents a legitimate fact-finding event for educational purposes and falls within the Member's official duties. This trip would likely not be acceptable under the House rules.

- **Outside religious activities:** A staff member volunteers at her church on her own time. Because she helps organize the congregation's annual retreat, the church offered to pay her expenses to attend the week-long event. She may accept.

- **Outside employment awards:** Senator Green's husband is a salesperson. He wins an all expenses paid trip for two to Mexico as salesman of the year. Senator Green may accompany her husband on the trip.

- **Collateral Entertainment:** The staff director of an influential Senate committee is invited to give a work-related speech at a conference. The sponsor offers to pay the employee's airfare, meals, lodging, and other expenses. Because it is in connection with her official duties, the staff director may accept. In addition, the sponsor offers to pay greens fees at a nearby golf course while she is at the conference. The Senate employee may not accept the greens fees. The trip would only be permissible under the rules if it qualified as a one-day trip detailed above in subsection B.2.

- **Spouses, Children and Staff:** The inclusion of a spouse or child on a domestic or foreign fact-finding trip is permissible for both the House and Senate if it qualifies as a one-day trip or under another exception detailed above in subsection B.2.

Note:
Congressional Delegation travel comes with a number of additional rules including: Spouses of Members may travel when necessary for protocol purposes only and at no cost to the federal government. An adult child may be granted permission to travel when the Member is unmarried; or is unavailable for the trip if a guest is necessary for protocol purposes. Staff support for a member may be provided by committee staffers only, not personal staff.

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5. DISCLOSURE REQUIREMENTS

The rules provide a number of disclosure requirements for Members, staff and trip sponsors relating to travel expenses. It should be noted that all information disclosed to the Clerk of the House or the Secretary of the Senate must be disclosed to the public as soon as possible after filing.

- Employees of the House and Senate who travel at private expense must obtain authorization *in advance* from the supervising Member or officer. The authorization must specify the details of the event, the funding source, and purpose of travel. The Member, in turn, must sign a statement that the travel is in connection with official duties and would not create the appearance of impropriety. A travel disclosure form for Senators and Senate staff must be filed with the Secretary of the Senate within 30 days of return, and House Members and staff must file a disclosure form with the Clerk of the House within 15 days of return under the House rules.

- All privately funded travel expenses for Senators, Members of Congress, and House and Senate staff must be itemized and disclosed within 30 days of return. This disclosure must be signed by the Member who is personally traveling or authorizing staff travel, and must include:

    - Good faith estimates of all expenditures related to the travel;

    - A determination that such expenses were necessary, reasonable, and not recreational; and

    - (For Member travel) a determination that the travel is in connection with official duties and does not create an appearance of impropriety.

The rules require a Member or staff to provide the respective ethics committee with a certification from the source of the funds that:

- The trip will not be financed by a registered lobbyist or foreign agent;

- The source either: does not employ or retain lobbyists or foreign agents; is an institution of higher education; or fits an exception (noted above in subsection B.2) and specifically details the extent of any involvement of a registered lobbyist or agent of a foreign principal in the planning, organization, request, or arrangement of the trip;

- The source will not accept any funds earmarked directly or indirectly for the purpose of the trip;

- The traveler will not be accompanied on any segment of the trip by a lobbyist or foreign agent (unless the lobbyist fits an exception noted above); and

- The trip will not be planned, organized, requested, or arranged by a lobbyist or foreign agent except in a *de minimis* way.

Note:
Such travel taken by Members and staff must be pre-cleared by the respective ethics committee.

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6. COMPLIANCE

The Senate and House gift and travel rules do not contain specific record-keeping requirements; instead, Members and employees are charged with making a "good faith effort to comply." The House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics are empowered to enforce compliance and launch investigations. These committees also interpret the rules and sometimes issue guidance memoranda or advisory rulings.

Criminal sanctions also apply. Lobbyists who knowingly provide travel to Members or staff in violation of these rules are subject to civil and criminal penalties under HLOGA. In addition, under the codified bribery laws, it is a federal criminal offense to offer or accept a gift if there is an element of corruption (18 U.S.C. § 201(c)). Punishment for violating 18 U.S.C. § 201(c) may include fines and imprisonment for not more than two years.

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C. Honoraria

This subsection highlights some of the operative rules and ethical considerations that restrict the offering of honoraria to Representatives, Senators, and their staff.

1. GENERAL RULE

The Legislative Appropriations Act of FY 1992 (P.L. 102-90) and the Ethics Reform Act of 1989 (P.L. 101-194) ban all honoraria paid personally to Representatives, Senators, and their respective staffs. While the Department of Justice ("DOJ") determined in 1996 that the ban cannot be enforced against any government employee, including a Representative, Senator and his or her staff, the statutory prohibition on paying honoraria remains in effect. Moreover, Senate and House ethics guidelines prohibit the payment of honoraria (note that the House permits lower level employees to receive honoraria in certain cases). It is therefore advisable to heed the technical prohibition on paying honoraria to Representatives, Senators and their staff, even though the DOJ may not enforce the ban as a practical matter.

2. LIMITED EXCEPTION FOR CHARITABLE CONTRIBUTIONS IN LIEU OF HONORARIA

Representatives, Senators, and their respective staff can give honoraria speeches and suggest the money be contributed to a *charitable* organization, with four limitations:

a. The sponsor of the event may only contribute up to $2,000 per event;

b. The sponsor should make the payment directly to the charity;

c. The Member and staff (or their respective family members) cannot derive financial benefit from the charity; and

d. there can be no tax deduction available for the Member or staff.

3. DISCLOSURE

Disclosure requirements of the amended 1978 Ethics in Government Act also apply to honoraria. The Members and senior staff must disclose on their annual disclosure forms the source, date, and amount of any honoraria accepted in excess of $100. This applies to Senate and House staff earning 120% or more of the GS-15 Executive Branch pay rate (*e.g.,* $123,175 or more in calendar year 2016).

Within 30 days of designating a charity to receive payment in lieu of honoraria from a lobbyist, Members and staff must report to the Clerk of the House or the Secretary of the Senate:

- The name and address of the lobbyist;
- The date and amount of the contribution; and
- The name and address of the charity so designated.

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D. CONGRESSIONAL POST-EMPLOYMENT RULES

1. GENERAL LAW

Former Members of Congress and Staff

The 1989 Ethics Reform Act requires that House and Senate Members (and senior staff earning 75% of their Member's pay) be covered by certain restrictions on their activities after their employment in the House or Senate. House and Senate rules also contain such restrictions. In September 2007, the Honest Leadership and Open Government Act of 2007 (P.L. 110-81) increased the scope of some of these provisions.

Senate Members:

Former Senators cannot lobby current Senate or House Members, Senate or House staff or any other employees in the legislative branch (*e.g.,* CBO, GAO, GPO, etc.) for two years after leaving office. (18 U.S.C. § 207(e)).

Despite the two-year post-employment restrictions, a former Senator may do any of the following at any time after leaving office:

- A former Senator may lobby the executive branch with the intent to influence official action provided he or she is not representing a foreign government or political party.

- A former Senator may play a background role, such as advising those who seek to influence Congress, provided that he or she does not appear in person or convey his or her name on communications to current Members, staff or legislative employees. (A former Member who is a licensed attorney may be precluded from playing such a role by bar association rules mandating disclosure of his or her activities to his or her former office.)

- A former Senator may testify under oath before Congress.

- A former Senator may make uncompensated statements based on his or her special knowledge.

- In addition, a former Senate Member may submit comments for inclusion in a public record, docket or file of a hearing, and, if acting solely on his or her own behalf, contact any Member or employee of the Senate or the House to express a personal opinion on a matter (provided that he or she takes care not to act on behalf of a client or an employer).

There are <u>two absolute restrictions</u> on a former Member, even if he or she plays only a background role, for one year after leaving office:

- A former Member may not represent, aid, or advise a foreign government or political party with the intent to influence any officer or employee of any department or agency of the U.S.; and

- If, during the former Member's final year of service, he or she participated personally and substantially in any trade or treaty negotiations on behalf of the U.S. and had access to confidential information about the negotiations, he or she may not use that information to represent, aid, or advise anyone other than the U.S. Government concerning the negotiations.

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House Members:

Former House Members cannot lobby current Senate or House Members, Senate or House staff or any other employees in the legislative branch (*e.g.,* CBO, GAO, GPO, etc.) for one year after leaving office. (18 U.S.C. § 207(e)).

Notwithstanding the difference in length of post-employment prohibitions between the House and Senate, House Members may engage in similar activities during the prohibited period as described for Senators above.

Senate Staff:

Under a criminal provision, Senate staff making equal to or more than 75% of a Member's salary may not lobby any Senator or Senate staff for one year.

In addition, *any* Senate staff aide (even those making less than 75% of the Member's salary) who, upon leaving his or her position, becomes a registered lobbyist or is retained or employed by a registered lobbyist (for the purpose of influencing legislation) is barred from lobbying his or her former Member-employer or committee for one year. For example, a Senate Commerce Committee staff member may not lobby that committee's current staff, any current Member who sits on that committee, or any Member who sat on that committee during the last year the former staff member worked there (but nothing prohibits the former committee staff member from lobbying *personal* staff of current or former committee Members).

Despite the one-year post-employment restrictions, any former Senate aide may do any of the following at any time after leaving office:

- A former Senate aide may lobby the executive branch or House of Representatives with the intent to influence official action provided that he or she is not representing a foreign government or political party.

- A former Senate aide may play a background role, such as advising those who seek to influence Congress, provided that he or she does not appear in person or convey his or her name on communications to current Members, staff or legislative employees. (A former Senate aide who is a licensed attorney may be precluded from playing such a role by bar association rules mandating disclosure of his or her activities to his or her former office.)

- A former Senate aide may testify under oath before Congress.

- A former Senate aide may make uncompensated statements based on his or her special knowledge.

- A former Senate aide may submit comments for inclusion in a public record, docket or file of a hearing.

- If acting solely on his or her own behalf, a former Senate aide may contact any Member or employee of the Senate or the House to express a personal opinion on a matter (provided that he or she takes care not to act on behalf of a client or an employer).

There <u>are two absolute restrictions</u> on certain Senate aides, even if they only play a background role, for one year after leaving their positions:

- A former Senate aide *who earns at least 75% of his or her Member's salary* may not represent, aid, or advise a foreign government or political party with the intent to influence any officer or employee of any department or agency of the U.S.; and

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- If, during any former Senate aide's final year of service, he or she participated personally and substantially in any trade or treaty negotiations on behalf of the U.S. and had access to confidential information about the negotiations, he or she may not use that information to represent, aid, or advise anyone other than the U.S. Government concerning the negotiations.

House Staff:

A House aide who earns at least 75% of his or her House Member's salary cannot lobby his or her former Member-employer or committee for one year. (18 U.S.C. § 207 (e)).

Note:
A former House aide that earned less than 75% of his or her Member's salary is not covered by the federal statute and hence is not subject to any post-employment restrictions since the House, unlike the Senate, does not have rules applying to any aide that becomes a registered lobbyist or is hired by a registered lobbyist.

As an example, a House Ways and Means Committee staff member who made 75% of his or her Member's salary may not lobby that committee's current staff, any current Member who sits on that committee, or any Member who sat on that committee during the last year the former staff member worked there (but nothing prohibits the former committee staff member from lobbying the personal staff of current or former committee Members).

Despite the one-year post-employment restrictions, any former House aide may do any of the following at any time after leaving office:

- A former House aide may lobby the executive branch or Senate with the intent to influence official action provided that he or she is not representing a foreign government or political party.

- A former House aide may play a background role, such as advising those who seek to influence Congress, provided that he or she does not appear in person or convey his or her name on communications to current Members, staff or legislative employees. (A former House aide who is a licensed attorney may be precluded from playing such a role by bar association rules mandating disclosure of his or her activities to his or her former office.)

- A former House aide may testify under oath before Congress.

- A former House aide may make uncompensated statements based on his or her special knowledge.

- A former House aide may submit comments for inclusion in a public record, docket or file of a hearing.

- If acting solely on his or her own behalf, a former House aide may contact any Member or employee of the Senate or the House to express a personal opinion on a matter (provided that he or she takes care not to act on behalf of a client or an employer).

There are two absolute restrictions on certain House aides, even if they only play a background role, for one year after leaving office:

- A former House aide *who earns at least 75% of a House Member's salary* may not represent, aid, or advise a foreign government or political party with the intent to influence any officer or employee of any department or agency of the U.S.; and

- If, during *any* former House aide's final year of service, he or she participated personally and substantially in any trade or treaty negotiations on behalf of the U.S. and had access to

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confidential information about the negotiations, he or she may not use that information to represent, aid, or advise anyone other than the U.S. Government concerning the negotiations.

2. PENALTIES

For legislative branch officials, the criminal penalty for being convicted of applicable post-employment restriction provisions is a fine up to the greater of $50,000 or the amount received or offered for the prohibited conduct and/or five years in prison per violation.

Two additional points regarding penalties are noteworthy:

- There are no apparent criminal penalties for *hiring* a Congressional official to lobby his or her former colleagues within the prohibited time period. However, the adverse publicity usually serves as a deterrent.

- There is no apparent criminal penalty for former Congressional officials to *advise* individuals on how they should lobby their former colleagues.

3. RESTRICTIONS ON EMPLOYMENT NEGOTIATIONS

The Honest Leadership and Open Government Act of 2007 added rules in both the Senate and House requiring Members and staff making at least 75% of Member pay to disclose any post-employment job negotiations or agreements for future employment or compensation. Specifically, Members in both chambers may not negotiate for future employment until their successors have been elected unless, within three days of commencement of such negotiations, they notify the respective ethics committee of the negotiations and the private entity involved.

In the Senate, there is an absolute prohibition on negotiation or having an arrangement for a job involving lobbying activities until a successor is elected. Members of the House are required to recuse themselves (and notify the House Ethics Committee of such a recusal in writing) from any issue on which there is a conflict of interest or an appearance of such a conflict due to the negotiations or arrangement.

Staff in both chambers making 75% or more of Member pay must notify their respective ethics committee within three days of the commencement of negotiations for private employment or an arrangement for private employment. Staff in both chambers are also required to recuse themselves from issues on which there is a conflict of interest or an appearance of such conflict due to the negotiations or arrangement and notify the respective ethics committees of the recusal.

Forms related to these disclosures are at Appendices J and K.

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IV. EXECUTIVE BRANCH ETHICS

This section highlights some of the operative rules and ethical considerations that restrict political/lobbying activities with federal executive branch officials. The restrictions cover the following four fundamental areas:

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A. GIFTS FROM OUTSIDE SOURCES

This subsection highlights several of the operative rules and ethical considerations that restrict the offering of gifts from outside sources to federal executive branch officials.

1. GENERAL RULES

Trump Administration Ethics Restrictions: On January 28, 2017, President Trump signed an Executive Order 13770 that requires all full-time political appointees to sign an ethics pledge (the "Trump ethics pledge") that "contractually" binds them to certain ethical standards. The Trump ethics pledge supersedes and is different from the ethics pledge that President Obama required appointees to sign during his administration (the "Obama ethics pledge"), and includes strict restrictions described below on accepting gifts from lobbyists. The Trump ethics pledge also imposes separate post-employment restrictions summarized in section IV.D. below. The Trump ethics pledge applies to all full-time, non-career political appointees regardless of whether they are appointed by the President, the Vice President, an agency head, or other government official. It is unclear, without further guidance from the Office of Government Ethics, whether the Trump ethics pledge invalidates the Obama ethics pledge, or if that pledge remains intact for those who signed it.

Office of Government Ethics ("OGE") Standards: Subpart B of the OGE standards restricts the solicitation and receipt of gifts by executive branch employees where gifts are from prohibited outside sources, or result from the employee's official position.

Supplemental Regulations: Executive branch employees are also required to comply with any supplemental agency regulations issued by their employing agency. Accordingly, it is always advisable to check the specific gift rules of the relevant agency instead of simply relying on the OGE rules.

With certain exceptions, the OGE ethical standards generally prohibit an executive branch employee from soliciting or accepting "gifts" from a "prohibited source," or which are given because of the employee's official position, unless the item: (1) is excluded from the definition of "gift"; or (2) falls within a specific exception set forth in the rules (*see* subsection 2. exceptions on the next page). One major exception is that individual gifts of $20 or less may be given to an official, provided that the aggregate annual value of all gifts given to that official from a single source does not exceed $50.

Under OGE's rules, "gifts" include gratuities, favors, discounts, entertainment, hospitality, loans, forbearance, or other items of monetary value. So too are services, training, transportation, local travel, lodgings, or meals (whether the gift is purchased, provided in-kind, or reimbursed after incurred).

A "prohibited source" is any person or entity:

- seeking official action from, doing business with, or conducting activities regulated by the employee's agency; or

- whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

Gifts which are given because of the employee's official position are also generally prohibited. Gifts are deemed to be "solicited" or "accepted" as a result of an employee's official position, if they would not have been solicited, offered or given but for the recipient's position in the federal government.

Example: A gift would be deemed to be offered because of the official position of its recipients if a theatrical company offered free season tickets to all Cabinet members.

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Indirect Gifts Prohibited: Gifts are considered to be solicited or accepted indirectly by an executive branch employee if they are:

- given, with the employee's knowledge and acquiescence, to family members of the employee because of their relationship; or

- given to any other individual (including certain charitable organizations) because of the employee's designation, recommendation, or specification. There are exceptions for the disposition of perishable items, and for payments made to charitable organizations in lieu of honoraria.

2. EXCEPTIONS

Exceptions to the general gift rules for executive branch personnel take two forms: exclusions from the definition of "gift"; and actual exceptions to the prohibition.

1) Exclusions from "gift" definition: The following items are **not** considered to be gifts under the ethical standards:

a. modest items of food and refreshments (*e.g.,* soft drinks, coffee, or doughnuts that are not furnished as part of a meal);

- OGE created this exclusion from the definition of the term "gifts" in order that executive employees would not be required to decline these customary courtesies under any circumstances. Because "modest items of food and refreshments" are considered an exclusion under the gift definition, they are not covered by the $50 annual limitation on *de minimis* gifts from any one individual (discussed below).

- An OGE rule that became effective in 2017 clarifies that alcoholic beverages are not permissible under this exclusion.

b. greeting cards and items with nominal intrinsic value (e.g., plaques, certificates, and trophies);

- Mementos apart from plaques, certificates, and trophies are acceptable gifts from outside sources only if they fall under one of the enumerated exceptions (such as the $20 *de minimis* exception).

c. loans rendered on terms generally available to the public;

d. opportunities and benefits (e.g., favorable rates and commercial discounts) available to the public or to a class of federal employees as a whole, regardless of geographic restrictions;

e. contest rewards and prizes, including random public drawings (except where participation in the event is required as part of an employee's official responsibilities);

f. pension and other employment benefits;

g. items purchased or secured by the government;

h. gifts accepted by an agency pursuant to specific statutory authority (including travel, subsistence and related expenses in connection with attendance by executive employees at a meeting or function involving their official duties) (31 U.S.C. § 1353);

i. "in-kind" gifts accepted by an agency under its "gift acceptance" statute; and

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j. items for which an employee has paid market value (*i.e.,* retail cost).

2) Exceptions to Prohibition: In addition, the OGE standards do not prohibit gifts to executive branch officers and employees from outside sources, if the items fall within the following specific exceptions:

a. individual gifts of $20 or less, provided that the aggregate annual value of gifts does not exceed $50 from a single source (*i.e.,* the "*de minimis*" exception);

b. gifts based on a personal relationship;

c. widely attended gatherings and other events;

d. certain reductions in membership rates and other fees offered by professional and similar organizations; discounts and similar benefits offered to members of a class *unrelated* to government employment; and discounts and similar benefits offered to members of a class *related* to government employment (if the same offer is made broadly available to large segments of the public through similar organizations);

e. awards and honorary degrees;

f. gifts resulting from an employee's outside business or employment activities, or based on the business or employment activities of her spouse (provided the benefits have not been offered or enhanced because of the employee's official position);

g. gifts from political organizations to an employee who is exempt from the Hatch Act (federal statute limiting political activity by federal employees);

h. social invitations from persons other than the prohibited sources;

i. meals, refreshments, and entertainment in foreign areas;

j. gifts to the President or Vice President (or on behalf of their family), provided that acceptance does not violate OGE regulations or federal statutory prohibitions against solicitation or receipt of bribes or illegal gratuities, or otherwise violate the U.S. Constitution;

k. gifts authorized by supplemental agency regulation; and

l. gifts accepted under specific statutory authority.

Gift Rule Restrictions on LDA Registrants for Trump Appointees: Like the Obama ethics pledge, covered appointees under the Trump ethics pledge are prohibited from accepting gifts from registered lobbyists or lobbyist organizations during their time in the Trump Administration. The term "gift" has the same definition as under Office of Government Ethics rules, although covered appointees are not subject to all of the same exceptions. Of note, covered appointees may not accept gifts that fall under the *de minimis* exception ($20 per gift/$50 per year), and may not attend widely attended gatherings free of charge.

Proper Disposition of Prohibited Gifts: Gifts that are improperly accepted or solicited (or the market value for prohibited gifts) must be returned to their donor. If the prohibited item is perishable, however, the item may be donated to an appropriate charity, shared with the recipient's office, or destroyed, at the discretion of the employee's supervisor or the agency ethics official.

Criminal Sanction: Under the codified bribery laws, it is a federal criminal offense to either offer or accept a gift if there is an element of corruption (18 U.S.C. § 201(c)). The punishment includes fines and imprisonment for not more than two years.

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3. ANALYSIS OF KEY GIFT EXCLUSIONS/EXCEPTIONS

1) The "*De Minimis*" Rule: Executive branch employees are permitted to accept unsolicited gifts with an aggregate market value of $20 or less per occasion, so long as the aggregate market value of individual gifts received from any one "person" does not exceed $50 per calendar year. This exception permits executive branch employees to accept a modest lunch from lawyers, lobbyists, and others who have issues pending before a particular federal agency (but not a lavish lunch or dinner). The rules specifically provide that:

- When the market value of a gift (or aggregate market value of gifts) exceeds the $20 *de minimis* limitation on any single occasion, an employee may not pay the excess value of the gift (or gifts) in order to accept the gift(s). Employees may, however, decline any distinct and separate item(s) in order to accept items aggregating $20 or less.

- The definition of the term "person" includes an individual, corporation, association, firm, partnership, and other organizations and institutions, including officers, employees and agents.

  Example: If four employees of a corporation that contracts with the Defense Logistics Agency ("DLA") each gave a gift worth $10 to a DLA employee on four separate occasions, the gifts would be aggregated at $40 for purposes of the $50 yearly limit. The corporation could only give up to another $10 in that calendar year to the DLA employee.

- For gift cards, an OGE rule that became effective in 2017 clarifies that general-use gift cards are prohibited under the $20 *de minimis* gift exception, although gift cards to specific vendors are permitted. For instance, a $20 prepaid Visa gift card is prohibited under the rules, but a $20 gift card to Starbucks is permissible.

2) Personal Relationship: Executive branch employees may accept gifts when it is obvious that a family relationship or personal friendship is the motivation behind the donor (*e.g.,* where there is a history of a personal or familial relationship, and the relative or friend pays for the item personally and does not seek to be reimbursed by his/her employer).

- Where a gift (such as greens fees on behalf of an executive employee) results from a business relationship because of a company's dealings with the employing agency, the gift is prohibited (even though the employee and company officials may have developed an amicable relationship).

3) Widely Attended Gatherings: Executive branch employees may accept unsolicited gifts of free attendance from sponsors of widely attended gatherings such as conferences or banquet dinners, where the agency has determined that the employee's attendance is in the agency's interest. A "widely attended gathering" (WAG) is a gathering of a large number of individuals from both the private sector and government who have diverse views and are able to exchange their viewpoints at the event.

The WAG exception was established in order for federal employees to attend meetings and other events that serve the interests of their employing agency. It permits executive employees to accept a waiver of all or part of a conference or other fee or any food, refreshments, entertainment, instruction, and materials furnished to all attendees. However, employees *may not* accept payment of travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees, since these do not fall under the definition of "free attendance."

The OGE published revised gift rules applicable to executive branch employees that became effective on January 1, 2017, which include changes to the WAG exception. These changes include:

- There is a new requirement that agency ethics officials make a written determination before any executive branch employee can attend a "widely attended gathering" (WAG), such as a banquet

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dinner, free of charge. This is a significant change from the predecessor rule, which required a written authorization only when the organization extending the invitation had interests that could be substantially affected by the invited executive branch employee.

- The authorization must be specific to each individual executive agency employee. The previous rule permitted blanket authorizations for all employees in a particular agency. The new rule allows ethics officials to authorize multiple employees from a particular agency to attend a WAG based upon the same criteria determinations, although each employee must receive an individual written authorization (which can be an email from the agency ethic official.)

- Agency ethics officials are required to consider additional factors to determine whether the employee's attendance at the WAG is in the agency's interest. These include whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment by gaining disproportionate access to the government employee, and whether the government is also providing similar access to other outside organizations with views or interests that differ from those of the donor.

- The revised rules allow executive branch employees that attend a WAG event, like a conference, in a speaker's capacity also to take part in a "speakers only" dinner as part of their attendance.

4) Social Invitations From Non-Prohibited Sources: The OGE rules contain an exception which permits employees to attend certain social events where they are invited because of their official position by a person who is not a prohibited source. The exception allows an executive branch employee to accept food, refreshments, and entertainment (but not travel or lodgings) at small social gatherings attended by several individuals, if no one in attendance is charged a fee. This exception was prompted by concern that the ban on gifts in some cases might unreasonably restrict purely social interaction. The DOD in particular had raised concerns that, absent such an exception, DOD personnel would be precluded from participating in community civic activities where military installations are located.

5) Reasonable Person Standard: The OGE's revised rules create a "reasonable person" standard under which government employees may decline otherwise permissible gifts. The standard is non-binding and is intended to encourage executive branch employees to carefully consider whether acceptance of the gift would harm the appearance of integrity and impartiality to a reasonable person. Executive branch employees are to consider such factors as whether: the gift has a high market value; the timing of the gift could reasonably call into question the employee's integrity or impartiality; the gift was provided by a person or organization who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and acceptance of the gift would provide the donor with significantly disproportionate access.The revised rules clarify that the standard is only intended to assist employees in making decisions about the acceptance of gifts, and that an employee has not violated the rule if he or she accepts a permissible gift under one of the exceptions to the gift rule.

4. LIMITATIONS ON USE OF EXCEPTIONS

Even if a particular gift falls within an exception, there are instances in which an employee still *may not* accept it. Employees may not accept a gift from an outside source if:

1) the gift is in return for an employee's having been influenced in the performance of an official act;

2) the gift resulted from solicitation or coercion;

3) the employee accepts gifts from the same or different sources so frequently that a reasonable person would be led to believe that the employee was using public office for private gain;

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4) acceptance of the gift would violate any federal statute, including federal prohibitions against:

a. solicitation or receipt of bribes (18 U.S.C. § 201(b));

b. solicitation or receipt of gifts from competing contractors (41 U.S.C. § 423(b)(2)); and

c. receipt of salary or any contributions to, or supplements of, salary as compensation for government service from a source other than the U.S. government (18 U.S.C. § 209); and

5) the acceptance of certain vendor promotional training is contrary to applicable federal procurement regulations or policies.

Avoid Even the Appearance of Ethics Violations: Executive branch employees also must avoid any actions which might create even the appearance that they are violating the law or ethical standards (as perceived by a reasonable person with knowledge of the relevant facts). This "appearance" limitation is intended to temper the use of the $20 *de minimis* exception. OGE also has included cautionary language in the rules, *to remind executive branch employees that they should exercise caution in accepting gifts*, even though they will not be disciplined for accepting gifts allowed by the exceptions enumerated in the rules.

5. EXAMPLES

A few examples help illustrate the application of these gratuity rules. These examples also illustrate the fine lines and the difficulty in interpreting the rules:

- A SEC employee and his two children *cannot* accept Orioles' baseball tickets in left field (market value is $10 per ticket for a total of $30) from a representative of an SEC-regulated company (the total gift from a single source for a single occasion exceeds the $20 *de minimis* amount). The SEC employee, however, could decline one of the three free tickets and accept the two others (gift value would not exceed $20).

- A Federal Maritime Commissioner can accept a small memento (*e.g.,* a $15 pen set) of his visit to a port facility, but *cannot* accept, later in the same year, two $18 concert tickets from an official from the same port (the annual total of the three gifts would exceed $50).

- An Army procurement officer involved in negotiations with three competing contractors *may not* accept a fancy ball point pen with a market value of $15 from one of the contractors (even though the pen is less than $20) prior to awarding the contract (acceptance of the pen would violate the procurement integrity statute and its acceptance may also raise the appearance of violating ethical standards).

- A Federal Trade Commission staff aide would have to pay his share of the $100 greens fee for a friendly round of golf with three corporate lawyers from the same firm involved in corporate mergers (exceeds the $20 *de minimis* amount and the friendship is a professional one, not family or personal).

- A National Park Service employee *could* accept a modest lunch of a burger and fries from a timber company executive, unless the free lunch is offered on a regular, recurring basis (frequent acceptance of gifts is an independent prohibition).

- An official from the Department of the Interior ("DOI") participating in a panel discussion of land management issues during a one-day conference *may* accept both a waiver of the attendance fee by the conference sponsor (the widely attended gatherings exception), and a token gift with a market value of $20 or less (the $20 *de minimis* exception).

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- An attorney in the Federal Communications Commission ("FCC") *may* accept a gift of free attendance at a telecommunications conference which she attends on her own time, or while on excused absence, if it is determined that her attendance is in the interest of the FCC, the event is open to members from throughout the communications industry (widely attended gatherings exception), and the employee obtains written authorization from the FCC ethics official before attending.

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B. TRAVEL

This subsection highlights some of the operative rules and ethical considerations that restrict the offering of free travel to federal executive branch employees.

1. GENERAL RULE

In general, under the General Services Administration's ("GSA") federal travel regulations (41 C.F.R. Part 304-1), federal agencies and their employees may not accept payments for travel, subsistence, and related expenses from prohibited (or conflicting) non-federal sources, unless specifically authorized by one of the enumerated exceptions discussed below.

2. EXCEPTIONS

1) Official Duties Exception: Federal agencies (but *not* the employee on his or her own behalf) may accept payment from a non-federal source for travel, subsistence, and related expenses of an employee who has been authorized to attend a meeting or function in an official capacity away from his or her duty station. The agency may also authorize the employee to receive such payment on the agency's behalf. There are, however, several key restrictions:

a. the agency must obtain general authorization from a designated agency ethics official to accept payments in advance of the travel;

b. cash payments accepted for travel expenses related to an employee's official duties must be credited to the relevant appropriation as soon as practicable (31 U.S.C. § 1353(a)); and

c. under certain circumstances, agencies may accept travel and related expenses for an employee's accompanying spouse, but only if the agency determines that the spouse's presence is in the interest of the agency.

Conflict of Interest Analysis: GSA's federal travel regulations require agencies to determine whether a conflict of interest would prohibit the agency from accepting payment for travel related expenses from a non-federal source:

- The balancing test for making this assessment has been changed to a reasonable person standard: an agency may not accept payment for travel expenses if "acceptance under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations."

- The rules specify a number of factors for use by the agency in making this decision, including: the nature of the employee's official duties; whether they impact on the source paying for the travel expenses; and the purpose of the function or meeting.

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2) **Other Employee Exceptions:** GSA federal travel rules generally do not authorize personal acceptance of travel expenses for an executive branch employee or an accompanying spouse. There are several exceptions to this rule, which include:

   a. **Tax-Exempt Nonprofit Organizations:** Executive branch employees are permitted to accept payment (in cash or in kind) of travel, subsistence, and other expenses incidental to training or attendance at meetings, when the travel expenses are paid by certain non-profit organizations as authorized under 5 U.S.C. § 4111 (*i.e.,* 501(c)(3) tax-exempt entities).

   b. **State, County, and Municipal Governments:** Executive branch employees are also permitted to accept payment (in cash or in kind) for travel expenses incidental to training or attendance at meetings from state, county, and municipal governments, as authorized by 5 U.S.C. § 4111.

   c. **Foreign Governments:** Executive branch employees can accept travel-related benefits from foreign governments in accordance with the Foreign Gifts and Decorations Act (5 U.S.C. § 7342).

   d. **Partisan Time:** In addition, GSA's travel rules do not preclude agencies or employees from accepting payment for travel to be performed for partisan (rather than official) purposes. However, reimbursement for travel expenses for partisan activities may not violate the Hatch Act. (5 U.S.C. §§ 7321 et seq.).

   e. **Other:** GSA's federal travel regulations permit agencies or employees to accept payments for travel and related expenses when authorized by an agency gift statute or similar statutory authority (except for meetings involving an employee's official duties). Additionally, travel expenses may be accepted if consistent with OGE's standards governing acceptance of gifts from prohibited sources.

No Personal Use: GSA's travel rules have been amended to clarify that employees are not authorized to accept payment for travel for personal use.

Penalty: Executive branch employees who do accept payment for travel expenses in violation of GSA rules may be required to repay such expenses to the general fund of the Treasury, in addition to other penalties.

3. EXAMPLES

The following examples illustrate how the executive branch travel rules might apply:

- The National Telecommunications and Information Administration ("NTIA") may accept travel expenses incurred in connection with a policy analyst's official duties from a non-federal source, provided that the source is not disqualified because of a conflict of interest. NTIA must obtain advance general authorization and must credit the payment to the relevant appropriation (official duties exception).

- The DOI *could* accept payment for the accompanying spouse of an employee attending an environmental conference if the spouse participates with other spouses in a program on Volunteerism in National Parks (spousal travel).

- If an Assistant Secretary of the Navy gives a speech on reductions in force at a convention of the aerospace industry, the authorized Navy official would be expected to recommend that the Department of the Navy not accept travel expenses from a contractor, if the Assistant Secretary was serving as the source selection official for a procurement involving that particular contractor as a competitor (GSA Federal Travel Rule 4 conflict of interest analysis).

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- In contrast, it might be appropriate for the National Institutes of Health to accept an offer from a large pharmaceutical association to finance a scientist's trip to an AIDS conference, despite the fact that the scientist was conducting experiments in connection with a new hypertension drug developed by one of the association's member companies (GSA Federal Travel Rule 4 conflict of interest analysis).

- In the same vein, the Federal Maritime Commission might be able to authorize acceptance of payment for travel and related expenses from a maritime association that invites a commission attorney to address the association regarding interpretation of a rule which she drafted that applies to the entire industry (GSA Federal Travel Rule 4 conflict of interest analysis).

- A Department of State official may accept reimbursement for attendance, course materials, transportation, lodgings, food, and refreshments from a tax-exempt nonprofit organization, provided the employee's agency has approved it (exception for nonprofit organizations).

Note:
Because these examples reveal subtle differences, it is advisable for executive branch personnel, and any non-federal source seeking to pay for travel expenses, to seek counsel from their ethics advisors on travel expense questions.

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C. HONORARIA

This subsection highlights some of the operative rules and ethical considerations that restrict the offering of honoraria to federal executive branch agency employees.

1. GENERAL RULE

Federal employees above the GS-15 level are technically prohibited by federal statute from receiving any compensation for an appearance, speech or article. *See* 5 U.S.C. App. § 501; *see also U.S. v. National Treasury Employees Union,* 513 U.S. 454 (1995) (finding the statutory prohibition unconstitutional as to federal employees at or below GS-15 and thereby limiting the prohibition to those above GS-15).

However, as a practical matter, the DOJ determined in 1996 that the statutory honoraria prohibition cannot be enforced against any government employee, including federal employees who are above GS-15. Accordingly, the government-wide OGE has advised federal agencies that any federal employee may receive honoraria held in escrow accounts established in accordance with OGE's 1991 guidelines.

All federal employees, however, still remain subject to other statutory and regulatory provisions that limit their ability to accept honoraria under certain circumstances. For example, as discussed below, OGE regulations prohibit the receipt of compensation for teaching, speaking or writing related to a federal employee's official duties or status. As a second example, certain federal employees remain subject to outside earned income restrictions. 5 U.S.C. App. § 501, as implemented by 5 C.F.R. §§ 2636.301 et seq.

The OGE rules (5 C.F.R. § 2635.807) also bar the receipt of compensation for teaching, speaking, and writing related to any federal employee's official duties (not just those above GS-15). Such an activity relates to an employee's official duties if: (1) the activity is performed as part of the employee's official duties; (2) the activity in significant part focuses on a matter assigned to the federal employee currently or in the last year; (3) the activity entails the use of nonpublic information; or (4) the activity is in response to an invitation rendered because of the employee's position or by certain prohibited sources. **Compensation includes transportation, lodgings, and meals.**

Limited Exception to OGE Rules: The Legislative Branch Appropriations Act of FY 1992 (P.L. 102-90) and OGE regulations may permit outside compensation for a *series* of appearances, speeches, or articles if they are wholly *unrelated* to the official duties of the executive branch employee.

Penalties: While the DOJ has determined that, as a practical matter, the honoraria statutory ban cannot be enforced, federal employees above the GS-15 level could still technically face criminal sanctions (18 U.S.C. § 209), civil penalties (5 U.S.C. App. § 504), and possible disciplinary action for violation of the ban. The criminal penalty for offering or accepting an honorarium is a $5,000 fine and imprisonment up to a year. The civil penalty is a maximum of $10,000 (or the amount of the honorarium received, whatever amount is greater).

2. CHARITABLE EXCEPTION

Any executive branch employee (including an employee above the GS-15 level) may propose that an honorarium that she is otherwise prohibited from receiving (*e.g.,* due to limits on outside earned income, compensation for teaching, speaking or writing, etc.) instead be paid in her name to a charitable organization, with four exceptions:

1) the individual limit for one charity is $2,000;

2) the executive branch personnel (or her respective family members) cannot derive financial benefit from the charity;

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3) the employee cannot take a tax deduction for any payment in lieu of an honorarium made to a charitable organization on her behalf; and

4) an honorarium will not qualify as a charitable contribution if the employee cannot accept the compensation herself because of a conflict of interest statute or regulation or applicable standards of conduct, *e.g.,* if the employee made an appearance or speech or wrote an article in an official capacity, as part of official duties, or the subject of which focused particularly on agency responsibilities, policies, or programs.

3. EXAMPLES

Following are some examples of how the honoraria rules and the charitable exception operate:

- An Assistant Attorney General who successfully oversees prosecution of a racketeering case cannot propose that an honorarium for the speech be donated to her law school, but *could* suggest that an honorarium for a speech on training sheepdogs be contributed to the school (speech focused specifically on official agency responsibilities.)

- A Department of Agriculture employee above the GS-15 level whose husband was employed by the Red Cross *could not* recommend that an honorarium for her speech about her vacation bicycling through Thailand be donated in her name to the Red Cross (an employee's spouse cannot derive direct financial benefit from the charitable organization).

- A Social Security Administration administrative law judge (above the GS-15 level) whose father suffers from cancer *may* suggest that an honorarium for her speech on historic restoration be donated to a charitable organization dedicated to cancer research, but *not* to the nursing home that furnishes in-home nursing services to her father (an employee's parent cannot derive direct financial benefit from the charitable organization).

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D. EXECUTIVE BRANCH POST-EMPLOYMENT RULES

1. GENERAL LAW

Executive Branch Officials

The 1978 Ethics in Government Act (as modified by the 1989 Ethics Reform Act, 18 U.S.C. § 207) strictly prohibits former senior federal executive branch officials from lobbying their former colleagues within specified periods of time.

a. One-Year Rule: This rule applies to certain senior-level executive branch officials who exercised significant decision-making or supervisory responsibilities. These officials cannot represent anyone within one year of leaving the executive branch with the intent to influence or make any "oral or written communication" on behalf of anyone to the same department, agency, or branch from which the former official served.

A one-year ban also applies and prohibits:

- any executive official who was "personally and substantially" involved in *a trade or treaty negotiation* from representing, aiding or advising anyone on such trade or treaty; and

- senior-level executive branch officials from representing, aiding or advising any *foreign government or foreign political party* before any U.S. agency.

b. Two-Year Rule for Very Senior Executive Personnel: This rule applies to certain very senior-level executive branch officials (e.g., Level I of the Executive Schedule). These officials cannot represent anyone within two years of leaving the executive branch with the intent to influence or make any "oral or written communication" on behalf of anyone to the same department, agency, or branch from which the former official served.

c. Two-Year Rule for Specific Matters: There is a two-year ban on matters that were under an employee's official responsibility *and* in which the U.S. is a party or has a direct and substantial interest.

d. Lifetime Rule: The law also contains a lifetime restriction from lobbying executive officials on the same issues for which the former official once participated "personally and substantially."

The Lobbying Disclosure Act of 1995 also imposes a lifetime ban on U.S. Trade Representatives ("USTRs") and Deputy USTRs from representing, advising, or aiding foreign entities before any federal agency or department. Furthermore, anyone who has represented foreign entities in the past with respect to trade negotiations or disputes in which the U.S. is a party may not be appointed to the position of USTR or Deputy USTR.

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Finally, as noted on page IV-2, an **executive order issued by President Trump on January 28, 2017 imposes additional post-employment restrictions on political appointees required to sign the pledge.**

The Trump pledge restores the **one-year "cooling-off" restriction** for certain senior administration officials on contacting employees in their former agency that is codified in Section 207(c) of Title 18. Note that this is a broader restriction on making contacts than that of the lobbying ban described below, since it applies to contacts with any employee of the former agency (as opposed to contacting covered officials and non-career Senior Executive Service appointees for purposes of the lobbying ban). This is a departure from the Obama ethics pledge, which extended the statutory one-year prohibition on contacting and appearing before former agency officials for two years.

The Trump ethics pledge also includes **a "lobbying ban" of five years**. Under the terms of the Trump pledge, covered appointees may not engage in "lobbying activities" with his or her former agency for five years upon leaving the government. "Lobbying activities" is the defined term that appears in the Lobbying Disclosure Act ("LDA") that includes *both* lobbying contacts and background preparation and strategy work. This restriction also applies to engaging in lobbying activities with any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Trump Administration.

Unlike the Obama ethics pledge, which prohibited covered appointees from "acting as a registered lobbyist" for two years, any covered appointee under the Trump pledge is prohibited not just from acting as a registered lobbyist for five years, but from engaging in the "behind the scenes" activity, regardless of whether the covered appointee's lobbying contacts trigger lobbying registration. Given the restrictive nature of this Trump pledge provision, the Office of Government Ethics may produce additional guidance.

2. PENALTIES

For each violation, an executive branch official can face criminal sanctions and civil penalties or an additional time-bar for lobbying any officer or employee of the official's former agency for up to five years in addition to the existing requirements.

Two additional points regarding penalties are noteworthy:

- There are no apparent criminal penalties for hiring an executive branch official to lobby his/her former colleagues within the prohibited time period. However, the adverse publicity usually serves as a deterrent.

- There is no apparent penalty for former executive branch officials advising individuals on how they should lobby the colleagues of the former officials.

Note:
Each federal department or agency offers assistance in interpreting revolving door provisions. Many federal agencies have promulgated their own revolving door regulations that clarify or go beyond the limitations described above. These should be carefully understood before taking any actions.

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V. SPECIAL RULES FOR 501(c)(3) ORGANIZATIONS

This section discusses general restrictions on lobbying and political campaign activity by public charities organized and operating under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("IRC"). The tax laws regulating lobbying and political campaign activity by 501(c)(3) private foundations and entities exempt under other subsections of 501(c) are beyond the scope of this section. This section covers the following topics:

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A. THE STATUTORY BACKGROUND

This section addresses the limitations on lobbying and prohibition on political campaign activity applicable to organizations exempt from taxation pursuant to Section 501(c)(3) of the Code. Generally speaking, 501(c)(3) organizations are **prohibited** from participating in a political campaign at the federal, state or local level. Those organizations are also prohibited from lobbying in "substantial part" when compared to the rest of their activities.

Section 501(c)(3) of the Internal Revenue Code provides the background for these restrictions. It says the following types of organizations will be considered to be tax-exempt:

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition . . ., or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, **no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, . . . and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.** IRC § 501(c)(3).

The IRS announced on July 16, 2018 in Revenue Procedure 2018-38 that tax-exempt organizations, other than organizations formed under Section 501(c)(3) and Section 527, would "no longer [be] required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ."

Prior to Revenue Procedure 2018-38, Section 501(c)(4) social welfare organizations and Section 501(c)(6) trade associations, among other organizations, were required to report to the IRS the names, addresses, and donation dollar amount for donors of over $5,000 during a fiscal year. Under Revenue Procedure 2018-38, for fiscal years ending on or after December 31, 2018, filers other than 501(c)(3) organizations can now report only the dollar amounts of donations from those donating over $5,000; names and addresses of donors need not be disclosed to the IRS unless so demanded. The Revenue Procedure enacts no changes for Section 501(c)(3) or Section 527 organizations, which still must report donor names, addresses, and dollar amounts to the IRS.

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B. THE LOBBYING RESTRICTION

This subsection B describes the standards used by the Internal Revenue Service ("IRS") to determine (1) whether any particular activity constitutes lobbying for tax purposes, (2) whether an organization has engaged in a substantial amount of lobbying and (3) the consequences of engaging in a substantial amount of lobbying.

Note:
The information in this subchapter applies only to 501(c)(3) organizations that are also public charities. Different and more restrictive rules apply to 501(c)(3) organizations that are private foundations. Also, different, often less stringent, rules apply to organizations that are exempt from federal income tax under some subsection of 501(c) other than (c)(3). For example, 501(c)(6) organizations (trade associations), 501(c)(4) organizations (social welfare organizations) and 501(c)(5) organizations (unions) are among many 501(c) organizations that are not (c)(3) organizations and hence not subject to the requirements set forth in this chapter.

Note:
The definitions of lobbying for tax purposes are very different than the definitions of lobbying under the Lobbying Disclosure Act. Accordingly, the information in this section should be used only for the purpose of evaluating tax compliance. Refer to section II for information on the LDA requirements.

1. Definition of Lobbying and Legislation

Under the IRC, at its most basic level, lobbying is attempting to influence legislation. "Lobbying" itself is not defined under Section 501(c)(3); but Section 4911 has established guidelines defining lobbying for 501(c)(3) organizations that elect to be governed by section 501(h) (described below). As a result, these guidelines technically are only applicable to organizations that elect under section 501(h); however, in practice, they are likely to serve as guidelines for all 501(c)(3) organizations.

Lobbying: Consists of all "direct" efforts to propose, support, or oppose legislation through uninvited contacts with legislators, their staffs, or government officials who may participate in formulation of the legislation, and all "grassroots" efforts to encourage others to contact legislators, their staffs, or any other government official who may participate in formulation of the legislation. IRC § 4911(d)(1).

Note:
Exceptions may apply.

Section 4911 exceptions to the definition of lobbying are detailed in subsection 4 below.

Legislation: Means "action with respect to Acts, bills, resolutions, or similar items by the Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment or similar procedure." Treas. Reg. § 1.501(c)(3)-l(c)(3).

Note:
*For tax purposes, only lobbying activities that **target the legislative branch** are relevant. Activities that involve the executive branch and administrative agencies are not considered to be lobbying **unless** the activity involves requesting the executive body or officer to support or oppose specific legislation. (This is one example of the many ways in which the tax requirements regarding lobbying differ from the LDA requirements.)*

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2. Determining Substantiality

Until 1976, the IRC contained no numerical guideline or formula for determining "substantial" or "insubstantial" lobbying activity. A "substantial activities" standard was developed from court decisions and IRS rulings. Those decisions and rulings were often inconsistent, confusing and led to uncertainty. Consequently, Congress revised the IRC in 1976 to allow charitable organizations to make an "election" under Section 501(h). Based solely on a charitable organization's expenditures, Section 501(h) provides a simple formula to determine whether the organization's legislative activities are "substantial." This election offers an alternative, a "safe harbor," to the amorphous substantial activities standard.

Many organizations make this election for the certainty that the "safe harbor" offers for determining the amount of allowable lobbying by that organization. If not elected, a public charity remains subject to the substantial activities standard developed in case law and IRS rulings.

3. The Substantial Activities Standard

Unless a 501(c)(3) organization makes a 501(h) election, its lobbying activities must fall below the "substantial activities standard." The substantial activities standard provides that if attempting to influence legislation is a "**substantial part**" of an organization's activities, the organization is deemed to be an "action" organization and may lose its status as a tax-exempt 501(c)(3) organization. Treas. Reg. § 1.501(c)(3)-l(c)(3).

If a 501(c)(3) public charity which operates under the substantial activities standard loses its exemption due to excessive lobbying, the IRS will impose a tax on the lobbying expenditures of such organization *equal to 5% of the lobbying expenditures*. Also, any manager of the organization who agreed to the expenditures knowing that they were likely to result in the organization failing the substantial activities standard will also have a tax of 5% of the expenditures *imposed on him or her*, unless he or she did not act willfully and acted with reasonable cause. IRC § 4912(a), (b).

Although there is not a set "test" that an organization can use to judge its compliance with the substantial activities standard, case law interpreting the substantial activities standard reflects three primary analyses for determining whether lobbying is substantial: (a) a percentage test that focuses on the "time and effort" devoted to legislative advocacy activities; (b) a percentage test based on the expenditures devoted to legislative advocacy activities; and (c) a broad balancing of the organization's legislative advocacy activities in relation to its objectives and circumstances.

a. **Time and Effort Percentage Test**. In Seasongood v. Commission of Internal Revenue, 227 F.2d 907, 912 (6th Cir. 1955), the court held that where less than 5% of the "time and effort" of the organization in question was devoted to "political" activities those activities were not substantial in relation to the organization's other activities. The court did not elaborate on how to establish the percentage figure of "time and effort." (Although the court used the word "political," the activities described were activities attempting to influence legislation.)

b. **Expenditure Percentage Test.** In Haswell v. United States, 500 F.2d 1133 (Ct. Cl. 1974), cert. denied, 419 U.S. 1107 (1975), the court held that the amount of expenditures allocated to legislative advocacy activities is considered in relation to an organization's total expenditures, to assess the substantiality of the organization's legislative activities. It noted, however, that expenditures are only one measure of substantiality. Lobbying expenditures in this case were 16-20% of the organization's total expenditures, which the court found to be "more than insubstantial" coupled with the fact that the organization had a primary objective that was political in nature.

c. **Balancing of Activities Test**. The court in Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1974), rejected the use

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of percentage tests to determine substantiality. Instead, the court proposed that the "political activities of an organization must be balanced in the context of the objectives and circumstances of the organization to determine whether a substantial part of its activities was to influence or attempt to influence legislation." (Although the defendant in Christian Echoes was alleged to have engaged in both lobbying and political campaign activities, and the court used the words "political activities" in stating the test above, the court established this test solely in connection with the organization's lobbying activities.)

According to the IRS, while there is no set test for substantiality under the substantial activities standard, Seasongood and Haswell provide some guidance. The Seasongood 5% safe harbor has frequently been applied as a general rule of thumb to determine whether an organization's lobbying is substantial. Similarly, lobbying expenditures that exceed the roughly 16-20% range found in Haswell are generally considered substantial. Lobbying Issues, Judith E. Kindell and John Francis Reilly, 1997 EO CPE Text. However, most courts have avoided applying a strict percentage test to determine whether legislative activities are substantial or have at least stated that a percentage test is not conclusive.

The lack of certainty afforded by the substantial activities standard poses significant challenges and risks for 501(c)(3) organizations that desire to engage in some amount of lobbying. Many organizations have addressed the uncertainty and accompanying risk by making the 501(h) election, described in subsection 4, below.

4. 501(h) Election

An eligible organization may elect to have the permissibility of its lobbying activities evaluated by the financial tests set forth in IRC Section 501(h). Section 501(h) also affords electing organizations the benefit of extensive regulations defining lobbying and setting forth exceptions. Generally speaking, these definitions and exceptions are available only to electing organizations.

The Section 501(h) election is made by filing Form 5768 (Appendix L) with the IRS. The 501(h) election is effective for all taxable years that end after the election is made. IRC § 501(h)(6). Once made, the election cannot be revoked for a tax year after that tax year has begun. Certain exempt organizations, including churches, and private foundations, and supporting organizations of 501(c)(4), 501(c)(5) and 501(c)(6) organizations, are not eligible to make the election.
IRC § 501(h)(3)(B).

Unlike the harsh consequences of the substantial activities standard, the penalty for excessive lobbying by an electing charity is generally payment of an excise tax on the excess lobbying expenditures with revocation of tax-exempt status reserved for exceptionally egregious violations.

a. **The Basic Section 501(h) Rules.** IRC § 4911(a),(c),(f); IRC § 501(h)(1); Treas. Reg. § 56.4911-1.

- **Establishment of a "Total Lobbying Nontaxable Amount."** An electing organization is subject to specific limits on the percentage of its "exempt purpose expenditures" (defined below) that may be devoted to lobbying. The limits are on a sliding scale allowing smaller organizations to expend a relatively greater portion of their exempt purpose expenditures on lobbying. Organizations may spend 20% of their first $500,000 of exempt purposes expenditures on lobbying, 15% of the second $500,000, 10% of the third $500,000, and 5% of any additional expenditures, so long as total lobbying expenses do not exceed $1,000,000. The total dollar amount permitted by this financial test is referred to as the Total Lobbying Nontaxable Amount. Lobbying activities that do not require expenditures, such as certain unreimbursed lobbying activities conducted by bona fide volunteers, are not included in the lobbying expenditures for the organization, making the election

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particularly advantageous for 501(c)(3) organizations whose volunteers lobby extensively on their behalf.

- **Grassroots limits.** Section 501(h) divides lobbying into two categories: direct lobbying and grassroots lobbying (defined below). Organizations that spend more than one fourth of the Total Lobbying Nontaxable Amount on grassroots lobbying are penalized. Thus, for example, an organization with exempt purpose expenditures of $500,000 or less may spend up to 5% of these expenditures on grassroots lobbying, but this amount will count toward the overall 20% lobbying limit.

Exempt Purpose Expenditures	Total Lobbying Nontaxable Amount	Grassroots Nontaxable Amount
Less than $500,000	20%	5%
$500,000 to $1 million	$100,000 + 15% of excess over $500,000	$25,000 + 3.75% of excess over $500,000
$1 to $1.5 million	$175,000 + 10% of excess over $1 million	$43,750 + 2.5% of excess over $1 million
$1.5 to $17 million	$225,000 + 5% of excess over $1.5 million	$56,250 + 1.25% of excess over $1.5 million
Over $17 million	$1 million	$250,000

- **Graduated penalties for exceeding limits.** A 25% excise tax applies to lobbying expenditures for lobbying and grassroots lobbying exceeding the 501(h) limits. However, if an organization normally spends more than 150% of its limits on lobbying, the IRS may revoke the organization's section 501(c)(3) status. “Normally” is not defined in the IRS for these purposes; however, the legislative history indicates that the IRS looks at whether, on average over the four preceding years, the organization exceeded 150% of the permitted amount. Joint Commission Staff, General Explanation of the Tax Reform Act of 1976 at 408; *see* also Treas. Reg. §1.501(h)-3(b)(c).

Example.

The ABC Coalition made the expenditure test election under Section 501(h) effective for taxable years beginning with 1977 and has not revoked the election. ABC Coalition has $500,000 of exempt purpose expenditures during each of years 1981 through 1984. In addition, during each of those years, ABC Coalition has spent $75,000 for direct lobbying and $25,000 for grassroots lobbying. Since the amount expended for ABC Coalition’s lobbying (both total lobbying and grassroots lobbying) is within the respective nontaxable expenditure limitations, the organization is not liable for the 25 % excise tax imposed under section 4911(a) upon excess lobbying expenditures, nor is ABC Coalition denied tax-exempt status by reason of section 501(h). Treas. Reg. § 1.501(h)-3(e), Example (4).

- **Aggregation Rule.** Where two or more “charitable” organizations are members of an affiliated group and at least one of the members has made the 501(h) election, the calculations of lobbying and exempt purpose expenditures must be made by taking into account the expenditures of the group. If these expenditures exceed the permitted limits, each of the electing member organizations must pay a proportionate share of the penalty excise tax, with the nonelecting members treated under the substantial activities standard. Organizations are generally deemed to be affiliated if (1) one organization is bound by decisions of the other on legislative issues pursuant to its governing instruments; (2) the governing board of one organization includes enough representatives of the other organization (including board members or paid executive staff of the other organization) to cause or prevent action on legislative issues by the first

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organization; or (3) a majority of the directors of one organization are also voting directors or paid executive staff of the other organization.

b. Calculating "Exempt Purpose Expenditures." IRC § 4911(e)(1); Treas. Reg. § 56.4911-4.

The calculation of the dollar limit on lobbying expenditures begins with the calculation of an organization's "exempt purpose expenditures." In general terms, an expenditure is an "exempt purpose expenditure" if it is *paid or incurred by a charitable organization to accomplish its exempt purposes plus administrative expenses paid or incurred for such purposes*. All expenditures made to influence legislation -- whether or not such expenditures advance the organization's exempt purposes -- are considered exempt purpose expenditures. Exempt purpose expenditures do not include amounts chargeable to a capital account, such as property acquisition, but do include a reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization of the capital asset. In addition, exempt purpose expenditures do not include fundraising expenditures paid to or incurred for a separate fundraising unit of the organization or a non-employee or non-affiliated organization, but do include other fundraising expenditures. Finally, exempt purpose expenditures do not include expenditures paid or incurred for the production of income.

Transfers from a section 501(c)(3) organization to another organization may be treated as exempt expenditures but special qualifications are applicable depending on whether the transferee is a section 501(c)(3) organization.

c. Direct Lobbying Communications. Treas. Reg. § 56.4911-2.

Direct Lobbying Communication: any attempt to influence legislation through a communication with a legislator, an employee of a legislative body, or other government official or employee involved in the legislative process that:

(1) refers to specific legislation; and

(2) reflects a view on that legislation.

Specific Legislation: includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes. Specific legislation does not include the promulgation of regulations by the administrative agency responsible for implementing an existing statute.

Note:
This can mean legislation at the federal, state, or local level.

Example.

An organization assigns its employee to approach members of the legislature to gain their support for a pending bill. The employee drafts and the organization prints a position letter on the bill. The employee distributes the letter to members of the legislature. Additionally, the employee personally contacts several members of the legislature or their staffs to seek support for the organization's position on the bill. The letter and the personal contacts are direct lobbying communications. Therefore, the costs of the employee's time in preparing the letter and making the personal contacts, together with any associated overhead expenses, must be included in the organization's lobbying expenditures. Treas. Reg. § 56.4911-2(b)(4)(i), Example (1).

Once the bill is enacted though, the organization may contact the agency in charge of preparing the regulations to implement the bill without any of its communications being considered lobbying

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communications. This is because the promulgation of regulations is not considered legislation for purposes of the lobbying expenditure rules. Thus, in the example provided above, the organization may send a letter to the agency responsible for implementing the bill providing detailed proposed regulations that the organization suggests to the agency as the appropriate standards to follow in implementing the bill. Treas. Reg. § 56.4911-2(b)(4)(i), Example (4).

Note: while contacting the agency is not lobbying for IRC purposes of lobbying, it may constitute lobbying for LDA definitions.

d. Grassroots Lobbying Communications. Treas. Reg. § 56.4911-2(b)(2).

Grassroots Lobbying Communication: any attempt to influence legislation through attempting to affect the opinions of the general public or a segment of the general public. It must:

(1) refer to specific legislation;

(2) reflect a view on that legislation; **and**

(3) encourage the recipients of the communication to take action.

Encouragement to Take Action: a communication encourages its recipients to take action if it:

(1) states that the recipient should contact a legislator, an employee of a legislative body, or other governmental official or employee involved in the legislative process;

(2) states the address, telephone number, or similar information of a legislator or an employee of a legislative body;

(3) provides a petition, tear-off postcard, or similar material for the recipient to communicate his or her views to a legislator, an employee of a legislative body, or other governmental official or employee involved in the legislative process; or

(4) specifically identifies one or more legislators who will vote on the legislation as opposing the communicator's view with respect to the legislation, being undecided with respect to it, being the recipient's representative in the legislature, or being a member of the legislative committee that will consider the legislation.

Direct Encouragement to Take Action: communications that are described in categories (1) through (3) above are deemed not only to encourage action with respect to legislation, but also to "directly encourage" action with respect to legislation. This distinction is important because only communications in category (4) may fit within the exceptions for communications with members or nonpartisan analysis, study, or research (described below) and, as a result, not be grassroots lobbying communications.

Example.

An organization sends a letter to all persons on its mailing list. The letter includes an update on numerous environmental issues with a discussion of general concerns regarding pollution, proposed federal regulations affecting the area, and several pending legislative proposals. The letter endorses two pending bills and opposes another pending bill, but does not name any legislator involved (other than the sponsor of one bill, for purposes of identifying the bill), nor does it otherwise encourage the reader to take action with respect to the legislation. This communication is not a grassroots lobbying communication. Treas. Reg. § 56.4911-2(b)(4)(ii)(A), Example (3). It also is not a direct lobbying communication, unless the letter is sent to a legislator, an employee of a legislative body, or other government official or employee involved in the legislative process.

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When calculating its grassroots lobbying expenditures, a charitable organization must include as grassroots lobbying expenditures any expenditures made to encourage its members and nonmembers to take action with respect to specific legislation. These expenditures will include employee time in preparing the lobbying communication, printing and mailing costs in distributing the lobbying communication to the public, and any associated overhead expenses.

Mass Media Communications: communications made through the mass media are generally subject to the usual three-part test for grassroots lobbying. However, there is a special rule for certain mass media advertisements about highly publicized legislation that are presented within two weeks before a vote on the legislation. The IRS will presume that communications of this type are grassroots lobbying communications *if* they reflect a view on the general subject of such legislation *and* either refer to the legislation or encourage the public to communicate with legislators on the general subject of the legislation (unless the organization can rebut this presumption).

e. Including Expenditures for Non-lobbying Communications in Grassroots Lobbying Expenditures. Treas. Reg. § 56.4911-2(b)(2)(v).

Certain communications or research materials that do not originally meet the definition of grassroots lobbying communications can be re-characterized as grassroots lobbying due to the subsequent use of the communications or research materials. This is the so-called "**6-Month Look-Back Rule.**" The costs of preparing and distributing advocacy communications or research materials (communications that refer to and reflect a view on specific legislation but that do not contain a direct encouragement for action) will be treated as grassroots lobbying expenditures if they are later accompanied by a direct encouragement for action (unless the "primary purpose" of the organization in preparing the advocacy communications or research materials was not for use in lobbying). The "primary purpose" of an organization in preparing an advocacy communication or research materials is not lobbying so long as the organization made a substantial non-lobbying distribution of the communication or research materials. If an organization cannot show a substantial non-lobbying distribution, the IRS will weigh all the facts and circumstances to determine the organization's primary purpose in preparing the advocacy communication or research material.

In any event, the characterization of advocacy communication or research material expenditures as grassroots lobbying expenditures applies only to expenditures paid less than six months before the first use of the advocacy communications or research materials with a direct encouragement to action.

Example.

An organization prepares a non-lobbying "report" (that is not nonpartisan analysis, study or research) and distributes this report to only 50 people. The organization then sends the report to 10,000 people along with a letter urging recipients to write their Senators about the legislation discussed in the report. Because the report's non-lobbying distribution is not as extensive as its lobbying distribution, the report's non-lobbying distribution is not substantial for purposes of the lobbying expenditure rules. Accordingly, the organization's primary purpose in preparing the report must be determined by weighing all of the facts and circumstances. In light of the relatively minimal non-lobbying distribution and the fact that the lobbying distribution is made by the preparing organization rather than by an unrelated organization, and in the absence of evidence to the contrary, both the report and the letter are grassroots lobbying communications. Assuming that all costs of preparing the report were paid within the six months preceding the mailing of the letter, all of the organization's expenditures for preparing and mailing the two documents are grassroots lobbying expenditures. Treas. Reg. § 56.4911-2(b)(2)(v)(H), Example (1).

f. Exceptions-Activities that are not Considered to be Lobbying. IRC § 4911(d)(2); Treas. Reg. § 56.4911-2(c); Treas. Reg. § 56.4911-5.

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One of the significant advantages of making a 501(h) election is the availability of numerous clearly defined exceptions excluding from the definition of lobbying certain actions that might otherwise fall within the definition of lobbying. Some of the most common of these exceptions are as follows:

- **Nonpartisan Analysis, Study or Research.** Communications that are nonpartisan analysis, study or research are not lobbying activities. The communication must be "an independent and objective exposition of a particular subject matter." Thus, such a communication "may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion." A communication is not within the nonpartisan analysis exception if the communication directly encourages recipients of the communication to take action. A communication that initially meets the exception but is later combined with a direct encouragement for action is subject to the 6 Month Look-Back Rule described above unless the organization can show its "primary purpose" in preparing the communication was not for use in lobbying.

- **Discussions of Broad Social, Economic, and Similar Problems.** Discussions of broad social, economic, and similar problems are not lobbying activities. This exception does not apply where a communication directly encourages recipients of the communication to take action or where the discussion addresses itself to the merits of a specific legislative proposal.

- **Technical Advice.** A communication is not lobbying if the communication is for the purpose of providing technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision. Note that the request must come from the body itself, not just a member of the body. Generally, this requires that the request come on the body's letterhead, and in the case of a committee, from the chair of the committee. The response provided by the electing organization must be within the scope of the questions presented by the request and must be available to all of the members of the body. This latter requirement effectively requires the electing organization to reduce its response to writing.

- **"Self-Defense."** A communication is not lobbying if it is an appearance before, or communication with, a legislative body with respect to a possible decision of such body which might affect the existence of the organization or an affiliated organization, its powers and duties, its tax exempt status, or the deduction of contributions to the organization or affiliated organizations.

- **Communications with Members.** Communications exclusive to an organization's bona fide members are excluded from the definition of lobbying if the communications are about legislation or proposed legislation of direct interest to the organization and its members, unless the communications directly encourage direct or grassroots lobbying. Members of an organization are not limited to persons who are members in a legal sense. For example, members include a person who pays dues or makes a contribution of more than a nominal amount or who makes a contribution of more than a nominal amount of time. However, an organization may not avoid lobbying treatment by classifying as members persons who have no or little connection with the organization.

g. **Reporting Direct and Grassroots Lobbying Communications.** Treas. Reg. § 56.4911-3(a)(1); Treas. Reg. § 56.4911-6.

An organization that elects the section 501(h) expenditure test must keep a record of its direct and grassroots lobbying expenditures for the taxable year. The organization reports its lobbying expenditures in its annual return (IRS Form 990). The lobbying expenditure records must include the following:

- Amounts directly paid or incurred for lobbying, including payments to another organization earmarked for lobbying, fees and expenses paid to individuals or organizations for lobbying, and printing, mailing, and other direct costs of reproducing and distributing materials used in lobbying;

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- The portion of amounts paid or incurred as current or deferred compensation for an employee's services in connection with lobbying;

- Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and in connection with lobbying, whether or not incurred by an employee;

- The allocable portion of administrative, overhead, and other general expenditures attributable to direct lobbying;

- Expenditures for publications or for communications with members to the extent the expenditures are treated as expenditures for lobbying; and

- Expenditures for lobbying of a controlled organization to the extent included by a controlling organization in its lobbying expenditures.

h. Allocating the Costs of Preparing and Distributing a Single Document that Has Both Lobbying and Non-lobbying Articles or that Has Both Direct and Grassroots Lobbying Articles. IRC § 4911(d)(2); Treas. Reg. § 56.4911-2(c); Treas. Reg. § 56.4911-3(a).

When a communication has both a lobbying function and a non-lobbying function, the organization must allocate the costs of the communication between the two functions. A charitable organization must also evaluate the communication to determine whether the pieces of the communication that constitute lobbying are direct or grassroots lobbying. The section 501(h) regulations adopt an approach to allocation based on the nature of the audience. Usually, the determination will depend upon whether the communication is being sent only to members, primarily to members, or primarily to nonmembers, whether the different parts of the communication are on separate or the same subject matter, and what type of legislative action is encouraged. Charitable organizations must then allocate the costs involved in preparing, printing, and mailing the communication between non-lobbying, direct lobbying, and grassroots lobbying expenditures.

Communications Not Sent Only or Primarily to Members. For communications with both a lobbying and a non-lobbying function that are not sent only to or primarily to members, all costs attributable to those parts of the communication that are on the “same specific subject” as the lobbying message must be included as lobbying expenditures for allocation purposes. The “same specific subject” is said to depend on the circumstances, but generally including discussion of “an activity or specific issue that would be directly affected” by the legislation that is the subject of the lobbying part of the communication as well as “the background or consequences” of such an activity or issue or the legislation itself.

Example.

A particular monthly issue of an organization's newsletter, which is distributed mainly to nonmembers of the organization, has three articles of equal length. The first article is a grassroots lobbying communication, the sole specific subject of which is pending legislation to help protect seals from being slaughtered in certain foreign countries. The second article discusses the rapid decline in the world's whale population, particularly because of the illegal hunting of whales by foreign countries. The third article deals with air pollution and the acid rain problem in North America. Because the first article is a grassroots lobbying communication, all of the costs allocable to that article (e.g., one-third of the newsletter's printing and mailing costs) are grassroots lobbying expenditures. The second article is not a lobbying communication and the pending legislation relating to seals addressed in the first article does not affect the illegal whale hunting activities. Because the second and third articles are not lobbying communications and are also not on the same specific subject as the first article, no portion of the costs attributable to those articles is a grassroots lobbying expenditure. Treas. Reg. § 56.4911-3(b), Example (7).

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An organization must also allocate the part of the communication that is a lobbying communication between direct lobbying communications and grassroots lobbying communications. If a communication is both a direct lobbying communication and a grassroots lobbying communication, the communication will be treated as a grassroots lobbying communication except to the extent the organization demonstrates the communication was made primarily for direct lobbying purposes, in which case a reasonable allocation between direct and grassroots lobbying purposes served by the communication can be made.

Communications Sent Only or Primarily to Members. When communications with both a lobbying purpose and a bona fide non-lobbying purpose are sent only or primarily to members (communications sent to more members than nonmembers), an organization must make a reasonable allocation between the amounts attributable to the lobbying communication and the amounts attributable to the non-lobbying communication.

Example.

An organization distributes only to members a pamphlet with two articles on unrelated subjects. The total cost of preparing, printing, and mailing the pamphlet is $11,000, $1,000 for preparation and $10,000 for printing and mailing. The cost of preparing one article, a non-lobbying communication, is $600. The article is printed on three of the four pages in the pamphlet. The cost of preparing the second article, a grassroots lobbying communication that states that the recipient members should contact their congressional representatives, is $400. This article is printed on one page of the four page pamphlet. The organization allocates $400 of preparation costs and $2,500 of printing and mailing costs (25% of total cost) as expenditures for direct lobbying. The allocation is reasonable. The allocation would not be reasonable if the organization based its allocation upon the fact that out of the 200 lines in the second document, only two stated that the recipient member should contact legislators about the pending legislation. Treas. Reg. § 56.4911-3(b), Example (3).

As with communications not sent only or primarily to members, an organization sending communications only to or primarily to members must also allocate the part of the communication that is a lobbying communication between direct lobbying and grassroots lobbying. There are special rules applicable to this allocation for communications made primarily to members of an organization. These rules are much more complex than those for communications made primarily to non-members. Note, the exemption for communications with members is not applicable because the communication is directly encouraging members to engage in direct or grassroots lobbying.

5. Comparison of Operating Under Substantial Part Standard and Section 501(h)

See next page for a table comparing the “substantial part” standard with the section 501(h) election.

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	Section 501(h)	**Substantial Part Standard**
Lobbying Limits	20% of first $500,000 of "exempt purpose expenditures" and decreasing percentages after that, up to $1 million cap, 25% of which amount may be spent on grassroots lobbying	Less than a "substantial" part of activities determined by 1 of 3 possible approaches or a combination of such approaches
Volunteer and other Cost-free Activities	Not included when calculating lobbying expenditures	Included in determining whether lobbying is "substantial"
Lobbying Definition	Defined, with specific exclusions for invited testimony; nonpartisan analysis, study & research; self defense	Not defined, no specific exclusions in statute or regulations (it is assumed that, in practice, guidelines pertaining to entities electing under 501(h) would be considered)
Excessive Lobbying Penalty for Organization	25% excise tax on excess over limits in any year	5% excise tax on all lobbying expenses if substantial lobbying results in revocation
Excessive Lobbying Penalty for Organization's Officers/Directors	No specific liability	5% if "substantial" lobbying willfully or unreasonably authorized
Revocation of Tax Status	If lobbying exceeds 150% of limits generally over 4 years	If "substantial" lobbying in any one year
Recordkeeping	Must document all lobbying expenses, both grassroots and direct	Must document all lobbying activities and expenses
Audit Exposure	No difference, whether electing or nonelecting	

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C. THE POLITICAL CAMPAIGN ACTIVITY PROHIBITION

This subsection C describes the general prohibition on political campaign activity by 501(c)(3) organizations, discusses activities that the IRS has determined not to be prohibited political campaign activity and discusses remedies available to the IRS to curb prohibited political campaign activity.

1. The Rule

Public charities are **prohibited from engaging in political campaign activity**. IRC § 501(c)(3) requires that the organization "does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office." **Unlike the limit on lobbying, the prohibition on political campaign activity is absolute. The penalty for violation of this prohibition is revocation of a charitable organization's 501(c)(3) tax-exempt status.** In addition, excise taxes may be imposed on the organization pursuant to IRC § 4955. Political campaign activity is not limited to specific endorsements of candidates. Determining whether any particular activity constitutes political campaign activity can be difficult.

2. Facts and Circumstances Analysis

Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to a candidate for political office depends on the facts and circumstances. Key factors in determining whether a communication results in political campaign intervention include:

- whether the statement identifies one or more candidates for a given public office;
- whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- whether the statement is delivered close in time to the election;
- whether the statement makes reference to voting or an election;
- whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of the election; and
- whether the timing of the communication and identification of the candidates are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

Although a facts and circumstances test is typically used to determine whether an organization engaged in prohibited political campaign activity, the IRS has made definitive determinations that some activities will always be considered prohibited political campaign activity. Examples include:

(1) making a contribution to a political campaign;

(2) publishing or distributing written or printed statements or making oral statements on behalf of or in opposition to a candidate;

(3) distributing statements prepared by others that favor or oppose any candidate for public office; and

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(4) allowing a candidate to use an organization's assets or facilities if other candidates are not given an equivalent opportunity. Internal Revenue Service-United States Dept. of the Treasury, Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations, available at IRS Doc. 154712.

3. Activities *Not* Considered to be Prohibited Political Campaign Activity

The IRS and courts have clarified that public charities *may* participate in some activities related to political campaigns if they meet certain requirements. This section contains a brief description of each of these activities.

Note:
The IRS often requires precise compliance with all of the terms of these exceptions. An organization should speak with a K&L Gates political ethics or tax-exempt organizations attorney or other counsel prior to engaging in the excepted activities.

a. Educating the Public: Treas. Reg. § 1.501(c)(3)-1(d)(3); Rev. Rul. 76-456, 1976-2 CB 151; Rev. Rul. 78-248, 1978-1 CB 154; Rev. Proc. 86-43, 1986-2 C.B. 729. Educating the public on subjects useful to the individual and beneficial to the community is permissible. An organization can advocate a particular position, as long as it presents a sufficiently full and fair exposition of the pertinent facts to permit an individual or the public to form an independent conclusion and acts in a nonpartisan manner. The presence of any of the following factors in the presentations made by an organization is indicative that the method used to advocate its viewpoints is not educational:

- the presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications;
- the facts that purport to support the viewpoints or positions are distorted;
- the organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations; and
- the approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

b. Voter Guides: Rev. Rul. 78-248, 1978-1 CB 154; IRS Doc. 154712. Voter guides are typically short documents, often in chart form, intended to help voters compare candidates' positions on a set of issues. The following factors must be considered in determining whether a voter guide can be distributed without violating the prohibition on political campaign intervention:

- whether the questions and description of issues are clear and unbiased in structure and content;
- whether the questions provided to the candidates are identical to those included in the voter guide;
- whether the candidates are given a reasonable amount of time to respond to the questions;

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- whether a candidate is given a reasonable opportunity to explain his position in his or her own words and whether that explanation is included in the voter guide;

- whether all candidates are covered; and

- whether the number of questions and the subjects covered are sufficient to encompass most major issues of interest to the entire electorate.

c. Voter-Registration and Get-Out-the-Vote Drives: Rev. Rul. 2007-41, 2007-25 IRB 1421; Election Year Issues, Judith E. Kindell and John Francis Reilly, 2002 EO CPE Text ("2002 EO CPE"). Organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives that are conducted in a non-partisan manner. Voter education or registration activities conducted in a biased manner that favor or oppose one or more candidates are prohibited. Factors to consider are:

- whether any candidate is named or depicted or all candidates for a particular office are named or depicted without favoring any candidate;

- whether the communication names a political party (except for identifying the political party affiliation of all candidates named or depicted);

- whether the communication is limited to urging acts such as voting and registering and to describing the hours and places of registration and voting; and

- whether all of the services are made available without regard to the voter's political preference.

d. Commentary on Government Action and Candidate Questionnaires: GCM 39811 (Feb. 9, 1990); Rev. Rul. 78-248, 1978-1, C.B. 154; 2002 EO CPE. Commenting on government actions without drawing a connection between the action and any one candidate is not disallowed (although it may need to comply with the lobbying restrictions).

Also, eliciting responses from the candidates to a questionnaire and publishing the questionnaire in certain situations is permissible. Facts and circumstances to consider in determining whether the publication of a questionnaire constitutes prohibited political activity are:

- whether the questionnaire is sent to all candidates;

- whether all of the responses are published;

- whether the questions cover a wide variety of issues;

- whether the questions indicate a bias toward the organization's preferred answer;

- whether the responses are compared to the organization's positions on the issues; and

- whether the responses are published as received without editing by the organization.

e. Publication of Voting Records: Rev. Rul. 80-282, 1980-1 C.B. 178; Rev. Rul. 78-248, 1978-1 C.B. 154. Publishing the voting records of incumbent members of legislative bodies is allowable as long as the following requirements are met:

- the organization publishes the voting records of all incumbent members of the entire legislative body;

- the report does not identify candidates for reelection;

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- the report does not link voting records to the campaign;
- the report covers votes on a broad range of issues;
- the report contains no editorial opinion on the candidates nor any indication of the organizations' approval or disapproval of the vote;
- the organization points out the inherent limitations of judging the qualifications of an incumbent on the basis of selected votes; and
- the publication is distributed to only the organization's normal recipients and no attempt is made to target the publication toward particular areas in which the elections are occurring.

f. Sponsoring a Candidate Forum: Treas. Reg. § 1.501(c)(3)-1(d)(3)(ii); Rev. Rul. 86-95, 1986-2 C.B. 73; Rev. Rul. 2007-41, 2007-25 IRB 1421. Sponsoring a candidate forum is allowable provided that the forum is neutral towards the candidates both procedurally and substantively and the following requirements are met:

- the organization sponsoring the forum has a record of concern for public and legislative issues;
- all viable candidates for the particular office are invited;
- the moderator states at the beginning and end that all viable candidates have been invited;
- the choice of the site is dictated by non-political considerations;
- the forum addresses a broad range of issues that are of interest to the public;
- the questions are prepared by a nonpartisan panel, independent of the sponsoring organization and candidate;
- the mediator is impartial and at the beginning and end the mediator states that the opinions expressed are those of the candidates and not the organization;
- each candidate is given an equal opportunity to present his or her view on each of the issues discussed;
- the candidates are not asked to agree or disagree with positions, agendas, platforms, or statements of the organization; and
- the moderator does not comment on the questions or otherwise imply approval or disapproval of the candidates.

g. Candidate Appearances: Rev. Rul. 2007-41, 2007-25 IRB 1421. An organization may invite political candidates to speak at the organization's events. They may be invited in their capacity as candidates or in their individual capacity. If an organization invites a candidate to speak in his or her capacity as a candidate, it must:

- provide an equal opportunity to political candidates seeking the same office;
- not indicate support or opposition to the candidate (should be stated explicitly); and
- ensure that no political fundraising occurs during the event.

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h. Conducting Business Activity: Rev. Rul. 2007-41, 2007-25 IRB 1421. The conducting of business activity such as leasing of office space or selling or leasing membership lists can be considered not to be political campaign activity. However, the following factors must be examined:

- whether the good, service, or facility is available to candidates in the same election on an equal basis;
- whether the good, service, or facility is available only to the candidates and not the general public;
- whether the fees charged to candidates are at the organization's customary and usual rates; and
- whether the activity is an ongoing activity of the organization or whether it is conducted for a particular candidate.

i. Websites: Rev. Rul. 2007-41, 2007-25 IRB 1421. If an organization posts something on its website that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements, or broadcasts that favored or opposed a candidate. Also, organizations are responsible for the information contained on websites that they link to their own website. The IRS will consider the following facts and circumstances to determine if links to candidate-related materials are political campaign intervention:

- the context of the link on the organization's website;
- whether all candidates are represented;
- an exempt purpose served by offering the link;
- the directness of the links between the organization's website and the web page containing material that favors or opposes a candidate for office.

j. Actions by Individuals: Rev. Rul. 2007-41, 2007-25 IRB 1421. The ban on political activities applies only to actions undertaken by or on behalf of charitable organizations; it does not apply to the personal activities of individuals. Leaders and employees of organizations are not prohibited from speaking for themselves as individuals nor are they prohibited from speaking about issues of public policy. However, leaders cannot make partisan comments in official organization publications or at official functions of the organization. Organizational leaders should be careful not to imply that they speak for the organization. For example, personal titles, rather than titles at the organization, should be used. If the leader is associated closely with the organization, it is advisable for the leader to indicate expressly that he or she is speaking for himself or herself personally and that his or her views do not necessarily reflect those of the organization. The leader should not use organizational assets such as office space, computer facilities, phones, letterhead, etc. Organizations whose leaders are particularly active politically may wish to adopt a policy that will provide guidance for its leaders on these matters.

k. Issue Advocacy: Rev. Rul. 2007-41, 2007-25 IRB 1421. Section 501(c)(3) Organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, they must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name but also by other means, such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need

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to be considered to determine if the advocacy is political campaign intervention. *See* the facts and circumstances listed in Section 2 above.

5. Additional Penalties for Violations of Prohibited Political Campaign Activity:

a. Background

In 1987, Congress enacted IRC 4955, which taxes the political expenditures of section 501(c)(3) organizations. Excise taxes levied through Section 4955 apply to 501(c)(3) organizations whether or not their tax-exempt status is revoked by the IRS. Congress enacted Section 4955 for two reasons. 2002 EO CPE. The first was that the penalty of exemption revocation was disproportionate to the violation in cases where the violation was small or unintentional. The second was that revocation was an ineffective remedy in cases where an organization ceased operations after diverting all of its assets to improper purposes. Congress considers Section 4955 to be an additional deterrent to the absolute prohibition on political campaign activity. T.D. 8628, 60 Fed. Reg. 62,209 (Dec. 5, 1995) Congress did not intend to reduce the standards for tax exemption under section 501(c)(3) by enacting Section 4955.

b. Operation of Section 4955

Tax on Organization: Section 4955 provides for an initial tax on the organization of 10% of the amount of each political expenditure. A 100% tax of the amount of each political expenditure is imposed if a political expenditure was previously taxed and not corrected within the taxable period. There is no limit on the amount of tax that the IRS can levy on an organization.

Tax on Managers: Section 4955 imposes a tax of 2.5% of the amount of the political expenditure on any organization manager (officer, director, or trustee or an employee having authority with respect to the transaction) who agreed to the making of the political expenditure. If an organization manager refuses to agree to all or part of a correction, he or she is subject to a tax of 50% of the amount of the political expenditure. If more than one manager is liable, all are jointly and severally liable. For any one political expenditure, there is a cap of $5,000 on the first tier tax and $10,000 on the second tier tax. A manager will only be taxed if:

- a tax is imposed on the organization;
- the manager knew that the expenditure was a political expenditure; and
- the manager's agreement to the expenditure was willful and not due to reasonable cause. Treas. Reg. § 53.4955-1(b)(1).

Political Expenditures: Any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of settlements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Additionally, under Sections 6852 and 7409, respectively, the IRS may immediately determine the amount of income and Section 4955 tax due from the organization, and seek an injunction against an organization that flagrantly violates the prohibition in order to prevent further political expenditures.

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VI. APPENDICES

These appendices include additional information on federal campaign contribution limits, Lobbying Disclosure Act (LDA) registration and reporting requirements, the Senate and House travel forms, the Senate-passed ethics and lobbying reform legislation.

A. Overview of Federal Political Contribution Limits

B. Flow Charts for Lobbying Disclosure Act Registration

C. Lobbying Disclosure Registration Form (Form LD-1)

D. Lobbying Disclosure Quarterly Report Form (Form LD-2)

E. Lobbying Disclosure Semi-Annual Report Form (Form LD-203)*
(*This form is only available online.)

F. Lobbying Disclosure Form for Federal Contractors and Grantees (Form LLL)

G. Comparison of Lobbying Activity Reportable Under Lobbying Disclosure Act and Non-Deductible Under Internal Revenue Code

H. House Travel Authorization Forms and Instructions

I. Senate Travel Authorization Forms and Instructions

J. House Job Negotiation Notification and Recusal Forms

K. Senate Job Negotiation Notification and Recusal Forms

L. IRS Form 5768

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A. Overview of Federal Political Contribution Limits

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Overview of Federal Political Contribution Limits

Contributor	Recipient				
	House, Senate, or Presidential[7] Candidate Committee	National Party Umbrella Committee (RNC/DNC)[1]	National Party Congressional Committee (NRSC/DSCC/ NRCC/DCCC)[1]	State, District & Local Party Committee[2]	Traditional Political Action Committee (PAC)[3]
Individual[4]	**$2,800*** per election[5]	**$35,500*** per year (main account) **$106,500** per year (convention account) **$106,500** per year (building account) **$106,500** per year (legal account) TOTAL: **$355,000** per year	**$35,500*** per year (main account) **$106,500** per year (building account) **$106,500** per year (legal account) TOTAL: **$248,500** per year	**$10,000** per year limit (combined)	**$5,000** per year (but unlimited to a "Super PAC")
Corporation	Prohibited	Prohibited	Prohibited	Laws vary by jurisdiction	Prohibited (but unlimited to a "Super PAC")
Non-Multicandidate PAC[6]	**$2,800*** per election[5]	**$35,500*** per year (main account) **$106,500** per year (convention account) **$106,500** per year (building account) **$106,500** per year (legal account) TOTAL: **$355,000** per year	**$35,500*** per year (main account) **$106,500** per year (building account) **$106,500** per year (legal account) TOTAL: **$248,500** per year	**$10,000** per year limit (combined)	**$5,000** per year but unlimited to a "Super PAC")
Multicandidate PAC[6]	**$5,000** per election[5]	**$15,000** per year (main account) **$45,000** per year (convention account) **$45,000** per year (building account) **$45,000** per year (legal account) TOTAL: **$150,000** per year	**$15,000** per year (main account) **$45,000** per year (building account) **$45,000** per year (legal account) TOTAL: **$105,000** per year	**$5,000** per year limit (combined)	**$5,000** per year but unlimited to a "Super PAC")

*See Notes to Chart on the reverse side of this document * - Indexed for inflation in odd-numbered years.*

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Notes to Chart:

[1] A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits.

[2] A state party committee shares its limits with district and local party committees in that state unless a district or local committee's independence can be demonstrated.

[3] These limits apply to both separate segregated funds (SSFs) (*e.g.*, PACs connected to a corporation, incorporated trade association or other incorporated entity), non-connected political action committees (*e.g.*, PACs affiliated with a partnership or other unincorporated entity), and other unauthorized PACs such as Leadership PACs. Affiliated PACs share the same set of limits on contributions made and received.

[4] Each spouse has a separate limit. A "green card" holder may make political contributions, but a foreign national may not do so. Minors (17 years or younger) may make political contributions, provided that they knowingly and voluntarily make the decision to contribute, that they own the assets contributed, and that the contribution was not made from proceeds of a gift given for the purpose of making a contribution.

[5] Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election and special election.

[6] A PAC automatically becomes a multicandidate committee once it has been registered for at least six months, has received contributions from more than 50 contributors and has made contributions to at least five federal candidates. Within 10 days of meeting these criteria, a non-multicandidate PAC must file a Form IM with the FEC. Failure to so file is a reporting violation subject to fine.

[7] Contribution limits applicable to presidential campaigns assumes that the campaigns do not accept public general election funding.

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B. Flow Charts for Lobbying Disclosure Act Registration

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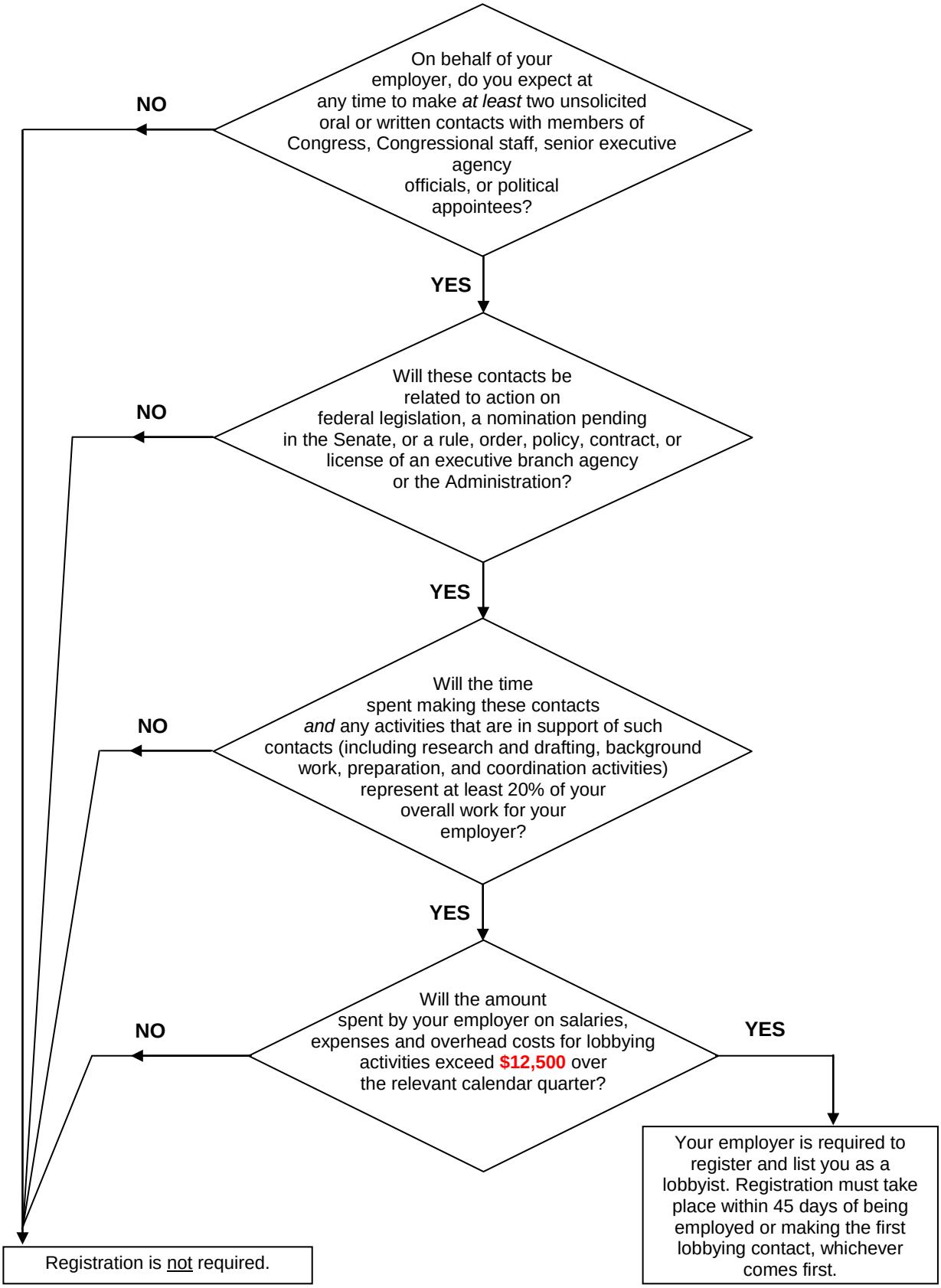
Test Number 1 for Lobby Disclosure - For "in-house" lobbyists:



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Note: Organizations that have already filed an LD-1 should add new lobbyists on the next LD-2 quarterly report even if the due date of the next LD-2 exceeds 45 days.

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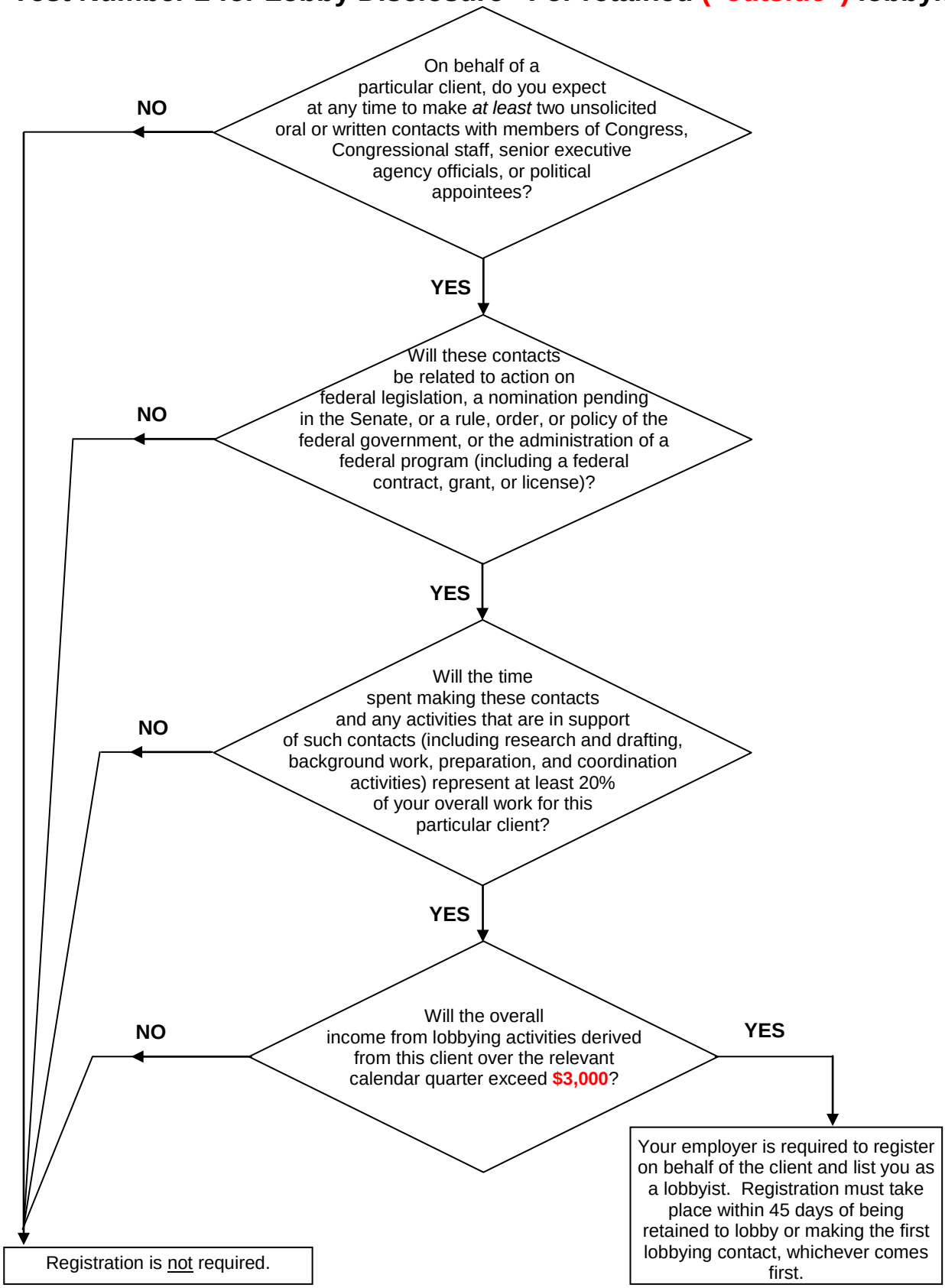
Test Number 2 for Lobby Disclosure - For retained ("outside") lobbyists:



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Note: Organizations that have already filed an LD-1 should add new lobbyists on the next LD-2 quarterly report even if the due date of the next LD-2 exceeds 45 days.

C. Lobbying Disclosure Registration Form (Form LD-1)

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Clerk of the House of Representatives
Legislative Resource Center
B-106 Cannon Building
Washington, DC 20515
http://lobbyingdisclosure.house.gov

Secretary of the Senate
Office of Public Records
232 Hart Building
Washington, DC 20510
http://www.senate.gov/lobby

LOBBYING REGISTRATION

Lobbying Disclosure Act of 1995 (Section 4)

Check One: ☐ New Registrant ☐ New Client for Existing Registrant ☐ Amendment

1. Effective Date of Registration _____

2. House Identification _____ **Senate Identification** _____

REGISTRANT

☑ Organization/Lobbying Firm ☐ Self Employed Individual

3. Registrant Organization _____

Address _____ Address2 _____

City _____ State _____ Zip _____ - _____ Country _____

4. Principal place of business (if different than line 3)

City _____ State _____ Zip _____ - _____ Country _____

5. Contact name and telephone number ☐ **International Number**

Contact _____ Telephone _____ E-mail _____

6. General description of registrant's business or activities

CLIENT

A Lobbying Firm is required to file a separate registration for each client. Organizations employing in-house lobbyists should check the box labeled "Self" and proceed to line 10. ☐ ***Self***

7. Client name _____

Address _____

City _____ State _____ Zip _____ - _____ Country _____

8. Principal place of business (if different than line 7)

City _____ State _____ Zip _____ - _____ Country _____

9. General description of client's business or activities

LOBBYISTS

10. Name of each individual who has acted or is expected to act as a lobbyist for the client identified on line 7. If any person listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within twenty years of first acting as a lobbyist for the client, *state the executive and/or legislative position(s) in which the person served.*

Name			Covered Official Position (if applicable)
First	Last	Suffix	

LOBBYING ISSUES

11. General lobbying issue areas (Select all applicable codes).

_____ _____ _____ _____ _____ _____ _____ _____ _____

12. Specific lobbying issues (current and anticipated)

AFFILIATED ORGANIZATIONS

13. Is there an entity other than the client that contributes more than $5,000 to the lobbying activities of the registrant in a quarterly period and either actively participates in and/or in whole or in major part plans, supervises or controls the registrant's lobbying activities?

☐ No --> Go to line 14. ☐ Yes --> Complete the rest of this section for each entity matching the criteria above, then proceed to line 14.

Internet Address: _____

Name	Address					Principal Place of Business		
	Street							
	City	State/Province	Zip Code	Country				
					City			
					State		Country	
					City			
					State		Country	
					City			
					State		Country	

FOREIGN ENTITIES

14. Is there any foreign entity

a) holds at least 20% equitable ownership in the client or any organization identified on line 13: or
b) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances or subsidizes activities of the client or any organization identified on line 13; or
c) is an affiliate of the client or any organization identified on line 13 and has a direct interest in the outcome of the lobbying activity?

☐ No --> Sign and date the registration. ☐ Yes --> Complete the rest of this section for each entity matching the criteria above, then sign the registration.

Name	Address				Principal place of business (city and state or country)		Amount of contribution for lobbying activities	Ownership
	Street							
	City	State/Province	Country					
				City				
				State		Country		%
				City				
				State		Country		%

Signature _____ **Date** _____

Printed Name and Title _____

ADDITIONAL LOBBYISTS

10. Supplemental. List any addtional lobbyists for this client not listed on page 1, number 10.

Name			Covered Official Position (if applicable)
First	Last	Suffix	

ADDITIONAL LOBBYING ISSUES

11. Supplemental. General lobbying issue areas. Enter any additional codes for issues not listed on page 2, number 11.

_____ _____ _____ _____ _____ _____ _____ _____ _____ _____

ADDITIONAL AFFILIATED ORGANIZATIONS

13. Supplemental. List any other affiliated organization thats meets the criteria specified and is not listed on page 2, number 13.

Name	Address					Principal Place of Business			
	Street								
	City	State/Province	Zip Code	Country					
						City			
						State		Country	
						City			
						State		Country	
						City			
						State		Country	

ADDITIONAL FOREIGN ENTITIES

14. Supplemental. List any other foreign entity that meets the criteria specified and is not listed on page 2, number 14.

Name	Address				Principal place of business (city and state or country)			Amount of contribution for lobbying activities	Ownership
	Street								
	City	State/Province	Country						
					City				%
					State		Country		
					City				%
					State		Country		
					City				%
					State		Country		

LD-1 – Lobbying Registration:

Registrant/Client/Lobbyist Information

REGISTRATION TYPE: Select one. This selection will not appear on the final printed form.

- New Registrant - If the registrant is NOT registered with the Office of the Clerk or the Secretary of the Senate for any lobbying, check 'New Registrant';
- New Client - If the registrant has an existing registration but wishes to add a new client, click 'New Client';
- Amendment - If the registrant is amending information relating to this specific registration, check amendment. Please note that the amendment is only for the client specified.

LINE 1. EFFECTIVE DATE OF REGISTRATION: Enter the date that the registrant is retained by the client or first makes a lobbying contact, whichever is earlier. If the effective date is prior to the end of a quarterly reporting period, a lobbying report must be filed detailing the activity for that quarterly period.

LINE 2. IDENTIFICATION NUMBER: Leave this line blank if this is an initial registration. The House ID will be assigned by the Legislative Resource Center after the registration is processed and will be unique to each registrant-client relationship. The Senate ID will be assigned by the Office of Public Records and will be unique to each registrant-client relationship. After being notified of this number, use it in all correspondence pertaining to this relationship.

LINE 3. REGISTRANT NAME AND ADDRESS: If the registrant is a lobbying firm or an organization employing in-house lobbyists, enter the full legal name, any trade name, and mailing address. Individual lobbyists do not register unless they are self-employed, in which case they register as firms and **indicate their own names, and any trade or business name**. A full address is required to complete the filing.

LINE 4. PRINCIPAL PLACE OF BUSINESS: Indicate the city, state, and country of the registrant's principal place of business, if different from the address on line 3.

LINE 5. TELEPHONE NUMBER, CONTACT NAME AND E-MAIL: Enter the full name of the person to contact for any questions concerning the registration. Enter the telephone number, including area code. Please use the 222-222-2222 format. Enter the contact e-mail address. A telephone number, contact name and e-mail address are required to complete the filing.

LINE 6. GENERAL DESCRIPTION OF REGISTRANT'S BUSINESS OR ACTIVITIES: Provide a general description of the registrant's business or activities, e.g. "manufacturing," "computer software developer," "law firm," "public relations firm," "self-employed public affairs consultant," "social welfare organization," etc. The business description is required to complete the filing.

LINE 7. CLIENT NAME AND ADDRESS: For an organization lobbying on its own behalf, check the box labeled 'SELF'. When 'Self' is checked, the registrant name is inserted automatically in the client name line. For a lobbying firm or self-employed

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

lobbyist lobbying on behalf of a client, DO NOT check “Self”. Instead, state the name and address of the client. Lobbying firms must file a separate registration for each client. The client address is required in this case.

LINE 8. CLIENT PRINCIPAL PLACE OF BUSINESS: If 'Self' is not checked, indicate the client's principal place of business (city and state and country), if different from line 7.

LINE 9. GENERAL DESCRIPTION OF CLIENT'S BUSINESS OR ACTIVITIES: If 'Self' is not checked, provide a general description of the business or activities of the client (see instructions to line 6 for examples).

LINE 10. LOBBYISTS: List the name of each individual who acted or is expected to act as a lobbyist for the client identified on line 7. If any person listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within twenty years of first acting as a lobbyist for the client, identify that person as a "covered official" and state the executive and/or legislative position in which the person served. Self-employed lobbyists must restate their names on this line and indicate any covered status as described above.

Note that an individual whose lobbying activities for the client are less than 20% of that individual’s total services to the client (as measured by time spent during any three month period) is not considered a lobbyist.

Lobbying Activity

LINE 11 LOBBYING ISSUES: Select categories from the following list that most closely match the client's lobbying issue areas. The form provides a list of descriptions and corresponding codes (for reference only) in a select box above the fields where the codes are to be entered. Select each applicable code from the small select boxes on line 11. Enter as many as necessary to accurately reflect all actual and anticipated lobbying activities.
See Lobbying Issue Codes for a complete list

LINE 12. SPECIFIC LOBBYING ISSUES: Identify the client's specific issues that have been addressed (as of the date of the registration) or are likely to be addressed in lobbying activities. Include, for example, specific bills before Congress or specific executive branch actions.

BE SPECIFIC, but brief. Bill numbers alone do not satisfy the requirements for reporting on this line and restatement of the general issue code is insufficient. Use the following format to describe legislation: BILL NO, BILL TITLE, AND DESCRIPTION OF THE SPECIFIC SECTION(S) OF INTEREST, i.e.;

"H.R. 3610, Department of Defense Appropriations Act of 1996, Title 2, all provisions relating to environmental restoration."

For specific issues other than legislation, provide detailed descriptions of lobbying efforts. Do not leave line blank. No additional space is available, so please abbreviate and enter the information in paragraph format to maximize space.

LINE 13. AFFILIATED ORGANIZATIONS: Identify the name, address, and principal place of business of any entity other than the client that contributes in

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

excess of $5,000 toward the registrant's lobbying activities in a quarterly period **and** actively participates in the planning, supervision, or control of such activities.

Either 'No' or 'Yes' must be checked for each level of affiliation. The LDA amendments require disclosure of some affiliates that were heretofore undisclosed, and retained the requirement for **listing** those affiliates that contribute in excess of $5,000 **and** in whole or major part **(20%)** plans, supervises or controls such lobbying activities.

If 'No' is checked, the affiliated organization lines will be 'skipped'. If 'Yes' is checked, at least one affiliated organization name and address is required. If 'No' is checked after information has been entered in the lines, the information will be deleted.

The LDA Amendments state in part: "No disclosure is required under paragraph (3)(B) if the organization that would be identified as affiliated with the client is listed on the client's publicly accessible Internet website as being a member of or contributor to the client unless the organization in whole or in major part plans, supervises or controls such lobbying activities." If a registrant relies upon the preceding sentence, the registrant must disclose the specific Internet address of the web page containing the information relied upon. If the registrant chooses to use the website, it is responsible for ensuring that the web page remains valid and accurate until a new LD-2 is filed with updated information. Please enter the URL underneath the address of any affiliates that apply.

LINE 14. FOREIGN ENTITIES: Identify the name, address, principal place of business, amount of any contribution in excess of $5,000, and the approximate percentage of equitable ownership in the client of any foreign entity that:

- holds at least 20% equitable ownership in the client or any organization identified on line 13; **or**;
- directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes activities of the client or any organization identified on line 13; **or;**
- is an affiliate of the client or any organization identified on line 13 and has direct interest in the outcome of the lobbying activity.

Either 'No' or 'Yes' must be checked. If 'No' is checked, the foreign entity lines will be 'skipped'. If 'Yes' is checked, at least one foreign entity name, address, principal place of business, contribution amount and percentage of ownership is required. If no contribution was made and no ownership exists, enter zero in those fields. If 'No' is checked after information has been entered in the lines, the information will be deleted.
See Signing and Filing Forms for more information

PRINTED NAME AND TITLE: Enter the name and title of the person who will sign the filing. The signer must be the officer or employee of the registrant who is responsible for the accuracy of the information contained in the registration.

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

Addendums

LINE 10 – 14 ADDENDUM: If you need to enter additional information for lines 10 – 14, insert an addendum page and enter the appropriate information.

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

D. Lobbying Disclosure Quarterly Report Form (Form LD-2)

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Clerk of the House of Representatives
Legislative Resource Center
B-106 Cannon Building
Washington, DC 20515
http://lobbyingdisclosure.house.gov

Secretary of the Senate
Office of Public Records
232 Hart Building
Washington, DC 20510
http://www.senate.gov/lobby

LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) **- All Filers Are Required to Complete This Page**

1. Registrant Name ☑ Organization/Lobbying Firm ☐ Self Employed Individual

2. Address ☐ **Check if different than previously reported**

Address1 _____ Address2 _____

City _____ State _____ Zip Code _____ - _____ Country _____

3. Principal place of business (if different than line 2)

City _____ State _____ Zip Code _____ - _____ Country _____

4a. Contact Name b. Telephone Number ☐ **International Number** c. E-mail 5. Senate ID#

7. Client Name ☐ ***Self*** ☐ ***Check if client is a state or local government or instrumentality*** 6. House ID#

TYPE OF REPORT

8. Year _____ Q1 (1/1 - 3/31) ☐ Q2 (4/1 - 6/30) ☐ Q3 (7/1-9/30) ☐ Q4 (10/1 - 12/31) ☐

9. Check if this filing amends a previously filed version of this report ☐

10. Check if this is a Termination Report ☐ Termination Date _____ 11. No Lobbying Issue Activity ☐

INCOME OR EXPENSES - YOU MUST complete either Line 12 or Line 13

12. Lobbying

INCOME relating to lobbying activities for this reporting period was:

Less than $5,000 ☐

$5,000 or more ☐ $ _____

Provide a good faith estimate, rounded to the nearest $10,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).

13. Organizations

EXPENSE relating to lobbying activities for this reporting period were:

Less than $5,000 ☐

$5,000 or more ☐ $ _____

14. REPORTING Check box to indicate expense accounting method. See instructions for description of options.

☐ **Method A.** Reporting amounts using LDA definitions only

☐ **Method B.** Reporting amounts under section 6033(b)(8) of the Internal Revenue Code

☐ **Method C.** Reporting amounts under section 162(e) of the Internal Revenue Code

Signature ✓ _____ **Date** **12/30/2008**

Printed Name and Title _____

Registrant _____ Client Name _____

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the registrant engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code, provide information as requested. Add additional page(s) as needed.

15. General issue area code [Select] (one per page)

16. Specific lobbying issues

17. House(s) of Congress and Federal agencies ☐ Check if None

18. Name of each individual who acted as a lobbyist in this issue area

First Name	Last Name	Suffix	Covered Official Position (if applicable)	New
				☐
				☐
				☐
				☐
				☐
				☐
				☐
				☐
				☐

19. Interest of each foreign entity in the specific issues listed on line 16 above ☐ Check if None

Printed Name and Title _____

Registrant _____ Client Name _____

Information Update Page - Complete ONLY where registration information has changed.

20. Client new address

Address _____

City _____ State _____ Zip Code _____ - _____ Country _____

21. Client new principal place of business (if different than line 20)

City _____ State _____ Zip Code _____ - _____ Country _____

22. New General description of client's business or activities

LOBBYIST UPDATE

23. Name of each previously reported individual who is no longer expected to act as a lobbyist for the client

	First Name	Last Name	Suffix		First Name	Last Name	Suffix
1				3			
2				4			

ISSUE UPDATE

24. General lobbying issue that no longer pertains

AFFILIATED ORGANIZATIONS

25. Add the following affiliated organization(s)

Internet Address:

Name	Address Street Address City State/Province Zip Country	Principal Place of Business (city and state or country)
		City State Country City State Country

26. Name of each previously reported organization that is no longer affiliated with the registrant or client

1 _____ 2 _____ 3 _____

FOREIGN ENTITIES

27. Add the following foreign entities

Name	Address Street Address City State/Province Country	Principal place of business (city and state or country)	Amount of contribution for lobbying activities	Ownership percentage in client
		City State Country		%

28. Name of each previously reported foreign entity that no longer owns, or controls, or is affiliated with the registrant, client or affiliated organization

1 _____ 3 _____ 5 _____

2 _____ 4 _____ 6 _____

Printed Name and Title _____

LD-2 – Lobbying Report:

Registrant and Report Type Information

ALL FILERS MUST COMPLETE THE FIRST PAGE.

LINE 1. REGISTRANT NAME: Indicate the registrant's full legal name and any trade name. The name must be either the name of the lobbying firm or the name of the organization employing in-house lobbyists. Individual lobbyists do not file reports unless they are self-employed, in which case they file as firms, and indicate their own name and any trade or business names.

If the registrant is a self-employed lobbyist, click 'Individual' to switch to name fields, then select the preferred prefix and enter the first name and last name. If you used a middle name, initial or suffix when you filed, enter a middle name or initial with the first name and the suffix with the last name. For future electronic filing, it is important to enter the name exactly the same each time.

LINE 2. REGISTRANT ADDRESS: Enter the mailing address for correspondence. Mark the box if the address is different than previously reported. A full address is required to complete the filing.

Note: If you enter a new address and you do not check this box, the pre-populated templates will not be updated.

LINE 3. PRINCIPAL PLACE OF BUSINESS: Indicate the city, state and country of the registrant's principal place of business, if different from the address on line 2.

LINE 4. TELEPHONE NUMBER AND CONTACT NAME: Enter the telephone number, including area code. Please use the (222)222-2222 or 222-222-2222 format. A US telephone number is preferred. Select the preferred prefix (Mr., Ms. Mrs.), and enter the full name of the person to contact for any questions concerning the report. Enter the contact e-mail address. A telephone number, contact name and email address in valid format are required to complete the filing.

LINE 5. SENATE IDENTIFICATION NUMBER: This number, assigned by the Office of Public Records, is unique to each registrant-client relationship. Enter the number and use it in all correspondence pertaining to this relationship.

LINE 6. HOUSE IDENTIFICATION NUMBER: This 9 digit number, assigned by the Legislative Resource Center, is unique to each registrant-client relationship. Enter the nine-digit number and use it in all correspondence pertaining to this relationship. This number is required to complete the filing.

LINE 7. CLIENT NAME AND ADDRESS: For an organization lobbying on its own behalf, check the box labeled 'SELF'. When 'Self' is checked, the registrant name is inserted in the client name line.

For a lobbying firm or self-employed lobbyist lobbying on behalf of a client, DO NOT check "Self". Instead, state the name and address of the client. Lobbying firms must file a separate report for each client. The client address is required in this case.

LINE 8. YEAR: Enter the year and mark the appropriate box to indicate which quarterly reporting period is covered by this report. A separate report is required for each filing period. A valid four-digit year is required to be entered. (Electronic filing is only available for

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

reports and amendments for the year-end 2004 report and later. However, older reports or amendments may be prepared on the form and printed for filing by mail or hand delivery.)

LINE 9. AMENDED REPORT If amending a previously filed version of this report, place a mark in the box. Otherwise, leave blank.

LINE 10. TERMINATION REPORT: If lobbying for the client has ended and the registrant wishes to terminate this registration, mark the box and enter the date that lobbying activities ceased. Enter the date in mm/dd/yyyy format. It is not necessary to put '0' in front of a single digit day or month. The date must be in the filing period you have marked in Line 8. If the date entered is not in that period, an error message will be returned.

LINE 11. NO LOBBYING ISSUE ACTIVITY BOX: If there were no **lobbying issue** activity, check the box. Otherwise, file a complete report (page 2 and addendum pages as necessary) detailing the lobbying activity. If this box is checked, page 2 will no longer be displayed as it does not need to be part of the filing.

Note: You cannot check this box if you have entered information on an issue page. You must delete the entries before you can select No lobbying activity.

INCOME OR EXPENSE SUMMARY (YOU MUST COMPLETE EITHER LINE 12 OR LINE 13 AS INSTRUCTED): The form will only allow the appropriate section to be completed. Any attempt to check a box or enter an amount in the incorrect area will return an error message.

INCOME OR EXPENSE SUMMARY (ANSWER LINE 12 OR LINE 13 AS INSTRUCTED): You must complete Line 12 if lobbying on behalf of a client. You must complete line 13 if you are lobbying on your own behalf.

LINE 12. LOBBYING FIRMS (INCOME): Indicate whether income relating to lobbying activities on behalf of the client identified on line 7 was less than $5,000, or was $5,000 or more, during this reporting period by checking the appropriate box. If income was $5,000 or more, provide a good faith estimate of all lobbying related income from the client (include all payments to the registrant by any other entity for lobbying activities on behalf of the client). Round your estimate to the nearest $10,000. (One selection is required for lobbying firms.) Any amount under $5,000 entered in the line will return an error. (You must check one box or the other.)

LINE 13. ORGANIZATIONS (EXPENSES): Indicate whether expenses related to lobbying activities were less than $5,000, or were $5,000 or more, during the reporting period by checking the appropriate box. If expenses were $5,000 or more, provide a good faith estimate of all lobbying expenses (include all payments to third parties for lobbying activities) and round estimates to the nearest $10,000. (One selection is required for organizations lobbying on their own behalf.)

LINE 14. REPORTING METHODS: Mark the appropriate box to indicate the expense accounting method used to determine expenses. One selection is required if 'Self' is checked.

- Method A. Reporting amounts using LDA definitions only. This method is available to all organizations.

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

- Method C. Reporting amounts using Internal Revenue Code definitions of lobbying activities, of which the cost is not deductible pursuant to Section 162(e) of the IRC. This method is available to any registrant that is subject to Section 162(e) of the IRC. The amount disclosed must pertain to the quarterly period covered by this report. Grass-roots and state lobbying expenses **may not be subtracted from this amount**.
- Method B. Reporting amounts using Internal Revenue Code definitions as defined under Section 4911(d) of the IRC. This method is only available to a NON-PROFIT registrant that is required to report and does report under Section 6033(b)(8) of the IRC. The amount disclosed must pertain to the quarterly period covered by this report.

FIRST PAGE SIGNATURE: This signature line is used to apply your digital signature using the Senate password. The signer name will appear after you have completed the signing process. See Signing and Filing Forms for more information

PRINTED NAME AND TITLE: Enter the name and title of the person who will sign the filing. The signer must be the officer or employee of the registrant who is responsible for the accuracy of the information contained in the registration.

Lobbying Activity

LOBBYING ISSUE PAGE: The electronic form includes one lobbying issue page when it is opened. You may add additional issue pages as needed. Each new issue page is inserted at the end of the form and numbered automatically. You may also insert addendum pages for issue descriptions and additional lobbyist names related to each general lobbying issue. Each addendum page is inserted after the issue page you are adding it to and numbered automatically.

LINE 15. GENERAL LOBBYING ISSUE AREA: Select the applicable code(s) from the list below which accurately reflect all general areas in which the registrant engaged in lobbying during the reporting period, whether or not the issue area was previously disclosed. Complete a separate page for each code selected.

The select box lists both the code and description for convenience. The code is required and must be entered before supplementary pages can be added. See Lobbying Issue Codes for a complete list

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

Lobbying Issue Codes

The lobbying issue codes listed below can be selected using pull down lists for issue codes on the LD-1DS and LD-2DS forms.

Code	Description	Code	Description
ACC	Accounting	HOM	Homeland Security
ADV	Advertising	HOU	Housing
AER	Aerospace	IMM	Immigration
AGR	Agriculture	IND	Indian/Native American Affairs
ALC	Alcohol & Drug Abuse	INS	Insurance
ANI	Animals	INT	Intelligence and Surveillance
APP	Apparel/Clothing Industry/Textiles	LBR	Labor Issues/Antitrust/Workplace
ART	Arts/Entertainment	LAW	Law Enforcement/Crime/Criminal Justice
AUT	Automotive Industry	MAN	Manufacturing
AVI	Aviation/Aircraft/Airlines	MAR	Marine/Maritime/Boating/Fisheries
BAN	Banking	MIA	Media (Information/Publishing)
BNK	Bankruptcy	MED	Medical/Disease Research/Clinical Labs
BEV	Beverage Industry	MMM	Medicare/Medicaid
BUD	Budget/Appropriations	MON	Minting/Money/Gold Standard
CHM	Chemicals/Chemical Industry	NAT	Natural Resources
CIV	Civil Rights/Civil Liberties	PHA	Pharmacy
CAW	Clean Air & Water (Quality)	POS	Postal
CDT	Commodities (Big Ticket)	RRR	Railroads
COM	Communications/Broadcasting/Radio/TV	RES	Real Estate/Land Use/Conservation
CPI	Computer Industry	REL	Religion
CSP	Consumer Issues/Safety/Protection	RET	Retirement
CON	Constitution	ROD	Roads/Highway
CPT	Copyright/Patent/Trademark	SCI	Science/Technology
DEF	Defense	SMB	Small Business
DOC	District of Columbia	SPO	Sports/Athletics
DIS	Disaster Planning/Emergencies	TAR	Miscellaneous Tariff Bills
ECN	Economics/Economic Development	TAX	Taxation/Internal Revenue Code
EDU	Education	TEC	Telecommunications
ENG	Energy/Nuclear	TOB	Tobacco
ENV	Environmental/Superfund	TOR	Torts
FAM	Family Issues/Abortion/Adoption	TRD	Trade (Domestic & Foreign)
FIR	Firearms/Guns/Ammunition	TRA	Transportation
FIN	Financial Institutions/Investments/Securities	TOU	Travel/Tourism
FOO	Food Industry (Safety, Labeling, etc.)	TRU	Trucking/Shipping
FOR	Foreign Relations	URB	Urban Development/Municipalities
FUE	Fuel/Gas/Oil	UNM	Unemployment
GAM	Gaming/Gambling/Casino	UTI	Utilities

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

Code	Description	Code	Description
GOV	Government Issues	VET	Veterans
HCR	Health Issues	WAS	Waste (hazardous/solid/interstate/nuclear)
		WEL	Welfare

LINE 16 SPECIFIC LOBBYING ISSUES: For each general lobbying area, list the specific issues which were actually lobbied during the quarterly period. Include, for example, specific bills before Congress or specific executive branch actions. BE SPECIFIC. **Bill numbers alone do not satisfy the requirements for reporting on this line and restatement of the general issue code is insufficient.** Use the following format to describe legislation: BILL NO., BILL TITLE, AND DESCRIPTION OF THE SPECIFIC SECTION(S) OF INTEREST.

i.e., "H.R. 3610, Department of Defense Appropriations Act of 1996, Title 2, all provisions relating to environmental restoration."

For specific issues other than legislation, provide detailed descriptions of lobbying efforts. Do not leave line blank.

To maximize space, use a paragraph format. If needed, you can add addendum pages to enter more descriptions.

Line 16 Addendum Page

An addendum page can be inserted, if needed, for each Lobbying Issue Page to enter additional issue descriptions. This page will be added after the issue page by clicking the button on line 16.

LINE 17 CONTACTS: Identify the Houses of Congress and Federal agencies contacted by the registrant in connection with the general issue area during the reporting period. Disclose only the houses or agencies, such as "Senate," "House of Representatives," "Department of Agriculture," or "Executive Office of the President," rather than the individual office. If there were no contacts during the period, mark the box labeled "none." This line is required to complete the filing.

If there were no contacts during the period, mark the box labeled "none." If there were contacts, select the agency names from the list on the left and click the **Add** button. The name will be added to the list on the right. A full formatted list of selected names will be inserted in the text box for line 17 if the form is printed.

LINE 18. LOBBYISTS: List the name of each **lobbyist** who had **any activity** in this general issue area. Enter the first name, last name and suffix in separate fields.

If there are lobbyists not previously disclosed, enter the names of the new lobbyist(s) under each pertinent issue code, and mark the box labeled "New." If any new lobbyist listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within twenty years of first acting as a lobbyist for the client, identify that person as a "covered official," state the executive and/or legislative position in which the person served.

NOTE: The 20% threshold does not apply to this line and is only used for determining who

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may be considered a "lobbyist" for registration/updating purposes.

You may enter up to 9 lobbyist names on the issue page. If needed, you can add addendum pages to enter more names.

LINE 19. FOREIGN INTEREST: Describe the interest of each foreign entity in the specific issues listed on line 16. **If there are no foreign entity interests in this issue, check the box marked 'None'.** If 'None' is checked after data has been entered in this field, it will be deleted.

Lobbyist Names Addendum

An addendum page for line 18 can be inserted, if needed, for each Lobbying Issue Page to enter additional lobbyist names. This page will be added after the issue page, and any line 16 addendum pages, by clicking the button on line 18.

Information Update Page

This page is not automatically inserted and only needs to be completed when registration information has changed. To insert an update page, click the button at the top of the first page. The update page is inserted at the end of the form and numbered automatically.

LINE 20. CLIENT NEW ADDRESS: Enter complete address of the client if different than previously reported. No address may be entered here if 'Self' is check in the client name box.

LINE 21. CLIENT NEW PRINCIPAL PLACE OF BUSINESS: Indicate the client's new principal place of business (city, state and country), if different from line 20. No address may be entered here if 'Self' is check in the client name box.

LINE 22 NEW DESCRIPTION OF CLIENT'S BUSINESS OR ACTIVITIES: Provide a general description of the new business or activities of the client. No business description may be entered here if 'Self' is check in the client name box.

LINE 23 LOBBYIST DELETE: Enter the name of each individual who **no longer** acts as a lobbyist for the client identified on line 7. Enter the first name, last name and suffix in separate boxes. If there are no names to remove, skip to line 24.

LINE 24 GENERAL ISSUE AREA DELETE: Select the codes from the list on page 3 of the instructions of all previously reported issue areas that no longer apply and enter them on line 24. If there are no codes to be deleted, skip to line 25.

LINE 25. AFFILIATED ENTITY ADD: Identify the name, address, and principal place of business of any entity other than the client that contributes in excess of $5,000 toward the registrant's lobbying activities in a quarterly period **and** actively participates in the planning, supervision, or control of such activities.

The LDA amendments require disclosure of some affiliates that were heretofore undisclosed, and retained the requirement for listing those affiliates that contribute in excess of $5,000 and in whole or major part (20%) plans, supervises or controls such lobbying activities.

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

The LDA Amendments state in part: "No disclosure is required under paragraph (3)(B) if the organization that would be identified as affiliated with the client is listed on the client's publicly accessible Internet website as being a member of or contributor to the client unless the organization in whole or in major part plans, supervises or controls such lobbying activities." If a registrant relies upon the preceding sentence, the registrant must disclose the specific Internet address of the web page containing the information relied upon. If the registrant chooses to use the website, it is responsible for ensuring that the web page remains valid and accurate until a new LD-2 is filed with updated information. Please enter the URL underneath the address of any affiliates that apply.

LINE 26. AFFILIATED ENTITY DELETE: List the names of all previously reported organizations that no longer meet the disclosure requirement. If there are no organizations to remove, skip to line 27.

LINE 27. FOREIGN ENTITY ADD: Identify the name, address, principal place of business, amount of any contribution in excess of $5,000, and the approximate percentage of equitable ownership in the client of any foreign entity that:

- holds at least 20% equitable ownership in the client or any organization identified on line 13 of the registration or line 25 of this report; **or**
- directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, **or** subsidizes activities of the client or any organization identified on line 13 of the registration or line 25 of this report; **or**
- is an affiliate of the client or any organization identified on line 13 of the registration or line 25 of this report and has direct interest in the outcome of the lobbying activity.

LINE 28. FOREIGN ENTITY DELETE: List the names of all previously reported foreign entities that no longer meet the disclosure requirement. Leave this line blank if there are no deletions.

SIGNATURE: This line is populated automatically if you are signing the form electronically. If you are printing the form and this is the last page of the report, sign and date this page and type or print the signer's name and title. Only the last page of the report need be signed. Form LD-2DS must be signed and dated by the officer or employee of the registrant who is responsible for the accuracy of the information contained in the report.

Source: Website of the Clerk of the U.S. House of Representatives
http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/workingwithforms.htm

E. Lobbying Disclosure Semi-Annual Report Form (Form LD-203)

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LOBBYING CONTRIBUTION REPORT

Clerk of the House of Representatives • Legislative Resource Center • B-106 Cannon Building • Washington, DC 20515
Secretary of the Senate • Office of Public Records • 232 Hart Building • Washington, DC 20510

1. FILER TYPE AND NAME

Type:
☑ Organization ☐ Lobbyist

Organization Name:

2. IDENTIFICATION NUMBERS

House Registrant ID:

Senate Registrant ID:

3. REPORTING PERIOD

Year:
2008
☑ Mid-Year (January 1 - June 30)
☑ Year-End (July 1 - December 31)
☐ Amendment

4. CONTACT INFORMATION

Contact Name:

Email:

Phone:

Address:

USA

5. POLITICAL ACTION COMMITTEE NAMES

- Political Action Committee

6. CONTRIBUTIONS

☐ No Contributions

#1.

Contribution Type: **Contributor Name:** **Amount:** **Date:**

Payee: **Honoree:**

#2.

Contribution Type: **Contributor Name:** **Amount:** **Date:**

Payee: **Honoree:**

7. COMMENTS

8. CERTIFICATION AND SIGNATURE

☐ I certify that I have read and am familiar with the provisions of the Standing Rules of the Senate and the Standing rules of the House of Representatives relating to the provision of gifts and travel. I have not provided, requested or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress with knowledge that receipt of the gift would violate rule XXXV of the Standing Rules of the Senate or rule XXV of the Rules of the House of Representatives during this filing period.

F. Lobbying Disclosure Form for Federal Contractors and Grantees (Form LLL)

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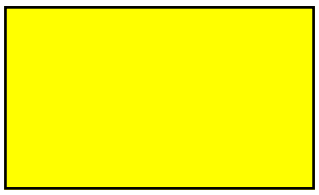
DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ **Prime** ☐ **Subawardee** Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)



INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employeeof a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

G. Comparison of Lobbying Activity Reportable Under Lobbying Disclosure Act and Non-Deductible Under Internal Revenue Code

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Comparison of Lobbying Activities Reportable Under Lobbying Disclosure Act and Non-Deductible Under Internal Revenue Code

Federal Lobbying Disclosure	Federal Tax Deductibility
Grassroots Lobbying: Grassroots efforts by themselves are technically not subject to disclosure. However, when coordinated with or undertaken to support reportable lobbying contacts, any grassroots efforts should be disclosed.	**Grassroots Lobbying:** Grassroots efforts are always non-deductible.
Administrative Lobbying: Virtually every contact is subject to disclosure where the purpose of the contact is to influence some action. Reportable costs include the time and overhead associated with such contacts and any supporting activities (*e.g.* research, preparatory meetings, etc.).	**Administrative Lobbying:** Contacts are non-deductible only if they are: (1) directly made to a "covered" executive branch official, and (2) made to influence the actions or positions of the official. Reportable costs include the time and overhead associated with such contacts and any supporting activities (*e.g.* research, preparatory meetings, etc.).
Legislative Lobbying: Any contact with a member of Congress or staffer is subject to disclosure where the contact regards a legislative, regulatory or other action. Reportable costs include the time and overhead associated with such contacts and any supporting activities (*e.g.* research, preparatory meetings, etc.). Some exceptions apply.	**Legislative Lobbying:** A contact with a member of Congress or staffer is non-deductible only if it refers to legislation or a specific legislative proposal (vs. a regulatory action) and expressly advocates a view on the legislation or proposal. The time and overhead costs expended in support of any such contacts are also non-deductible.
Testimony: Testimony does not have to be disclosed.	**Testimony:** Testimony which is compelled by subpoena or federal or state law is deductible; all other testimony is non-deductible.
***De Minimis* Rule:** An entity does not have to register under the LDA if it expects to spend **$12,500** or less over any **3-month** period on lobbying. Similarly, an outside lobbying firm does not have to register for a client if it does not expect its lobbying income from that client to exceed **$3,000** during any **3-month** period. If registered though, a report must be filed even if no lobbying has occurred during the relevant quarterly reporting period.	***De Minimis* Rule:** If an entity expends **$2,000** or less (not including overhead costs) during the tax year on lobbying, the full amount is deductible. In addition, an entity does not have to attribute its salary costs as non-deductible for employees who spend less than 5% of their time lobbying (but any amount of time spent directly lobbying is non-deductible).
State Lobbying: Only federal lobbying is covered. It is inappropriate to disclose state lobbying activities.	**State Lobbying:** State and federal lobbying activities are covered.
Expense Reporting Specificity: For expenses of more than $5,000, round to the nearest **$10,000.**	**Expense Reporting Specificity:** Precise reporting is required.

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H. House Travel Authorization Forms and Instructions

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☐ *Original* ☐ *Amendment*

U.S. House of Representatives
Committee on Ethics

SPONSOR POST-TRAVEL DISCLOSURE FORM

This form must be completed by an officer of any organization that served as the primary trip sponsor in providing travel expenses or reimbursement for travel expenses to House Members, officers, or employees under House Rule 25, clause 5. ***A completed copy of the form must be provided to each House Member, officer, or employee who participated on the trip within 10 days of their return.*** You must answer all questions, and check all boxes, on this form for your submission to comply with House rules and the Committee's travel regulations. Failure to comply with this requirement may result in the denial of future requests to sponsor trips and/or subject the current traveler to disciplinary action or a requirement to repay the trip expenses.

NOTE: Willful or knowing misrepresentations on this form may be subject to criminal prosecution pursuant to 18 U.S.C. § 1001.

1. Sponsor(s) (who paid for the trip): _____

   _____

2. Travel Destination(s): _____

3. Date of Departure: _____ Date of Return: _____

4. Name(s) of Traveler(s): _____
   (NOTE: You may list more than one traveler on a form only if all information is identical for each person listed.)

5. **Actual amount** of expenses paid on behalf of, or reimbursed to, each individual named in response to Question 4:

	Total *Transportation* Expenses	Total *Lodging* Expenses	Total *Meal* Expenses	*Other* Expenses (dollar amount per item and description)
Traveler				
Accompanying Relative				

6. All expenses connected to the trip were for actual costs incurred and not a *per diem* or lump sum payment. (*Signify statement is true by checking box*): ☐

. I certify that the information contained in this form is true, complete, and correct to the best of my knowledge.

Signature: _____

Name: _____ Title: _____

Organization: _____

I am an officer of the above-named organization *(signify statement is true by checking box)*: ☐

Address: _____

_____

Telephone number: _____

Email Address: _____

Committee staff may contact the above-named individual if additional information is required.

If you have questions regarding your completion of this form, please contact the Committee on Ethics at (202) 225-7103.

U.S. House of Representatives
Committee on Ethics

PRIMARY TRIP SPONSOR FORM

This form should be completed by private entities offering to provide travel or reimbursement for travel to House Members, officers, or employees under House Rule 25, clause 5. A completed copy of the form (and any attachments) should be provided to each invited House Member, officer, or employee, who will then forward it to the Committee together with a Traveler Form ***at least 30 days before the start date of the trip***. The trip sponsor should NOT submit the form directly to the Committee. The Committee Web site (ethics.house.gov) provides detailed instructions for filling out the form.

NOTE: Willful or knowing misrepresentations on this form may be subject to criminal prosecution pursuant to 18 U.S.C. § 1001. Failure to comply with the Committee's Travel Regulations may also lead to the denial of permission to sponsor future trips.

1. Sponsor (who will be paying for the trip): _____

   _____

2. I represent that the trip will not be financed (in whole or in part) by a registered federal lobbyist or foreign agent (s*ignify that the statement is true by checking box*): ☐

3. *Check only one:* I represent that:
   a. the primary trip sponsor has not accepted from any other source funds intended directly or indirectly to finance any aspect of the trip ☐ ***or***
   b. the trip is arranged without regard to congressional participation and the primary trip sponsor has accepted funds only from entities that will receive a tangible benefit in exchange for those funds ☐ ***or***.
   c. the primary trip sponsor has accepted funds from other source(s) intended directly or indirectly to finance all or part of this trip and has enclosed disclosure forms from each of those entities. ☐
   If "c" is checked, list the names of the additional sponsors: _____

   _____

4. Provide names and titles of **ALL** House Members and employees you are inviting. **For each House invitee, provide an explanation of why the individual was invited** (include additional pages if necessary):

   _____

   _____

5. Is travel being offered to an accompanying relative of the House invitee(s)? ☐ Yes ☐ No

6. Date of departure: _____ Date of return: _____

7. a. City of departure: _____
   b. Destination(s): _____
   c. City of return: _____

8. I represent that (*check one of the following*):
   a. The sponsor of the trip is an institution of higher education within the meaning of section 101 of the Higher Education Act of 1965: ☐ ***or***
   b. The sponsor of the trip does not retain or employ a registered federal lobbyist or foreign agent: ☐ ***or***
   c. The sponsor employs or retains a registered federal lobbyist or foreign agent, but the trip is for attendance at a one-day event *and* lobbyist/foreign agent involvement in planning, organizing, requesting, or arranging the trip was *de minimis* under the Committee's travel regulations. ☐

9. Check one of the following:
   a. I checked 8(a) or (b) above: ☐
   b. I checked 8(c) above but am not offering any lodging: ☐
   c. I checked 8(c) above and am offering lodging and meals for one night: ☐ ***or***
   d. I checked 8(c) above and am offering lodging and meals for two nights: ☐
   If "d" is checked, explain why the second night of lodging is warranted: _____

   _____

10. Attached is a detailed agenda of the activities the House invitees will be participating in during the travel (*i.e.*, an hourly description of planned activities for trip invitees) (*indicate agenda is attached by checking box*): ☐

11. Check one:
    a. I represent that a registered federal lobbyist or foreign agent will not accompany House Members or employees on any segment of the trip (s*ignify that the statement is true by checking box*): ☐ ***or***
    b. N/A – trip sponsor is a U.S. institution of higher education. ☐

12. For **each** sponsor required to submit a sponsor form, describe the sponsor's interest in the subject matter of the trip **and** its role in organizing and/or conducting the trip:

    _____

    _____

    _____

    _____

    _____

13. *Answer parts a and b. Answer part c if necessary.*
    a. Mode of travel: Air ☐ Rail ☐ Bus ☐ Car ☐ Other ☐ (Specify: _____)
    b. Class of travel: Coach ☐ Business ☐ First ☐ Charter ☐ Other ☐ (Specify: _____)
    c. If travel will be first class or by chartered or private aircraft, explain why such travel is warranted:

       _____

       _____

14. I represent that the expenditures related to local area travel during the trip will be unrelated to personal or recreational activities of the invitee(s). (s*ignify that the statement is true by checking box*): ☐

15. I represent that either (*check one of the following*):
    a. The trip involves an event that is arranged or organized *without regard* to congressional participation and that meals provided to congressional participants are similar to those provided to or purchased by other event attendees: ☐ ***or***
    b. The trip involves events that are arranged specifically *with regard* to congressional participation: ☐

       If "b" is checked:

       1) Detail the cost per day of meals (approximate cost may be provided): _____

          _____

       2) Provide reason for selecting the location of the event or trip: _____

          _____

          _____

          _____

16. Name, nightly cost, and reasons for selecting each hotel or other lodging facility:

    Hotel name: _____ City:_____ Cost per night: _____

    Reason(s) for selecting: _____

    Hotel name: _____ City:_____ Cost per night: _____

    Reason(s) for selecting: _____

    Hotel name: _____ City:_____ Cost per night: _____

    Reason(s) for selecting: _____

17. I represent that all expenses connected to the trip will be for actual costs incurred and not a per diem or lump sum payment. (*signify that the statement is true by checking box*): ☐

18. TOTAL EXPENSES FOR EACH PARTICIPANT:

☐ actual amounts ☐ good faith estimates	Total *Transportation* Expenses per Participant	Total *Lodging* Expenses per Participant	Total *Meal* Expenses per Participant
For each Member, Officer, or employee			
For each accompanying relative			

	Other Expenses (dollar amount per item)	Identify Specific Nature of "Other" Expenses (*e.g.*, taxi, parking, registration fee, etc.)
For each Member, Officer, or employee		
For each accompanying relative		

NOTE: Willful or knowing misrepresentations on this form may be subject to criminal prosecution pursuant to 18 U.S.C. § 1001.

19. Check one:
    a. I certify that I am an officer of the organization listed below. ☐ ***or***
    b. N/A – sponsor is an individual or a U.S. institution of higher education. ☐

20. I certify that I am not a registered federal lobbyist or foreign agent for any sponsor of this trip. ☐

21. I certify by my signature that the information contained in this form is true, complete, and correct to the best of my knowledge.

    Signature: _____

    Name: _____

    Title: _____

    Organization: _____

    Address: _____

    Telephone number: _____

    Email address: _____

If there are any questions regarding this form please contact the Committee at the following address:

Committee on Ethics
U.S. House of Representatives
1015 Longworth House Office Building
Washington, DC 20515
(202) 225-7103 (phone)
(202) 225-7392 (general fax)

☐ ***Original*** ☐ ***Amendment***

U.S. House of Representatives
Committee on Ethics

MEMBER / OFFICER POST-TRAVEL DISCLOSURE FORM

This form is for disclosing the receipt of travel expenses from a private source for travel taken in connection with a Member or officer's official duties. This form does not eliminate the need to report privately-funded travel on the Member or officer's annual Financial Disclosure Statement. In accordance with House Rule 25, clause 5, you must **complete this form and file it with the Clerk of the House, 135 Cannon House Office Building, within 15 days after travel is completed**. Please **do not** file this form with the Committee on Ethics.

NOTE: Willful or knowing misrepresentations on this form may be subject to criminal prosecution pursuant to 18 U.S.C. § 1001.

1. Name of Traveler: _____

2. a. Name of accompanying relative: _____ ***or*** None ☐
   b. Relationship to Traveler: ☐ Spouse ☐ Child ☐ Other (specify): _____

3. a. Dates of departure and return: Departure: _____ Return: _____
   b. Dates at personal expense: _____ ***or*** None ☐

4. Departure city: _____ Destination: _____ Return city: _____

5. Sponsor(s) (who paid for the trip): _____

6. Describe meetings and events attended (attach additional pages if necessary): _____

   _____

7. Attached to this form are EACH of the following (*signify that each item is attached by checking the corresponding box*):
   a. ☐ a completed Sponsor Post-Travel Disclosure Form;
   b. ☐ the Primary Trip Sponsor Form completed by the trip sponsor prior to the trip, including all attachments and Grantmaking or Non-Grantmaking Sponsor Forms;
   c. ☐ page 2 of the completed Traveler Form submitted by the Member or officer; ***and***
   d. ☐ the letter from the Committee on Ethics approving my participation on this trip.

8. a. I represent that I participated in each of the activities reflected in the sponsor's agenda. (*Signify that statement is true by checking box*): ☐
   b. If not, explain: _____

   _____

I certify that the information contained in this form is true, complete, and correct to the best of my knowledge. I have determined that all of the expenses on the attached Sponsor Post-Travel Disclosure Form were necessary and that the travel was in connection with my duties as a Member or officer of the U.S. House of Representatives and would not create the appearance that I am using public office for private gain.

SIGNATURE OF MEMBER: _____

DATE: _____

U.S. House of Representatives
Committee on Ethics

INSTRUCTIONS FOR COMPLETING THE PRIMARY TRIP SPONSOR FORM

NOTE: The notation "§ __" indicates a relevant portion of the Committee's Travel Regulations, issued December 27, 2012. The full text of the Travel Regulations is available on the Committee's Web site, http://ethics.house.gov. In addition to the cited sections, many key terms are defined in § 104 of the Regulations.

1. *Sponsor (who will be paying for the trip):* Fill in the name of the person, organization, or other entity that is primarily responsible for funding, planning, organizing, or participating in the trip. Entities that provide funding to the Primary Trip Sponsor may be required to fill out a Grantmaking Sponsor Form or Non-Grantmaking Sponsor Form, as appropriate. Non-Grantmaking Sponsors who receive a tangible benefit in exchange for supporting a trip arranged without regard to congressional participation are not required to complete a Non-Grantmaking Sponsor Form. (§ 200 & see § 104(e), (i), (s), (u), (z) & (ee)).

2. *I represent that the trip will not be financed (in whole or in part) by a registered federal lobbyist or foreign agent:* House Members and staff may not accept travel funded by a registered federal lobbyist or foreign agent, even when the lobbyist or foreign agent will be reimbursed by a client or employer. Check the box to indicate that no part of the trip will be paid for by such individuals. (§ 201.2)

3. *Check one: [a. primary trip sponsor has not accepted outside funds intended for the trip or b. has accepted funds from entities that receive a tangible benefit or c has accepted such outside funds but has enclosed appropriate disclosure forms]:* A primary trip sponsor that is using only its own funds to pay for the trip, and all events taking place during the trip, should mark choice a. Also mark choice a if funds were not solicited, directly or indirectly, or offered by a private source with regard to this trip or congressional travel in general. A primary trip sponsor that has accepted funds from another private source that were solicited or offered directly or indirectly to pay for (1) all or part of this trip, (2) an event or activity that will occur during this trip, or (3) congressional travel in general should mark choice b or c, as appropriate. Mark choice b if both (1) the trip or event for which funding was provided was arranged without regard to congressional participation ***and*** (2) each such donor has been or will be provided a tangible benefit in exchange for its donation. Mark choice c if you are providing completed disclosure forms from each such outside source (grantmaking or non-grantmaking sponsors), and list the names of those grantmaking or non-grantmaking sponsors on the line below choice c. (§§ 202 - 202.4 & see § 104(e), (i), (s), (u), (z) & (ee))

4. *Provide names and titles of ALL House Members and employees you are inviting. For each House invitee, provide an explanation of why the individual was invited:* You must list <u>every</u> House Member and employee who is invited on the trip, together with your reason for inviting that individual. Members and House staff may accept privately-sponsored travel only when related to their official duties. The explanation should demonstrate a connection between the trip and each invitee's official duties. (§§ 401(b) & 503.1(a))

5. *Is travel being offered to an accompanying relative of the House invitee(s)?* Check yes or no. House Rules permit Members and House staff to accept travel benefits for one accompanying relative if offered by the trip sponsor. (§ 403)

6. *Date of departure & Date of return:* State the dates of departure and return. Regulation §§ 303 - 303.2 discuss the maximum permitted duration of a trip.

7. *City of departure/Destination(s)/City of return:* State the city from which the traveler will be departing, the city and state or foreign country to which the traveler will be going, and the city to which the traveler will be returning. Include multiple destinations if there will be more than one. Do not list the names of airports, times of flights, or cities where travelers will merely have an airport layover and will not engage in any substantive activity (this information should be included in the attached detailed agenda). As a general rule, destinations generally must be more than 35 miles from the U.S. Capitol and a Member's closest district office (§ 302).

8. *I represent that (check one of the following):* Check only one box in response to this question. "Institutions of higher education" generally include accredited public and private colleges or trade schools located in the U.S. and its territories (§ 104(ff)); such entities should check box a, regardless of whether they employ or retain a registered federal lobbyist (see § 204.3). Entities other than institutions of higher education that do not employ or retain a registered federal lobbyist or foreign agent should check box b. Entities other than U.S. institutions of higher education that do employ or retain a registered federal lobbyist or foreign agent should check box c. It does not matter for purposes of the travel rules whether the lobbyist is in-house at the organization or retained from an outside firm. Such entities may sponsor travel only for one-day events (that is, all officially-connected activity must take place on a single calendar day) (§ 303.2), and lobbyist involvement in the trip must be *de minimis*, as defined by § 204.1. It is permissible for a registered federal lobbyist to sit on the board of a sponsoring entity, provided the individual does not lobby for any sponsoring entity; in such a case, if the sponsoring entity does not have any individual registered to lobby on its behalf, it can mark choice b. (§ 204).

9. *Check one of the following [with choices a-d]:* If you answered a or b to Question 8, check box a in response to Question 9. If you answered c to Question 8, check box b, c, or d, as appropriate, depending on whether you are offering no lodging (choice b), lodging for one night (choice c), or lodging for two nights (choice d). For travel to one-day events sponsored by an entity that retains or employs a registered federal lobbyist or foreign agent, lodging and meals generally may be provided only for one night. However, two nights may be authorized by the Committee in accordance with the factors set forth in Committee Regulation § 303.2(d). Thus, if you check box d, you must also give an explanation as to why lodging for a second night is warranted.

10. *Attached is a detailed agenda of the activities the House invitees will be participating in during the travel.* The agenda should be a detailed, hour-by-hour agenda, including the departure and return times of each invitee. Include the names of speakers and the subjects of briefings. The agenda should also include information regarding the expected arrival and departure times of the traveler to the trip destination, and time spent on local travel between points at the destination itself. The agenda must contain a substantial amount of officially-connected activity each day. Travel will not be approved if the agenda includes an excessive amount of either unscheduled time or opportunities for recreational activities, even if such activities are at the personal expense of the invitees. (§§ 303.3 & 503.1(b))

11. *Check one: No lobbyist or institution of higher education:* When a trip is sponsored by an entity other than a U.S. institution of higher education (generally a U.S. college or university), House rules prohibit Members and employees from being accompanied by registered federal lobbyists or foreign agents while traveling to or from the trip destination. (§ 204.2) This rule does not prohibit lobbyist or foreign agent participation in briefings or meetings that occur at the destination. (see § 104(y)) Representatives of U.S. colleges, universities, or trade schools should check box b, that the question is not applicable, as they are not subject to this limitation. (§ 204.3) All other trip sponsors must check box a to indicate that no registered federal lobbyist or foreign agent will accompany House Members and staff during the travel portions of the trip.

12. *For <u>each</u> sponsor required to submit a sponsor form, describe the sponsor's interest in the subject matter of the trip <u>and</u> its role in organizing and/or conducting the trip:* The primary trip sponsor should be the entity primarily responsible for organizing the trip. There may be more than one primary trip sponsor, if multiple entities take an active role in paying for and organizing the trip. More often there will be one primary trip sponsor and one or more grantmaking or non-grantmaking sponsors, each of which must submit the relevant sponsor form. (§ 200.1) However, no form is required from a non-grantmaking sponsor that will receive a tangible benefit in exchange for its donation to an event arranged without regard to congressional participation. The primary trip sponsor should indicate in response to Question 12 its own interest in the subject matter of the trip and its role in planning, arranging, organizing, or participating in the trip (§ 202.1(a)), and should make similar statements with regard to each grantmaking or non-grantmaking sponsor for which it is submitting a sponsor form for the trip. (see §§ 202 – 202.4).

13. You must answer parts a and b of Question 13. Answer part c only if you are offering charter or first class travel.

    13(a) *Mode of travel (air, rail, bus, etc.):* Indicate whether travel will be by air, rail, bus, car, or other means. If "other" is selected, also indicate what the mode of travel will be.

    13(b) *Class of travel:* For air, rail, or bus travel, indicate what class of travel will be provided, such as coach or business class, or whether the transportation will be by chartered aircraft or bus. If "other" is selected, also indicate what the class of travel will be. The regulations generally permit only coach or business class travel. (§ 305.1)

    13(c) *If travel will be by first class or by chartered or private aircraft, explain why such travel is warranted.* Travel on private aircraft (*i.e.*, an aircraft operated or paid for by a carrier not licensed by the Federal Aviation Administration to operate for compensation or hire) is allowed only in very limited circumstances. (§ 305.1). Likewise, travel in first class is permissible only in limited circumstances. If travel will be on private or chartered aircraft, provide an explanation as to why such travel is necessary. If travel will be in first class, explain why such travel is permissible under § 305.1.

14. *I represent that the expenditures related to local area travel during the trip will be unrelated to personal or recreational activities of the invitee(s):* While Members and staff may accept local transportation necessary in facilitating their participation in officially-connected aspects of a trip, they may not accept local transportation in connection with recreation or entertainment. Check the box to indicate that you will not be reimbursing for any local travel that is unrelated to the official purpose of the trip.

15. *I represent that either . . . (regarding congressional participation):*

As explained more fully below, if the trip was arranged without regard to congressional participation, mark choice a. If the trip was arranged with regard to congressional participation, mark choice 15(b) and complete subsections (b)(1) and (b)(2) (and leave box 15(a) blank).

15(a): For events that are arranged or organized without regard to congressional participation (*e.g.*, annual meetings of business or trade associations), Members or employees may accept the meals that are provided for or are available to all other attendees as part of the event. (§ 307.1) Such an event is one that would take place regardless of the participation or attendance of House Members or employees. The location of an event that was organized without regard to congressional participation is also presumptively reasonable. (§ 302.1)

15(b)(1): For events put on specifically for House Members or staff, or contingent on their participation or attendance, the trip sponsor must indicate at 15(b)(1) the daily costs of the meals that will be provided to each participant. These meal expenses must be "reasonable" in accordance with Committee regulations. (§ 307) For events arranged without regard to congressional participation, meal expenses are presumptively reasonable, provided the House travelers will be receiving the same meals that are provided for or are available to all other attendees. (§ 307.1)

15(b)(2): For travel arranged with regard to congressional participation, the destination of a trip must be related to its purpose, and the trip sponsor must indicate at 15(b)(2) the reason the sponsor selected the particular destination for the trip. (§ 302.1) The location of an event that was organized without regard to congressional participation (*e.g.*, annual meetings of business or trade associations) is presumptively reasonable. (§ 302.2)

16. *Name, nightly cost, and reasons for selecting each hotel or other lodging facility:* For travel arranged with regard to congressional participation, the trip sponsor must also justify the cost and reason for selecting each hotel or other lodging facility at which travelers will be staying. Include the name, city, and cost per night of each hotel or lodging facility at which Members or staff will be staying during the trip. Also provide the reasons for selecting each particular hotel (see § 306). Make as many entries as are necessary to include all lodging facilities that will be used on the trip. Attach additional sheets if needed. For travel or an event arranged without regard to congressional participation, (*e.g.*, annual meetings of business or trade associations), an entry such as "location of annual trade association meeting" is sufficient, as long as the House travelers are provided the same lodging as is available to all other event attendees. On any trip, the trip sponsor should not pay for a "package" that includes recreational or entertainment activities. However, Members and staff may generally use a pool or gym facilities that are offered free of charge to all hotel guests.

17. *I represent that all expenses connected to the trip will be for actual costs incurred not a per diem or lump sum payment:* Members and staff may not accept a lump sum payment based on an estimate of anticipated or incidental expenses. The trip sponsor must check yes to this question, indicating that only actual, necessary travel expenses will be paid or reimbursed by the sponsor, and no lump sum payment will be provided for any aspect of the trip. (see § 309(c))

18. *Total Expenses for Each Participant:* Indicate whether the figures provided are actual amounts or good faith estimates by checking the appropriate box. All trip expenses should be included. Expenses other than those for transportation, lodging, and meals must be individually listed and described. (see § 309) When the "other" column includes more than one item, provide the cost of each item separately (*e.g.*, "Ground Transportation $30; tote bag $9"). A conference fee that will be paid by other, non-House attendees (but will be waived by the trip sponsor for House travelers) should be indicated as an "other expense." (§§ 308 & 308.1) Expenses other than necessary expenses (see §§ 304 & 104(r)) must comply with House gift rule.

19. *Certification of officer status:* For trips sponsored by a corporation or other entity, the form must be signed by an officer of that entity. Check box a to indicate that the signatory of the form is an officer of the sponsoring entity, or box b to indicate that no such certification is required because the sponsor is either a U.S. institution of higher education or an individual. (§ 503(a))

20. *Certification of non-lobbyist status:* The Primary Trip Sponsor Form may not be signed by a registered federal lobbyist or foreign agent. The signatory on the form must check yes to this question, indicating that the individual is neither a registered federal lobbyist nor foreign agent, either for the sponsor or any other organization or entity. (§ 503(b))

21. *Certification Information:* Self-explanatory. All lines must be completed.

THE TRIP SPONSOR SHOULD PROVIDE A COPY OF THE COMPLETED FORM, INCLUDING ALL ATTACHMENTS, TO EACH HOUSE MEMBER OR EMPLOYEE INVITED ON THE TRIP.

REQUESTS MUST BE RECEIVED BY THE COMMITTEE FROM THE TRAVELERS NO LESS THAN 30 DAYS BEFORE THE DEPARTURE DATE OF THE TRIP, OR APPROVAL WILL NOT BE GRANTED.

Note: Within 10 days of the return from travel, the Primary Trip Sponsor must provide each traveler with a completed Sponsor Post-Travel Disclosure form detailing the expenses actually incurred on the trip by or for that traveler. (§ 603.1)

U.S. House of Representatives
Committee on Ethics

INSTRUCTIONS FOR COMPLETING THE TRAVELER FORM

NOTE: The notation "§ __" indicates a relevant portion of the Committee's Travel Regulations, issued December 27, 2012. The full text of the Travel Regulations is available on the Committee's Web site, http://ethics.house.gov. In addition to the cited sections, many key terms are defined in § 104 of the Regulations.

First Page:

- *Name of Traveler:* Fill in the name of the House Member or employee who will be going on the trip.

- *Certification Information:* The form must be signed to attest to the truth of the information it contains. The signatory can be either the person who will be traveling or someone who completed the form on that person's behalf. If the person who signed the form is not the traveler, indicate the signatory's name on the second line ("Name of Signatory (if other than traveler)"). Staff travelers must also indicate the name of their employing Member or committee on the third line. All filers should provide the office address, telephone number, and email address for the person to be contacted with questions about the form. Note that statements made on the form are subject to criminal penalties under the False Statements Act (18 U.S.C. § 1001). (§ 404.1)

- *"Check this box if . . .":* Trips that are sponsored by a media outlet, such as a television or radio station or program, to enable the traveler to participate on a program for that entity are not subject to the 30-day pre-trip filing deadline. Check this box only if the trip for which the traveler is seeking approval is such a trip. (§ 501.1) This exception also applies to a staffer who is staffing their employing Member for the Member's media appearance.

Note: You must submit this page of your form to the Ethics Committee as part of your request for approval to travel, but you are <u>not</u> required to submit it to the Clerk as part of the post-travel disclosure.

Second Page:

1. *Name of Traveler:* Fill in the name of the House Member or employee who will be going on the trip. This should be the same name used in response to this question on the first page of the form.

2. *Sponsor(s) (who will be paying for the trip):* Fill in the names of each person, organization, or other entity contributing funds or in-kind support towards the trip. This information should match the information on the Primary Trip Sponsor Form, and any accompanying Grantmaking or Non-Grantmaking Sponsor Forms (if applicable), you will be submitting together with your Traveler Form.

3. *Travel destination(s):* Identify the city and state or country you will be visiting. Include multiple destinations, if appropriate. Do not list airports or cities in which you will merely have a travel layover. Do not list your cities of departure and return, only your destination(s). Do not use the airport code; print the full name of the city and state (or country). As a general rule, destinations generally must be more than 35 miles from the U.S. Capitol and (for personal office staff and Members), more than 35 miles from the Member's closest district office. (§ 302)

4. *Date of departure and Date of return:* List the days on which you will be departing on the trip and returning from the trip, including any dates at your personal expense. If you will have days at your personal expense for personal activity, list those dates on line 4(b). Note that the days at personal expense must be fewer (or at most equal to) the days you will be participating in official activity (minus travel time), unless you pay your own return transportation costs. (§ 310) If you plan to pay your own return transportation costs, please indicate that on the form. (§ 310(f)) Regulation §§ 303 - 303.2 discuss the maximum permitted duration of a trip, which depends on the type of trip sponsor.

5. *Will you be accompanied by a relative at the sponsor's expense:* House Members and staff may accept travel expenses for one accompanying relative, if an unsolicited offer was made offered by the trip sponsor. (§ 403) If the trip sponsor will be paying for a relative to accompany you, answer yes to Question 5(a), and provide details about that person in part 5(b). If a relative will accompany you at your own expense (rather than at the trip sponsor's expense), answer no to Question 5(a). Such accompaniment must be approved by the trip sponsor. (§ 403.2(b)) Reg. § 104(x) defines permissible relatives as being at least 18 years of age and related to the traveler as spouse, parent, child or step-child, grandchild, sibling or half-sibling, father-in-law, or mother-in-law. Financé/es and unmarried significant others are not relatives for purposes of the travel rules. You may write in separately to the Committee to seek permission to be accompanied by a non-relative at the sponsor's expense (provided the trip sponsor made an unsolicited offer to pay those expenses). (§ 403.2)

6. *Did the trip sponsor answer "yes" to Question 9(d) on the Primary Trip Sponsor Form (i.e., travel is sponsored by an entity that employs a registered federal lobbyist or foreign agent and you are requesting lodging for two nights)*: When a trip is sponsored by an entity that employs or retains a federal lobbyist or foreign agent, the Regulations generally permit the acceptance of lodging for only a single night. However, the Committee can authorize lodging for a second night on a case-by-case basis. (§ 303.2) Therefore, if the primary trip sponsor answered yes to Question 9(d) on the Primary Trip Sponsor Form (indicating the trip sponsor employs a lobbyist and is requesting lodging for two nights), you should answer yes to Question 6(a) and complete Question 6(b) to explain why the second night is warranted. If the trip sponsor checked 9(a), 9(b), or 9(c) in response to Question 9 on the Primary Trip Sponsor Form (indicating the trip sponsor is a college, or does not employ a lobbyist, or employs a lobbyist but is seeking lodging for only one night), you should answer "no" to Question 6(a) and leave Question 6(b) blank or put "N/A." (§ 303.2)

7. *Primary Trip Sponsor Form is attached, including agenda, invitee list, and any other attachments and contributing sponsor forms:* You must include a Primary Trip Sponsor Form (completed by the primary trip sponsor) with your request, including any attachments

to that form. You must also include completed Grantmaking or Non-Grantmaking Sponsor Forms, if there are any for your trip. Check the Primary Trip Sponsor Form and attachments before filing to ensure that they are complete and accurate. For example, make sure that your name is included on the invitee list and that the agenda gives your personal detailed, hour-by-hour agenda of the specific activities in which you will be participating, including your departure and arrival times. Check the box if you have included all required sponsor information. See § 503.1(b) for a description of the required itinerary.

8. *Explain why participation in the trip is connected to the traveler's official or representational duties*: Travel must have a connection to the official duties of the particular Member or employee who will be traveling. (§§ 301 & 401.1(a)) Provide an explanation as to why this trip relates to the traveler's official House duties or area of expertise, as opposed to those of another House employee or Member. As a general matter, the explanation for a House employee should include the individual's job title and explain how the activities on the itinerary relate to the duties of that position. For staff travelers, citing how the subject matter of the trip is related to the Member's duties (as opposed to the staffer's) is not sufficient. Section 301 of the Regulations lists examples of permitted officially-connected purposes, as well as impermissible purposes.

9. *Is the traveler aware of any registered federal lobbyists or foreign agents involved in planning, organizing, requesting, or arranging the trip?* The involvement of registered federal lobbyists or foreign agents in planning, organizing, or arranging a trip must be *de minimis*, which means minimal or negligible. (§§ 204.1 & 104(d)) If you are aware of the involvement of a registered federal lobbyist or foreign agent in planning, organizing, or arranging any aspect of the trip (even if *de minimis*), answer "yes" to Question 9. If you are not aware of any such involvement, answer "no" to Question 9.

10. *For Staff Travelers: To be completed by your employing Member:* Staff travel must be authorized in advance by the individual's employing Member. The Member must sign on the appropriate line to indicate that such approval has been given. The signatory in this section must be a Member of the House. The specific explanations of who is an employing Member is contained at Regulation §§ 402 – 402.3. Note that for staff of a committee, the employing Member is either the Chairman or Ranking Member of the full committee, as appropriate. (§ 402.2)

To request approval for a proposed trip, you must submit to the Ethics Committee
both pages of the completed Traveler Form, together with a completed Primary Trip Sponsor Form
and any attachments and Grantmaking or Non-Grantmaking Sponsor forms.
You must receive explicit approval from the Committee before you depart on a trip.

Your submission may be faxed to the Committee at (202) 225-7392, sent or delivered to the Committee at 1015 Longworth, or e-mailed to travel.requests@mail.house.gov

NOTE: REQUESTS MUST BE RECEIVED BY THE COMMITTEE NO LESS THAN 30 DAYS BEFORE THE DEPARTURE DATE OF THE TRIP, OR APPROVAL WILL NOT BE GRANTED.

Final Notes:

- You should keep a photocopy of your completed Traveler Form, plus the Primary Trip Sponsor Form and any attachments and supplemental sponsor forms (if any), as well as the letter from the Ethics Committee approving your travel, as you will have to submit them to the Clerk as part of your post-travel disclosure. (§ 602) In addition, Travel Regulation § 404(d) requires you to keep a copy of all request forms and supporting paperwork for three subsequent Congresses from the date of travel.

- You should let the Committee know if there are any alterations to your trip plans (such as date changes, or adding or removing an accompanying relative) after your initial submission. (404.2)

- You should let the Committee know if the trip is canceled or you decide not to go. (§ 404.3) No post-travel disclosure is required in those circumstances.

- You should not go on a trip unless you have received written approval from the Committee that you specifically have been approved to go on a particular trip. Failure to receive pre-approval from the Committee will likely result in the requirement that the trip expenses be repaid to the trip sponsor by the Member or employing Member out of the Member's personal or (possibly) principal campaign committee funds. (§ 505) Official funds (MRA or committee funds) generally will not be available to pay the expenses.

☐ ***Original*** ☐ ***Amendment***

U.S. House of Representatives
Committee on Ethics

EMPLOYEE POST-TRAVEL DISCLOSURE FORM

This form is for disclosing the receipt of travel expenses from private sources for travel taken in connection with official duties. This form does not eliminate the need to report privately-funded travel on the annual Financial Disclosure Statements of those employees required to file them. In accordance with House Rule 25, clause 5, **you must complete this form and file it with the Clerk of the House, 135 Cannon House Office Building, within 15 days after travel is completed**. Please **do not** file this form with the Committee on Ethics.

NOTE: Willful or knowing misrepresentations on this form may be subject to criminal prosecution pursuant to 18 U.S.C. § 1001.

1. Name of Traveler: _____

2. a. Name of accompanying relative: _____ ***or*** None ☐
   b. Relationship to Traveler: ☐ Spouse ☐ Child ☐ Other (specify): _____

3. a. Dates of departure and return: Departure: _____ Return: _____
   b. Dates at personal expense (if any): _____ ***or*** None ☐

4. Departure city: _____ Destination: _____ Return city: _____

5. Sponsor(s) (who paid for the trip): _____

6. Describe meetings and events attended: _____

   _____

7. Attached to this form are EACH of the following (*signify that each item is attached by checking the corresponding box*):
   a. ☐ a completed Sponsor Post-Travel Disclosure Form;
   b. ☐ the Primary Trip Sponsor Form completed by the trip sponsor prior to the trip, including all attachments and Grantmaking or Non-Grantmaking Sponsor Forms;
   c. ☐ page 2 of the completed Traveler Form submitted by the employee; ***and***
   d. ☐ the letter from the Committee on Ethics approving my participation on this trip.

8. a. I represent that I participated in each of the activities reflected in the attached sponsor's agenda. (*Signify that statement is true by checking box*): ☐
   b. If not, explain: _____

   _____

I certify that the information contained on this form is true, complete, and correct to the best of my knowledge.

SIGNATURE OF TRAVELER: _____ DATE: _____

I authorized this travel in advance. I have determined that all of the expenses listed on the attached Sponsor Post-Travel Disclosure form were necessary and that the travel was in connection with the employee's official duties and would not create the appearance that the employee is using public office for private gain.

NAME OF SUPERVISING MEMBER: _____ DATE: _____

SIGNATURE OF SUPERVISING MEMBER: _____

U.S. House of Representatives
Committee on Ethics

TRAVELER FORM

This form should be completed by House Members, officers, or employees seeking Committee approval of privately-sponsored travel or reimbursement for travel under House Rule 25, clause 5. The completed form should be submitted directly to the Committee by each invited House Member, officer, or employee, together with the completed and signed trip sponsor form(s) and any attachments. A copy of this form, minus this initial page, will be made available for public inspection. ***Form (and any attachments) may be faxed to the Committee at (202) 225-7392, sent or delivered to the Committee at 1015 Longworth, or e-mailed to travel.requests@mail.house.gov.***

YOUR COMPLETED REQUEST MUST BE SUBMITTED TO THE COMMITTEE NO LESS THAN 30 DAYS BEFORE YOUR PROPOSED DEPARTURE DATE. Absent exceptional circumstances, permission will not be granted for requests received less than 30 days before the trip commences. You must receive explicit approval from the Committee before you depart on this trip.

Name of Traveler: _____

NOTE: Willful or knowing misrepresentations on this form may be subject to criminal prosecution pursuant to 18 U.S.C. § 1001.

I certify that the information contained on both pages of this form is true, complete, and correct to the best of my knowledge.

Signature: _____

Name of signatory (if other than traveler): _____

For staff, name of employing Member or committee: _____

Office address: _____

Telephone number: _____

Email address of contact person: _____

☐ Check this box if the sponsoring entity is a media outlet, the purpose of the trip is to make a media appearance sponsored by that entity, and these forms are being submitted to the Committee less than 30 days before the trip departure date.

NOTE: You must complete all of the contact information fields above, as Committee staff may need to contact you if additional information is required.

KEEP A COPY OF THIS FORM. Page 2 (but not this page) must be submitted to the Clerk as part of the post-travel disclosure required by House Rule 25. Travel Regulation § 404(d) also requires you to keep a copy of all request forms and supporting paperwork for three subsequent Congresses from the date of travel.

If there are any questions regarding this form please contact the Committee:

Committee on Ethics
1015 Longworth House Office Building
Washington, DC 20515
(202) 225-7103 (phone)
(202) 225-7392 (fax)
Travel email: travel.requests@mail.house.gov

U.S. House of Representatives
Committee on Ethics

TRAVELER FORM

1. Name of Traveler: _____

2. Sponsor(s) (who will be paying for the trip): _____

   _____

3. Travel destination(s): _____

4. a. Date of departure _____ Date of return: _____
   b. Will you be extending the trip at your personal expense? ☐ Yes ☐ No
      If yes, dates at personal expense: _____

5. a. Will you be accompanied by a relative at the sponsor's expense? ☐ Yes ☐ No
   b. If yes:
      (1) Name of accompanying relative: _____
      (2) Relationship to traveler: ☐ Spouse ☐ Child ☐ Other (specify): _____
      (3) Accompanying relative is at least 18 years of age: ☐ Yes ☐ No

6. a. Did the trip sponsor answer "yes" to Question 9(d) on the Primary Trip Sponsor Form (*i.e.*, travel is sponsored by an entity that employs a registered federal lobbyist or foreign agent and you are requesting lodging for two nights)? ☐ Yes ☐ No
   b. If yes, explain why the second night of lodging is warranted:

      _____

      _____

7. Primary Trip Sponsor Form is attached, including agenda, invitee list, and any other attachments and contributing sponsor forms: ☐ Yes ☐ No
   NOTE: The agenda should show the traveler's individual schedule, including departure and arrival times and identify the specific events in which the traveler will be participating.

8. Explain why participation in the trip is connected to the traveler's individual official or representational duties. Staff should include their job title and how the activities on the itinerary relate to their duties.

   _____

   _____

   _____

9. Is the traveler aware of any registered federal lobbyists or foreign agents involved in planning, organizing, requesting, and/or arranging the trip? ☐ Yes ☐ No

10. **FOR STAFF TRAVELERS:**
    TO BE COMPLETED BY YOUR EMPLOYING MEMBER:

    ADVANCED AUTHORIZATION OF EMPLOYEE TRAVEL

    I hereby authorize the individual named above, an employee of the U.S. House of Representatives who works under my direct supervision, to accept expenses for the trip described in this request. I have determined that the above-described travel is in connection with my employee's official duties and that acceptance of these expenses will not create the appearance that the employee is using public office for private gain.

    Date: _____ _____
    Signature of Employing Member

I. Senate Travel Authorization Forms and Instructions

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Clear Form

SENATORS AND OFFICERS POST-TRAVEL DISCLOSURE OF TRAVEL EXPENSES

This disclosure, along with a copy of the Private Sponsor Travel Certification Form and all attachments, MUST be provided to the **Office of Public Records**, **Room 232 of the Hart Building**, within **30 days** after the travel is completed.

In compliance with Rule 35.2(a) and (c), I _____, make the following
(Name of Senator/Officer)
disclosures with respect to travel expenses that have been or will be reimbursed/paid for me.

Private Sponsor(s) (list all):_____

Travel date(s):_____

Destination(s):_____

Name of accompanying family member (if any): _____
Relationship to Member/Officer: ☐ Spouse ☐ Child

FILL IN THE APPROPRIATE LINES. IF THE COST OF LODGING **DID NOT INCREASE** DUE TO THE ACCOMPANYING SPOUSE OR DEPENDENT CHILD, ONLY INCLUDE LODGING COSTS IN EMPLOYEE EXPENSES. (Attach additional pages if necessary.)

Expenses for Senator/Officer:

	Transportation Expenses	**Lodging Expenses**	**Meal Expenses**	**Other Expenses (Amount & Description)**
☐ Good Faith Estimate ☐ Actual Amount				

Expenses for Accompanying Spouse or Dependent Child (if applicable)

	Transportation Expenses	**Lodging Expenses**	**Meal Expenses**	**Other Expenses (Amount & Description)**
☐ Good Faith Estimate ☐ Actual Amount				

Provide a description of all meetings and events attended. *See* Senate Rule 35.2(c)(6). (Attach additional pages if necessary.):_____

_____

_____

I HAVE MADE A DETERMINATION THAT THE TRAVEL DESCRIBED ABOVE WAS IN CONNECTION WITH MY DUTIES AS AN OFFICEHOLDER, AND DID NOT CREATE THE APPEARANCE THAT I WAS USING PUBLIC OFFICE FOR PRIVATE GAIN.

_____ _____
(Date) *(Signature of Senator/Officer)*

Clear Form

PRIVATE SPONSOR TRAVEL CERTIFICATION FORM

This form must be completed by any private entity offering to provide travel or reimbursement for travel to Senate Members, officers, or employees (Senate Rule 35, clause 2). Each sponsor of a fact-finding trip must sign the completed form. The trip sponsor(s) must provide a copy of the completed form to each invited Senate traveler, who will then forward it to the Ethics Committee with any other required materials. The trip sponsor(s) should **NOT** submit the form directly to the Ethics Committee. Please consult the accompanying instructions for more detailed definitions and other key information.

The Senate Member, officer, or employee **MUST** also provide a copy of this form, along with the appropriate travel authorization and reimbursement form, to the Office of Public Records (OPR), Room 232 of the Hart Building, within thirty (30) days after the travel is completed.

---

1. Sponsor(s) of the trip (please list all sponsors):_____

   _____

2. Description of the trip: _____

   _____

3. Dates of travel: _____

4. Place of travel:_____

5. Name and title of Senate invitees:_____

6. I *certify* that the trip fits one of the following categories:

   ☐ (A) The sponsor(s) are not registered lobbyists or agents of a foreign principal **and** do not retain or employ registered lobbyists or agents of a foreign principal **and** no lobbyist or agents of a foreign principal will accompany the Member, officer, or employee *at any point* throughout the trip.

   – OR –

   ☐ (B) The sponsor or sponsors are not registered lobbyists or agents of a foreign principal, but retain or employ one or more registered lobbyists or agents of a foreign principal and the trip meets the requirements of Senate Rule 35.2(a)(2)(A)(i) or (ii) *(see question 9)*.

7. ☐ I *certify* that the trip will not be financed in any part by a registered lobbyist or agent of a foreign principal.

   – AND –

   ☐ I *certify* that the sponsor or sponsors will not accept funds or in-kind contributions earmarked directly or indirectly for the purpose of financing this specific trip from a registered lobbyist or agent of a foreign principal or from a private entity that retains or employs one or more registered lobbyists or agents of a foreign principal.

8. I *certify* that:

   ☐ The trip will not in any part be planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal except for *de minimis* lobbyist involvement.

   – AND –

   ☐ The traveler will not be accompanied on the trip by a registered lobbyist or agent of a foreign principal except as provided for by Committee regulations relating to lobbyist accompaniment (*see question 9*).

9. **USE ONLY IF YOU CHECKED QUESTION 6(B)**
I *certify* that if the sponsor or sponsors retain or employ one or more registered lobbyists or agents of a foreign principal, one of the following scenarios applies:

☐ (A) The trip is for attendance or participation in a one-day event (exclusive of travel time and **one** overnight stay) and no registered lobbyists or agents of a foreign principal will accompany the Member, officer, or employee *on any segment* of the trip.

– OR –

☐ (B) The trip is for attendance or participation in a one-day event (exclusive of travel time and **two** overnight stays) and no registered lobbyists or agents of a foreign principal will accompany the Member, officer, or employee *on any segment* of the trip (*see questions 6 and 10).*

– OR –

☐ (C) The trip is being sponsored only by an organization or organizations designated under § 501(c)(3) of the Internal Revenue Code of 1986 and no registered lobbyists or agents of a foreign principal will accompany the Member, officer, or employee *at any point* throughout the trip.

10. **USE ONLY IF YOU CHECKED QUESTION 9(B)**
If the trip includes two overnight stays, please explain why the second night is practically required for Senate invitees to participate in the travel:

_____

_____

_____

11. ☐ An itinerary for the trip is attached to this form. I *certify* that the attached itinerary is a detailed (hour-by-hour), complete, and final itinerary for the trip.

12. Briefly describe the role of each sponsor in organizing and conducting the trip:

_____

_____

_____

13. Briefly describe the stated mission of each sponsor and how the purpose of the trip relates to that mission:

_____

_____

_____

14. Briefly describe each sponsor's prior history of sponsoring congressional trips:

_____

_____

_____

15. Briefly describe the educational activities performed by each sponsor (other than sponsoring congressional trips):

_____

_____

_____

16. Total Expenses for Each Participant:

	Transportation Expenses	**Lodging Expenses**	**Meal Expenses**	**Other Expenses**
☐ Good Faith estimate ☐ Actual Amounts				

17. State whether a) the trip involves an event that is arranged or organized *without regard* to congressional participation **or** b) the trip involves an event that is arranged or organized *specifically with regard* to congressional participation:

_____

_____

18. Reason for selecting the location of the event or trip

_____

_____

19. Name and location of hotel or other lodging facility:

_____

_____

20. Reason(s) for selecting hotel or other lodging facility:

_____

_____

_____

21. Describe how the daily expenses for lodging, meals, and other expenses provided to trip participants compares to the maximum per diem rates for official Federal Government travel:

_____

_____

_____

22. Describe the type and class of transportation being provided. Indicate whether coach, business-class or first class transportation will be provided. If first-class fare is being provided, please explain why first-class travel is necessary:

_____

_____

23. ☐ I represent that the travel expenses that will be paid for or reimbursed to Senate invitees do not include expenditures for recreational activities, alcohol, or entertainment (other than entertainment provided to all attendees as an integral part of the event, as permissible under Senate Rule 35).

24. List any entertainment that will be provided to, paid for, or reimbursed to Senate invitees and explain why the entertainment is an integral part of the event:

_____

_____

25. I hereby *certify* that the information contained herein is true, complete and correct. (You must include the completed signature block below for each travel sponsor.):

Signature of Travel Sponsor: _____

Name and Title: _____

Name of Organization: _____

Address: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Instructions
(Do not file the Instructions with OPR)

General Instructions

- The Senate Select Committee on Ethics ("Ethics Committee") has developed guidelines for evaluating privately-sponsored trips and for judging whether trip expenses are reasonable. Trip sponsors should consult the *Senate Select Committee on Ethics' Regulations and Guidelines for Privately-Sponsored Travel*, including the *Glossary of Terms*, prior to filling out the *Private Sponsor Travel Certification Form* and contact the Ethics Committee at (202) 224-2981 with any additional questions. The Ethics Committee will make the final determination as to whether the expenses incurred during a privately-sponsored trip are reasonable.

- If there are multiple sponsors, they should jointly complete one *Private Sponsor Travel Certification Form* for the trip. Each travel sponsor should complete the signature block.

- When evaluating a trip proposal and judging the reasonableness of expenses, the Ethics Committee will consider the following factors:

    a. the stated mission of the organization sponsoring the trip;
    b. the organization's prior history of sponsoring congressional trips, if any;
    c. other educational activities performed by the organization besides sponsoring congressional trips;
    d. whether any trips previously sponsored by the organization led to an investigation by the Select Committee on Ethics;
    e. whether the length of the trip and the itinerary is consistent with the official purpose of the trip;
    f. whether there is an adequate connection between a trip and official duties;
    g. the reasonableness of the total amount spent by a sponsor of the trip;
    h. whether there is a direct and immediate relationship between a source of funding and an event;
    i. the maximum *per diem* rates for official Federal Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense;
    j. whether travel to a location or event is arranged or organized without regard to congressional participation, or whether it is specifically organized for Congressional staff; and
    k. any other factor deemed relevant by the Select Committee on Ethics.

    Consult the *Senate Select Committee on Ethics' Regulations and Guidelines for Privately-Sponsored Travel*, including the *Glossary of Terms*, for further discussion of these factors.

- Responses to each question should be brief, consistent with the requirement to provide all relevant information. Attach additional pages, as necessary.

- To allow sufficient time for the Ethics Committee to review requests for privately sponsored travel, the participating Senate Members, officers, and employees must submit the completed form to the Ethics Committee at least **thirty (30) days** before the date of the proposed trip.

Filling out the Private Sponsor Travel Certification Form (Question by Question Instructions)

1. *Sponsor(s) of the trip (please list all sponsors):* A sponsor of a trip is any person, organization, or other entity contributing funds or in-kind support for the trip. A sponsor must have a significant role in organizing and conducting a trip and must have a specific organizational interest in the purpose of the trip. If Members, officers, and employees are participating in an event or fact-finding trip in connection with their duties, they may accept necessary travel expenses only from the event or trip sponsor.

2. *Description of the trip:* Provide a brief statement about the purpose of the trip.

3. *Dates of travel:* Provide the dates of departure and return.

4. *Place of travel*: Provide the destination(s) for the trip.

5. *Name and titles of Senate invitees:* Provide the name and title for each Senate Member, officer, or employee who is invited on the trip.

6. *I certify that the trip fits one of the following categories:* A Senate Member, officer, or employee may accept privately sponsored travel only from sponsor(s) of a trip that fits one of the categories listed. Consult the instructions for question 9 to determine if the trip meets the lobbyist accompaniment standard.

7. *Financing of the trip, earmarked funds and in-kind contributions:* Senate Members, officers, and staff may not accept privately-sponsored travel funded by a registered lobbyist or foreign agent. Members, officers, and staff may not participate in privately-sponsored travel when the sponsors accept funds or in-kind contributions earmarked for this particular trip from a registered lobbyist or agent of a foreign principal or from a private entity that retains or employs one or more registered lobbyists or agents of a foreign principal. Earmarking includes any direction, agreement, or suggestion -- formal or informal -- to use donated funds, goods, services, or other in-kind contributions for a particular trip or purpose.

8. *Lobbyist/agent of a foreign principal involvement:* Senate invitees may not participate in trips planned, organized, arranged, or requested by a lobbyist or foreign agent in more than a *de minimis* way, which means negligible or inconsequential. It would be considered inconsequential for one or more lobbyists or foreign agents to serve on the board of an organization that is sponsoring travel, as long as the lobbyists or foreign agents are not involved in the trip. It is also permissible for a lobbyist to respond to a trip sponsor's request to identify Senate invitees with interest in a particular issue relevant to a planned trip. However, a lobbyist is not allowed to solicit or initiate communication with a trip sponsor, have control over which Senate employees are invited on a trip, extend or forward an invitation to a participant, determine the trip itinerary, or be mentioned in the invitation.

   Example: A trip sponsor that is a § 501(c)(3) non-profit organization asks a lobbyist to recommend staffers who might be most interested in joining a trip to the U.S.-Mexican border. If a lobbyist knows a staffer who has a particular interest in the DEA's activities at the border, then providing that information (in light of the trip sponsor's request), in and of itself, would not exceed a *de minimis* level of participation, and would be permitted. However, it would not be permissible for the lobbyist to initiate contact with the trip sponsor to suggest that a particular Senate staffer be invited or forward an invitation to that staffer. Consult the instructions for question 9 to determine if the trip meets the lobbyist accompaniment standards.

9. *Lobbyist/agent of a foreign principal accompaniment standards:* Senate Members, officers, and staff may not accept privately-sponsored travel from an entity that retains or employs one or more federally-registered lobbyists or foreign agents unless one of the listed scenarios applies. *At any segment of the trip* means lobbyists may not accompany the Senate invitee for parts of the travel to and from the event (not at the event itself or the location being visited). *At any point throughout the trip* means lobbyists may not accompany Senate invitees at any point to and from the event, at the event itself, or at the location being visited, other than in a *de minimis* way. This is a broader prohibition than the *at any segment of a trip* standard.

   "De minimis" exception: Both lobbyist/agent of a foreign principal "accompaniment" prohibitions include a *de minimis* exemption. *De minimis* means negligible or inconsequential. The mere coincidental presence of a lobbyist or foreign agent at an event would likely be considered *de minimis*. But in making the final determination, the Ethics Committee will consider the totality of the circumstances, including the amount of time lobbyists or foreign agents are present at the event; the amount of direct contact they have with Senate invitees; and the amount of control a trip sponsor has over their presence or contact with Senate guests. For example, if the trip includes attendance at an event considered widely-attended under Rule 35(1)(c)(18), the trip sponsor is unlikely to know all attendees present. Thus, it is likely to be permissible for such widely-attended events to include both a Senate guest and a lobbyist. Similarly, an organization cannot possibly know all the other passengers taking the same flight or other common carrier to a given destination. Accordingly, the sponsor does not need to certify that it knows for certain that no lobbyist or foreign agent will be on such a common carrier.

10. *If travel includes two overnight stays:* The Ethics Committee may approve two overnight stays for trips sponsored by an entity that employs or retains one or more lobbyists or foreign agents under certain conditions. Consult Committee regulations for additional information.

11. *An itinerary for the trip is attached to this form:* The Ethics Committee will not review the trip request without a detailed (hour-by-hour), complete and final itinerary for the trip. As a general matter, the Ethics Committee advises that each travel day contain a minimum of 6 hours of officially-related activities for Senate invitees.

12. *Briefly describe the role of each sponsor in organizing and conducting the trip:* A sponsor must have a significant role in organizing and conducting a trip and must have a specific organizational interest in the purpose of the trip.

13. *Briefly describe the stated mission of each sponsor and how the purpose of the trip relates to that mission:* Provide a brief description of the stated mission of each sponsor and how it relates to the trip.

14. *Briefly describe each sponsor's prior history of sponsoring congressional trips:* Provide a brief discussion of the sponsor's history of sponsoring congressional travel. It is not necessary to list every trip.

15. *Briefly describe the educational activities performed by each sponsor (other than sponsoring congressional trips):* Provide a brief description of the educational activities performed by each sponsor. It is not necessary to list every individual activity; the description may be by kind or category of educational activity involved.

16. *Total expenses for each participant:* Indicate whether the figures provided are actual amounts or good faith estimates by checking the appropriate box. All trip expenses should be included. Expenses other than those for transportation, lodging, and meals must be individually listed and specified. Attach additional pages as necessary.

17. *Congressional participation:* For events that are arranged without regard to congressional participation (for example, annual meetings, conferences, seminars, and symposiums of trade associations, professional societies, business associations, and other membership organizations), the Ethics Committee may, but is not required to, allow Senate Members, officers, and employees to accept lodging and meal expenses that are commensurate with what is customarily provided to non-congressional attendees in similar circumstances. For events specifically arranged around congressional participation, lodging, meal expenses and other expenses must be "reasonable" in accordance with Ethics Committee regulations.

18. *Reason for selecting the location of the event or trip:* The location of the trip *must be related to its purpose*. A brief but detailed description of the reason for the selection of the location must be provided.

19. *Name and location of hotel or other lodging facility:* Include the exact name and address of the hotel or other lodging facility.

20. *Reasons for selecting hotel or other lodging facility:* Provide an explanation of the sponsor's rationale for selecting the particular lodging, include information such as proximity to the airport or site to be visited.

21. *Describe how the daily expenses for lodging, meals, and other expenses provided to trip participant compare to the maximum per diem rates for official Federal Government travel:* Where feasible and available, trip expenses for lodging and meals should generally be comparable to the government *per diem* rates. The circumstances surrounding a particular trip may legitimately require lodging and meal expenses to exceed these rates. Consult the Ethics Committee regulations for additional information.

22. *Describe the type and class of transportation being provided:* While coach or business-class fare may be accepted, first-class fare for any mode of transportation may be permitted only under limited conditions and only with specific prior written approval by the Ethics Committee. Transportation on a private or charter aircraft is not permitted for privately-sponsored travel under any circumstances.

23. *Expenses for recreational activity, alcohol, or entertainment:* The only recreational or entertainment activities that will be approved by the Ethics Committee are those that are provided to all attendees and are an integral part of an event. Alcoholic beverages are not considered to be a reasonable expense.

24. List any entertainment that will be provided to, paid for or reimbursed to Senate invitees and explain why the entertainment is an integral part of the event: Entertainment expenses that are not provided to all attendees and deemed an integral part of the event will not be approved by the Ethics Committee.

25. *Certification:* Each sponsor of a trip should sign the form and certify that the information is complete and correct. Attach additional pages with the certification and signature block, as necessary, for each trip sponsor.

Clear Form

Date/Time Stamp:

EMPLOYEE PRE-TRAVEL AUTHORIZATION

Pre-Travel Filing Instructions: Complete this form in advance of travel. (Submit a copy to the **Senate Ethics Committee** in **220 Hart**.) This form is also required for the post-travel filing.

Name of Traveler: _____

Employing Office/Committee: _____

Private Sponsor(s) (list all):_____

Travel date(s):_____

Destinations(s):_____

Explain why participation in the trip is connected to your official duties:_____

_____

_____

Name of accompanying family member (if any):_____
Relationship to Employee: ☐ Spouse ☐ Child

I certify that the information contained in this form is true, complete and correct to the best of my knowledge:

_____ _____
(Date) *(Signature of Employee)*

TO BE COMPLETED BY SUPERVISING MEMBER/OFFICER:

I, _____ hereby authorize _____
(Print Senator's/Officer's Name) *(Print Traveler's Name)*

an employee under my direct supervision, to accept payment or reimbursement for necessary transportation, lodging, and related expenses for travel to the event described above. I have determined that this travel is in connection with his or her duties as a Senate employee or an officeholder, and will not create the appearance that he or she is using public office for private gain.

I have also determined that the attendance of the employee's spouse or child is appropriate to assist in the representation of the Senate. (*signify "yes" by checking box)* ☐

_____ _____
(Date) *(Signature of Supervising Senator/Officer)*

Clear Form

Employee Post-Travel Disclosure of Travel Expenses

Post-Travel Filing Instructions: Complete this form within **30 days** of returning from travel. Submit all forms to the **Office of Public Records in 232 Hart Building.**

In compliance with Rule 35.2(a) and (c), I make the following disclosures with respect to travel expenses that have been or will be reimbursed/paid for me. I also certify that I have attached:

☐ The **original** *Employee Pre-Travel Authorization* (Form RE-1), **AND**
☐ A **copy** of the *Private Sponsor Travel Certification Form* with all attachments (itinerary, invitee list, etc.)

Private Sponsor(s) (list all):_____

Travel date(s):_____

Name of accompanying family member (if any): _____
Relationship to Traveler: ☐ Spouse ☐ Child

IF THE COST OF LODGING **DID NOT INCREASE** DUE TO THE ACCOMPANYING SPOUSE OR DEPENDENT CHILD, ONLY INCLUDE LODGING COSTS IN EMPLOYEE EXPENSES. (Attach additional pages if necessary.)

Expenses for Employee:

	Transportation Expenses	**Lodging Expenses**	**Meal Expenses**	**Other Expenses (Amount & Description)**
☐ Good Faith Estimate ☐ Actual Amount				

Expenses for Accompanying Spouse or Dependent Child (if applicable):

	Transportation Expenses	**Lodging Expenses**	**Meal Expenses**	**Other Expenses (Amount & Description)**
☐ Good Faith Estimate ☐ Actual Amount				

Provide a description of all meetings and events attended. *See* Senate Rule 35.2(c)(6). (Attach additional pages if necessary.):

_____

_____

_____ _____ _____
(Date) (*Printed name of traveler*) *(Signature of traveler)*

TO BE COMPLETED BY SUPERVISING MEMBER/OFFICER:

I have made a determination that the expenses set out above in connections with travel described in the *Employee Pre-Travel Authorization* form, are necessary transportation, lodging, and related expenses as defined in Rule 35.

_____ _____
(Date) *(Signature of Supervising Senator/Officer)*

J. House Job Negotiation Notification and Recusal Forms

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United States House of Representatives
Committee on Ethics

Statement of Recusal

1. This is to notify the Committee that, pursuant to House Rule XXVII, I have recused myself from any official matter that would affect the following private entity as a result of my negotiation or agreement regarding future employment or compensation:

   _____, effective as of

   _____, 20__.

2. Pursuant to this rule, I am required to recuse myself from participation in any official matter that will present a conflict of interest or give the appearance thereof.

3. I will promptly inform the Committee in writing if I withdraw my recusal statement.

4. **For Members only:** I have provided to the Clerk for public disclosure a copy of my completed Notification of Negotiations or Agreement for Future Employment form regarding this entity.

Signature: _____

Print Name: _____

Date: _____

For staff, name of employing Member/committee: _____

Submit ORIGINAL to: Committee on Ethics
Office of Advice and Education
1015 Longworth House Office Building

NOTE: Forms may <u>not</u> be filed by fax.

United States House of Representatives
Committee on Ethics

Notification of Negotiations or Agreement for Future Employment

1. Pursuant to House Rule XXVII, clauses 1-3, I am required to notify the Committee on Ethics within 3 business days after the commencement of negotiations or the formalization of an agreement regarding future employment or compensation.

2. This is to notify you that my negotiations or agreement for future employment commenced on _____, 20__ with the following private entity:

   _____.

3. I understand and acknowledge that, pursuant to this rule, I must recuse myself from any official matter involving the above-named entity that would create a conflict of interest or the appearance of such a conflict, and that I must notify the Committee in writing of such recusal.

4. **For Members only**: I understand that, if I recuse myself from official matters related to the above-named private entity, I am additionally required to provide a copy of this completed form to the Clerk for public disclosure.

Signature: _____

Print Name: _____

Date: _____

For staff, name of employing Member/committee: _____

Submit ORIGINAL to: Committee on Ethics
Office of Advice and Education
1015 Longworth House Office Building

NOTE: Form may <u>not</u> be filed by fax.

K. Senate Job Negotiation and Recusal Forms

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Clear Form

NON-PUBLIC DISCLOSURE BY STAFF OF EMPLOYMENT NEGOTIATIONS AND RECUSAL

If you are a staffer making $121,956 or more for CY 2015, in addition to notifying your supervising Senator of job negotiations or arrangements for employment or compensation you have with a prospective private employer, you must file this form with the Ethics Committee **(220 Hart Building)** within three days of starting these negotiations or entering into a arrangement for employment. Employees who are required to file this notification must also certify to the Ethics Committee that they have recused themselves as required under either Senate Rule 37.14 or Section 17 of the STOCK Act, Pub. L. 112-105 (Apr. 4, 2012). These forms will not be made public. You can use additional sheets if necessary.

Name of Senate Staffer	
Employing Senate Office or Committee	
Name of Private Employer(s)	
Date of Commencement of Negotiations/Arrangement and Recusal	

RECUSAL STATEMENT

Initial the recusal standard that applies to you:

_____ ***For senior staff making $130,500 or more in CY 2015.*** I understand and acknowledge that pursuant to Senate Rule 37.14, I must recuse myself from any contact or communication with the above-named prospect employer on issues of legislative interest to the prospect employer and from any legislative matter in which there is a conflict of interest or the appearance of a conflict. I also understand and acknowledge that pursuant to Section 17 of the STOCK Act, I must recuse myself from any official matter involving the above-named prospective employer whenever there is a conflict of interest or the appearance of a conflict of interest.

_____ ***For staff paid $121,956 or more, but less than $130,500 in CY 2015.*** I understand and acknowledge that pursuant to Section 17 of the STOCK Act, I must recuse myself from any official matter involving the above-named prospective employer whenever there is a conflict of interest or the appearance of a conflict of interest.

If you have any questions, please call the Senate Ethics Committee staff at (202) 224-2981.

Signature	Date
Home Address	**Home Phone Number**

Clear Form

DISCLOSURE BY MEMBER OF EMPLOYMENT NEGOTIATIONS AND RECUSAL

Members shall not negotiate or make any arrangements for jobs involving lobbying activities until after their successor has been elected. For any other future private employment, Members must file a signed public statement with the Secretary of the Senate within 3 business days of beginning the negotiations or arrangements for private employment or compensation. Members who are required to file this notification must also certify to the Ethics Committee that they have recused themselves as required under Section 17 of the STOCK Act, Pub. L. 112-105 (Apr. 4, 2012). File this form with the Secretary of the Senate, Office of Public Records **(232 Hart Building)** and provide a copy to the Ethics Committee **(220 Hart Building)**.

Name of Senator	
Name of Private Employer(s)	
Date of Commencement of Negotiations/Arrangement and Recusal	

For your information, the relevant Senate Rule and applicable law read as follows:

Senate Rule 37, Paragraph 14 states that:

> (a) A Member shall not negotiate or have any arrangement concerning prospective private employment until after his or her successor has been elected, unless such a Member files a signed statement with the Secretary of the Senate, for public disclosure, regarding such negotiations or arrangements not later than 3 business days after the commencement of such negotiation or arrangement, including the name of the private entity or entities involved in such negotiations or arrangements, and the date such negotiations or arrangements commenced.
>
> (b) A Member shall not negotiate or have any arrangement concerning prospective employment for a job involving lobbying activities as defined by the Lobbying Disclosure Act of 1995 until after his or her successor has been elected.

Section 17(b) of the STOCK Act states that:

> An individual filing a statement under subsection (a) shall recuse himself or herself whenever there is a conflict of interest, or appearance of a conflict of interest, for such individual with respect to the subject matter of the statement, and shall notify the individual's supervising ethics office of such recusal.

If you have any questions, please call the Senate Ethics Committee staff at (202) 224-2981.

Signature	Date

L. IRS Form 5768

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Form **5768**

(Rev. September 2016)

Department of the Treasury
Internal Revenue Service

Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation

(Under Section 501(h) of the Internal Revenue Code)

▶ **Information about Form 5768 and its instructions is at *www.irs.gov/form5768*.**

For IRS Use Only ▶

Name of organization	Employer identification number
Number and street (or P.O. box no., if mail is not delivered to street address)	Room/suite
City, town or post office, and state	ZIP + 4

1 Election— As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending _____ and all subsequent tax years until revoked.
(Month, day, and year)

Note: This election must be signed and postmarked within the first taxable year to which it applies.

2 Revocation— As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending _____ and all subsequent tax years *(until a new election is made)*.
(Month, day, and year)

Note: This revocation must be signed and postmarked before the first day of the tax year to which it applies.

Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ▶ ☐ election ☐ revocation on behalf of the above named organization.

_____ (Signature of officer or trustee) _____ (Type or print name and title) _____ (Date)

General Instructions

Section references are to the Internal Revenue Code.

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible section 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grass roots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Part II-A of Schedule C (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item **1** or **2**, as applicable, and sign and date the form in the spaces provided.

Eligible organizations. A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:

1. Section 170(b)(1)(A)(ii) (relating to educational institutions),
2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),
3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),
4. Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),
5. Section 170(b)(1)(A)(ix) (relating to agricultural research organizations),
6. Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or
7. Section 509(a)(3) (relating to organizations supporting certain types of public charities other than those section 509(a)(3) organizations that support section 501(c)(4), (5), or (6) organizations).

Disqualified organizations. The following types of organizations are not permitted to make the election:

a. Section 170(b)(1)(A)(i) organizations (relating to churches),

b. An integrated auxiliary of a church or of a convention or association of churches, or

c. A member of an affiliated group of organizations if one or more members of such group is described in **a** or **b** of this paragraph.

Affiliated organizations. Organizations are members of an affiliated group of organizations only if (1) the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or (2) the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

For more details, see section 4911 and section 501(h).

Note: A private foundation (including a private operating foundation) is not an eligible organization.

Where to file. Mail Form 5768 to:

Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201-0027

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K&L Gates is a fully integrated global law firm with lawyers located across five continents. The firm represents leading multinational corporations, growth and middle-market companies, capital markets participants, and entrepreneurs in every major industry group, as well as public sector entities, educational institutions, philanthropic organizations and individuals. For more information about K&L Gates or its locations, practices and registrations, visit klgates.com.

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