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Kirkpatrick & Lockhart Preston Gates Ellis LLP

# A Guide to Political and Lobbying Activities

Updated April 2008

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

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This is an update to the September 2007 *Guide to Political and Lobbying Activities*. That previous edition was released soon after the enactment of the Honest Leadership and Open Government Act of 2007 and, although it summarized the new obligations set forth by the Honest Leadership and Open Government Act of 2007, the intervening months have allowed important guidance to be issued by the administering agencies and committees of Congress. In addition, the new Guide incorporates significant analysis by federal government ethics practitioners and attorneys who practice in this area. Since this updated Guide reflects these clarifications and interpretations, it should replace the old September 2007 Guidebook.

The most significant changes brought about by the Honest Leadership and Open Government Act of 2007 are in the areas of lobbying disclosure and Congressional ethics. In the area of **lobbying disclosure**, reports of an organization's lobbying activities have increased in both frequency and scope. The LD-2 disclosure report, which was formerly filed semiannually, must now be filed quarterly (the first new quarterly report is due April 21, 2008). In addition, disclosure of affiliated entities has become more expansive, additional information on a lobbyist's prior federal employment may be required, and the monetary thresholds have been lowered.

The single most important expansion of the scope of disclosure is embodied in the new requirements of the form LD-203. Both lobbying registrants (*e.g.*, corporations, trade associations, and lobbying firms) and each lobbyist listed on any registrant's disclosure form are now required to file the LD-203 disclosure twice a year (the first LD-203 disclosures are due July 30, 2008). The LD-203 must report federal political contributions, payments for events honoring Members of Congress and covered executive branch officials, and any other contributions made at the direction of a covered official. Importantly, the LD-203 also requires each of these filers, including the registered entity, to certify that no gifts or travel have been provided to Members of Congress or Congressional staff in violation of the Congressional rules. The Honest Leadership and Open Government Act of 2007 also added, for the first time, *criminal penalties* for any violation of the Lobbying Disclosure Act. These amendments have thus created a need for registrants to create more robust internal compliance programs and recordkeeping regimes.

The House and the Senate have also significantly amended the **Congressional ethics** rules, particularly those regarding gifts and travel and post-employment provisions. For instance, lobbyists, foreign agents, and entities that employ or retain lobbyists and foreign agents may no longer give anything of value to Members of Congress and their staffs, unless one of the many exceptions to the gift and travel rules applies. In addition, Members and staff must now also disclose employment negotiations and make public notice of recusal under certain circumstances. Senators and Senate staff also face more restrictive "cooling-off periods" after leaving public service.

Finally, the Honest Leadership and Open Government Act of 2007 made a significant change to **campaign finance** laws by requiring the disclosure by federal campaigns of registered lobbyists who "bundle" contributions on the campaign's behalf. This Guide contains more detail on the provision, but many questions will be left unanswered until the Federal Election Commission ("FEC") finishes a rulemaking on bundling, which is not expected for at least several months.

## A NOTE OF CAUTION

This updated *Guide to Political and Lobbying Activities*, 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 political action committees (“PACs”). 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 Ethics Guide is not intended, and should not be relied upon, as legal advice on any particular situation or set of facts. This Ethics 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 the ethical restrictions can lead to strained relations, adverse publicity, 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 Ethics Guide or need political ethics 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 POLITICAL AND LOBBYING ACTIVITIES

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## I. POLITICAL FUNDRAISING

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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:

- A. Individual “Hard Money” Contributions & Limitations..... I-2
- B. Fundraising Activities By Corporate Officials ..... I-9
- C. Corporate PAC Activities ..... I-16

## A. INDIVIDUAL HARD MONEY CONTRIBUTIONS & LIMITATIONS

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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 (2 U.S.C. § 441b(a)). The corporation may, however, establish and maintain a separate political committee called a PAC (*see* PAC discussion at I-16), which can make contributions to a federal campaign committee or other political committee.

**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 “hard money” contributions, *e.g.*, those to federal, state or local elections or to candidates for those offices, as well as to PACs contributing to specific candidates. A foreign national is also prohibited from making a contribution to a political party committee as well as an expenditure, independent expenditure, or disbursement for an “electioneering communication.” An “electioneering communication” is a communication that refers to a clearly identified federal candidate, is made via broadcast, cable or satellite systems within 60 days of a general, special or runoff election or within 30 days of a primary election, and (in the case of a Senate or House candidate) is targeted to the candidate’s electorate. (*See* I-6 for further information.) Both a U.S. citizen and a “green card” holder may make “hard money” contributions to federal candidates and their campaigns, contributions to the political party committees and “electioneering communications.”

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.

### 2. “HARD MONEY” VERSUS “SOFT MONEY”

The federal campaign finance laws differentiate between so-called “hard money” and “soft money” contributions. The fundamental difference between the two is that “hard money” describes funds that are raised, spent and contributed in accordance with the contribution limits and reporting requirements of the federal campaign finance laws. “Soft money” typically describes funds that are raised and spent according to state laws (*e.g.*, contributed to state-level candidates) or used incidentally to the federal process, such as when an interest group runs a legislative “issue”

advertisement. Soft money contributions were significantly curtailed by the Bipartisan Campaign Reform Act of 2002 (“BCRA”).

The federal campaign finance laws use the term “contribution” to refer to “hard money.” The term “contribution” is defined broadly to include not just money but “anything of value.” Accordingly, *many in-kind contributions* (e.g., food, postage, use of equipment) *count against applicable contribution limitations*. There are, however, several exceptions that may require additional analysis. For example, services provided without compensation by campaign volunteers working in their spare time outside the office do not count as contributions. In addition, funds raised by a national, state or local party for construction or purchase of an office facility that is not acquired to influence the election of a particular candidate also do not count as contributions.

### 3. LIMITATIONS ON “HARD MONEY” 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 interrelated limits, many of which are indexed to inflation.

Currently, individuals may contribute up to a total of **\$108,200** per two-year election cycle. This limit applies to all contributions (e.g., to federal candidates, PACs and political party committees). This limit is indexed for inflation, and increases in odd-numbered years (usually in February or March). *Out of this \$108,200, an individual may contribute **\$42,700** to federal candidates during a two-year election cycle.*

Individuals may also contribute up to **\$5,000** annually (not per cycle) to any one PAC. This means that, in addition to being able to contribute \$42,700 directly to federal candidates during a two-year election cycle, an individual may contribute **\$10,000** during the same cycle (\$5,000 per year) to any one PAC.

## Limits On and After January 1, 2007

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

- To each candidate for the House or Senate: **\$2,300** for any election including primary, general, runoff, or special election; *i.e.*, an individual can give \$2,300 to a candidate for the primary *and* an additional \$2,300 to the same candidate for the general election. The \$2,300 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): **\$2,300** for the primary election (but only \$2,300 for the entire election cycle if the presidential campaign is receiving public matching funds).
- To each national party committee: **\$28,500** per year.
- To each 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 PAC: **\$5,000** per year.

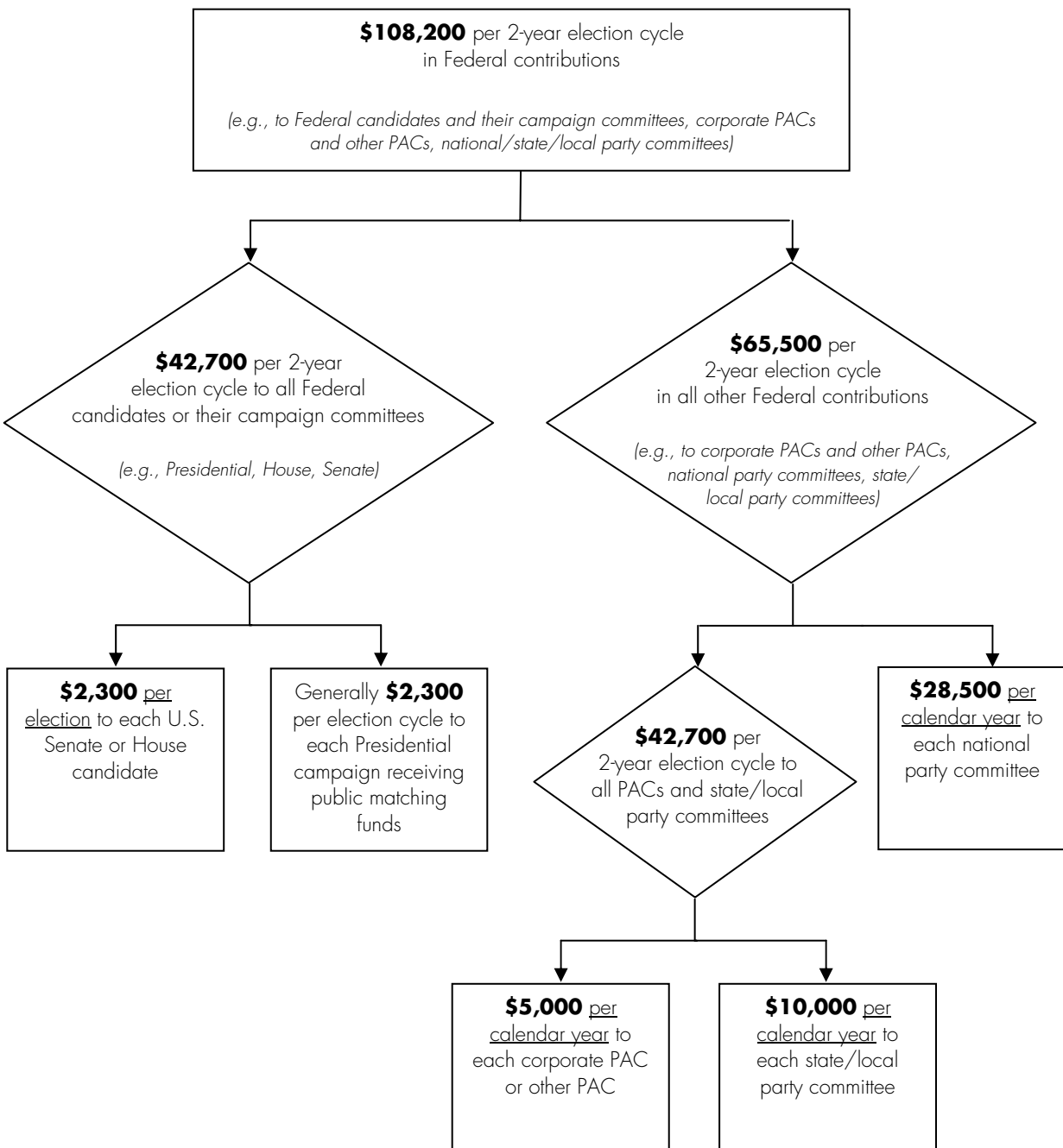
The maximum total hard money political contributions (including contributions to PACs) that any individual can make during any two-year election cycle is \$108,200. Of this amount, \$42,700 may be contributed to all federal candidates. Another \$65,500 may be contributed to other political committees such as corporate PACs, national party committees and state or local party committees during the same two-year election cycle. The two-year election cycle begins on January 1 of odd-numbered years and ends on December 31 of even-numbered years.

Contributions to federal candidates count toward the \$2,300 per election limit and the \$108,200 biennial limit on such contributions in the year in which the election is held, not the year in which a contribution is made. Contributions to PACs count toward the \$5,000 annual limit on such contributions in the year in which the contribution is made.

Please see the diagram on the following page.



## Hard Money Limits on Individual Contributions



#### 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.

A person other than a corporation, labor union or national bank (*e.g.*, an individual, association, partnership, corporate or other PAC) may make such *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.

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

#### 5. ELECTIONEERING COMMUNICATIONS

The FEC regulates so-called “electioneering communications,” broadcast advertising that refers to a clearly identified federal candidate. Under the 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. In short, it appears that although corporations and labor organizations are still prohibited from engaging in “express advocacy,” they may now engage in certain issue advocacy during the 30 and 60 day windows described below. *Federal Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. \_\_\_\_, (2007). However, they are still subject to disclosure rules incident to electioneering communications. This area of law remains unsettled, and we recommend you consult with a K&L Gates attorney before engaging in any such advertising.

An “electioneering communication” is a communication that:

- Refers to a clearly identified federal candidate (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.

## 6. CONTRIBUTIONS RECEIVED IN FEDERAL BUILDINGS

It is generally unlawful for any person to solicit or receive a "hard money" or "soft money" 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 the *giving* of "hard money" or "soft money" 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. 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 new 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 new 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, or reporting of 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.

## POLITICAL FUNDRAISING

Knowing and willful violations of the campaign finance laws that result in making, receiving, or reporting of 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.

**Note:**

*The penalty provisions discussed above have been expanded to encompass not only violations of the “hard money” contribution limitations and restrictions but also “soft money” contribution restrictions.*

## B. FUNDRAISING ACTIVITIES BY CORPORATE OFFICIALS

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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 are 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], but it is advisable to disclose to the campaign the amount and source of such in-kind contributions.*

**IMPORTANT NOTE:**

*The FEC takes these rules on “corporate facilitation” very seriously. The Commission, for instance, assessed Prudential Securities with a \$550,000 civil penalty – at the time the largest in FEC history – for its use of corporate resources to host fundraisers (Conciliation Agreement, executed Dec. 1, 1994, MUR 3540). Prudential was fined because it had hosted within its offices 14 fundraisers for 9 federal candidates over 5 years in which: clerical staff were instructed to prepare letters, memos, and other materials on the fundraisers; invitations were sent to the company’s executives, vendors, advertisers, lawyers, and financial advisers; and the invitation contained instructions to send contributions to a Prudential Vice President who served as a collection point for the contributions. The FEC determined that the use of Prudential’s corporate resources in hosting the fundraisers was not individual volunteer activity.*

**Examples:** [Also see the “do’s and don’ts” points found at I-13].

- 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.
- 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 superior).
- A corporation can allow a candidate or his representative to address its stockholder, executive, or administrative personnel at the annual corporate convention or at a function hosted at the corporation’s office. The candidate may solicit funds for his campaign or party at such a gathering.
- 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 \$2,300 per candidate per election limit.

**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 new 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 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 contributions which are “earmarked” or otherwise specifically directed to the candidate through an “intermediary or conduit.” Such earmarked contributions – sometimes called “bundling” – 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* (\$2,300 per candidate per election). Those acting as conduits must also file special disclosure reports.

**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 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 friends send the contributions directly to the campaign committee (*e.g.*, the CEO is not “bundling” his friends’ checks and delivering them to the candidate).

### Note:

*If the CEO is an express fundraising agent of the campaign, he or she can bundle 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 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. The media also has reported on examples of campaign contribution bundling 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 bundling – 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 facilities 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 (or “bundle”) 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. But, 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 amended federal election law to require disclosure – by the receiving campaign committee, leadership PAC, or political party – of certain contributions “bundled” by those persons registered to lobby or an employee listed on a federal lobbying disclosure report.

Specifically, the political committee receiving contributions is required to list the name, address, employer, and aggregate amount “bundled” of a lobbyist that “bundles” more than **\$15,000** in a semiannual filing period. A bundled contribution is one that is (1) physically forwarded by the bundler to the campaign committee, or (2) received by the committee, but credited by the committee to the bundler through records, designations, or other means of recognizing the fundraising efforts of the bundlers. According to the legislative history, the credit for a bundler could be reflected with an honorary title, access to special events, or other benefits provided as a “reward” for successful fundraising.

This provision is not effective until three months after the FEC has issued final regulations to administer the bundling disclosure. At that point, this guide will be updated to reflect the specific requirements for filing.



#### 4. DO'S AND DON'TS OF HOSTING A FUNDRAISER

To ensure compliance with the FEC regulations described above, a corporation or corporate officials should avoid the following 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-9 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.

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)).

## C. CORPORATE PAC ACTIVITIES

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

- (1.) Raising PAC Funds ..... I-17
- (2.) Giving PAC Contributions ..... I-21
- (3.) Administrative Requirements ..... I-24

**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 “political organizations” (so called “527 Organizations”) such as some leadership PACs, political party committees or similar 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.*

**Note:**

*The FEC has announced a series of proposed 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. Although the proposed controls are voluntary, they will likely be treated as requirements. Please consult the FEC or ethics advisors at K&L Gates for the current status of these controls.*

## (1.) RAISING PAC FUNDS

This subsection highlights some of the operative legal requirements restricting the raising of funds for use by a corporate PAC.

### 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 solicit funds from select groups:

At any time, a corporate PAC can solicit funds from the following three groups known as the "restricted class":

- **Stockholders** and ESOP participants of the corporation;
- **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, salaried foremen, employees who supervise hourly employees, 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
- 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 PAC cannot exceed certain limits:**

- more than \$5,000 from any one contributor (which includes individuals, groups, and other PACs) per year;
- 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 U.S.; 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 parent 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):

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

**Mail 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 (except for twice yearly solicitations)**, 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.

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

**Non-multicandidate PACs may contribute up to \$2,300 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 such “hard money” 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 PACs.

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 \$2,300 per candidate per election.** A non-multicandidate PAC may also contribute \$28,500 per year to each national party committee, 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:**

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

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.
- **Individual Limits** – Contributions given to PACs which are making independent expenditures solely on behalf of a single candidate cannot exceed the standard \$5,000 individual contribution limit.

**Note:**

*The independent expenditure area is difficult, confusing, and potentially controversial. While some independent expenditures have been successful – the infamous Willie Horton television ad in the 1988 presidential race was an independent expenditure – they also have the potential to backfire. More detailed analysis is warranted before these kinds of contributions are made. Proceed in this area only with extreme caution.*

### (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 announced 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. Although the controls are voluntary, they will likely be treated as requirements. Please consult the FEC or ethics advisors at K&L Gates for the current status of these controls.

#### 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).
- 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.

## POLITICAL FUNDRAISING

- 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.*

## II. LOBBYING DISCLOSURE & DEDUCTIBILITY

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

- A. Lobbying Disclosure..... II-2
- B. Lobbying Restrictions Regarding Contracts & Grants..... II-16
- C. Lobbying Deductibility..... II-20

## A. Lobbying Disclosure

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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 B. For a description of which lobbying costs are not deductible as ordinary and necessary business expenses, see Subsection C.

### 1. GENERAL LAW

The Lobbying Disclosure Act of 1995 (“LDA”) (P.L. 104-65), as amended by the new 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:** 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 more than 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 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 both semiannual 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 C 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 attorney 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,

\$2,500 during any quarterly period. This amount is indexed for inflation, and will increase again in early 2009.

For organizations having *in-house lobbying operations*, registration is not required, unless lobbying expenses exceed, or are expected to exceed, \$10,000 during any quarterly period. This amount is indexed for inflation, and will increase again in early 2009.

**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 formerly 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 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.

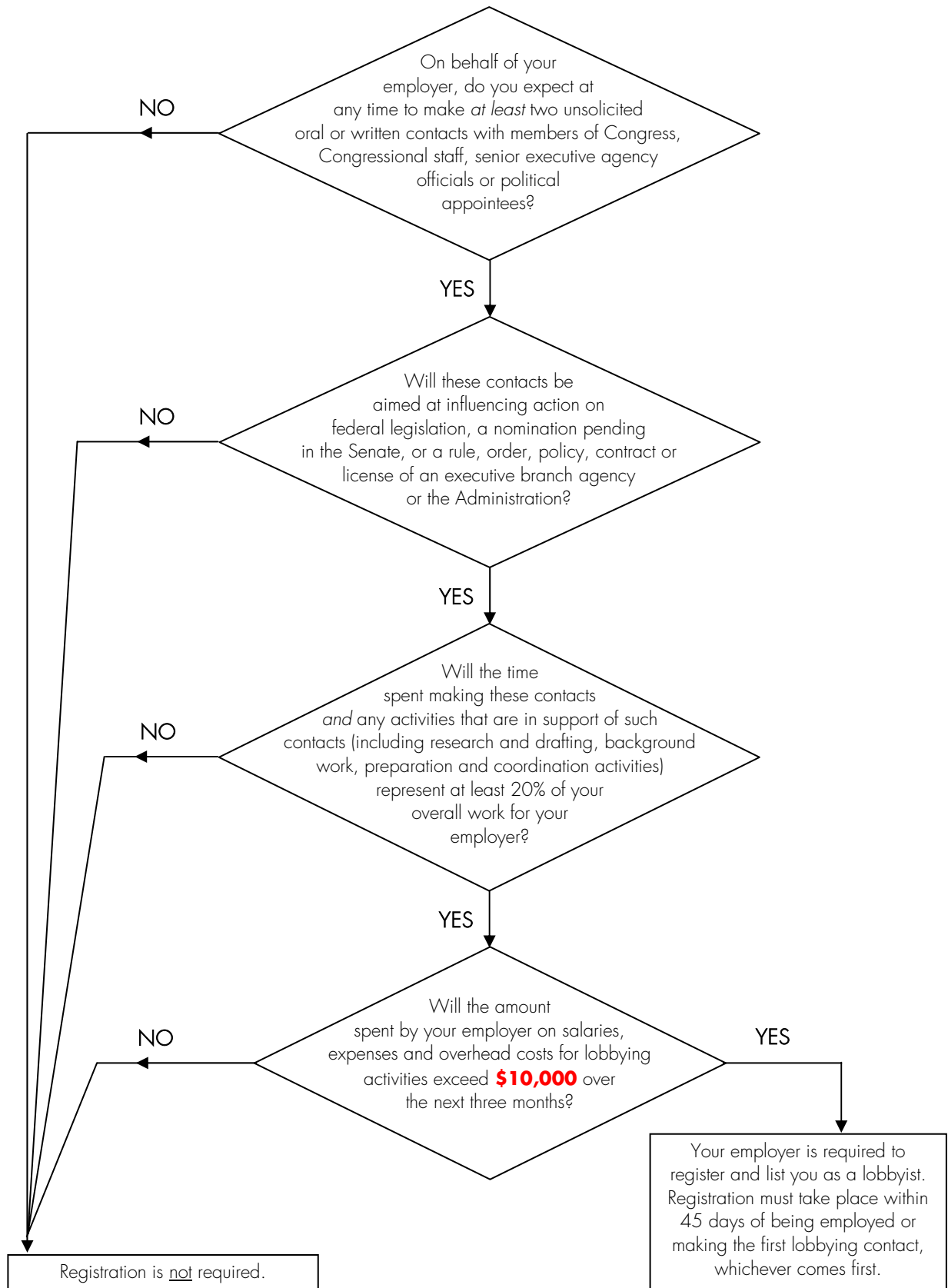
**The following are examples that further illustrate when registration under the LDA is required:**

- 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 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 \$12,250 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 more than 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 this coalition 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 her total time over the next three months working for this coalition, she must be listed on the registration form if she makes at least two lobbying contacts and her lobbying activities for this client represent more than 20% of 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 threshold for a retained lobbying firm, and all three members of the firm will spend more than 20% of their time for this client involved in lobbying activities. (*See* diagram at II-9).

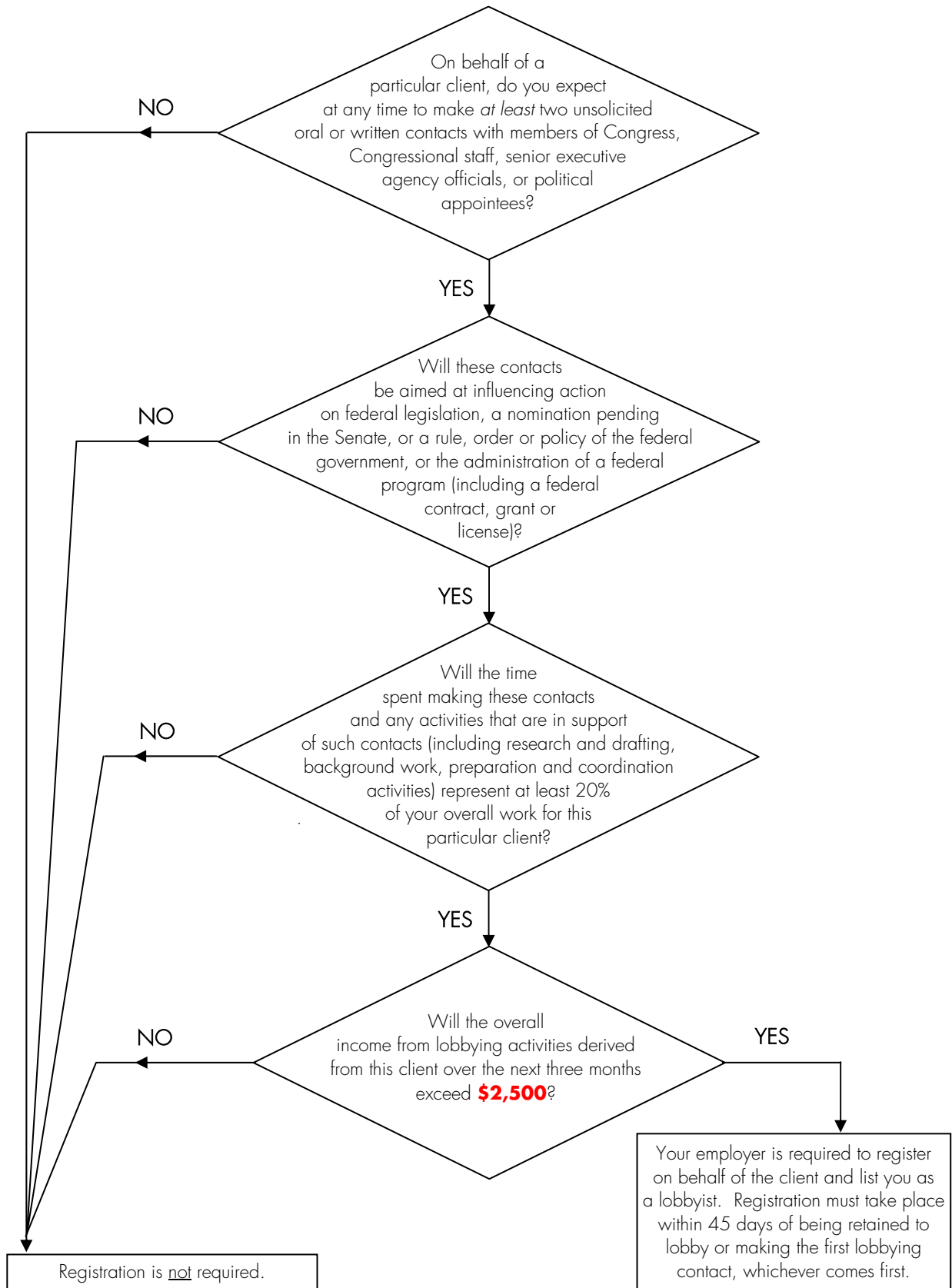
The two decision diagrams on the following pages may assist employees of corporations or associations and retained outside lobbyists in determining whether registration is required under the LDA for lobbying activities.

### 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.

**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.

### 3. REGISTRATION AND REPORTING

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

**Note:**

*As of January 1, 2008, all lobbying disclosure reports must be filed electronically with the House and Senate. For details on how to file electronically, visit [lobbyingdisclosure.house.gov](http://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 now also identify any member that contributes more than \$5,000 for lobbying activities in a quarterly period and "actively participates" in the planning, supervision or control of such lobbying activities.

Recent 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



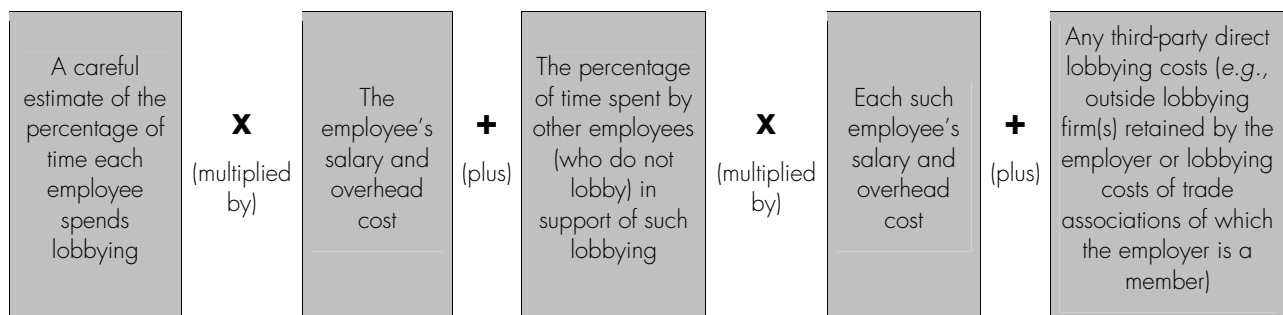
position during the preceding 20-year period and, if so, identify the employee's former title and office.

A copy of the lobbying registration form (Form LD-1) is found at Appendix D. Four pages of accompanying instructions to assist in filling out the form are also included. **Note:** *This registration form must now 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 semiannual report (Form LD-2) to supplement the initial LDA filing. Such reports are to be filed within 45 days after the close of each quarterly period beginning on January 1, April 1, July 1 and October 1 (*i.e.*, by February 14, May 15, August 14, and November 14).

The semiannual 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 \$10,000 in the lobbying effort.
- A list of affiliated entities that contributed more than \$5,000 in the quarterly period and “in whole or in major part” controlled the lobbying activities of the organization, similar to that required by the LD-1.
- 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:



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 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 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-20.

**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 E. 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.**

- c. **Semiannual reports.** Beginning in July 2008, all lobbyists 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.
- d. **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.

- 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 2 U.S.C. § 434 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.

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 “I” with the “Widget Manufacturing Legislative Leaders of 2008” 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 “I” has checked with the House Committee on Standards of Official Conduct. “B” pays \$500 to partially fund the event. “B” would report that it paid \$500 on November 20, 2008 for the purpose of honoring “Y” and “I” with the plaques.
- **Example 2:** After checking to discover if the activity is permissible, Lobbyist “C” contributes \$300 on June 1, 2008 to AnyState University towards the endowment of a chair named for “Y” in the example above. “C” would report the information above noting that the payment was 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 “B” is a member. Registrant “B” makes a donation of \$100 to Charity “X” in lieu of honoraria. “B” would disclose a contribution of \$100 on July 15, 2008, with the notation that “Y” was the speaker and the contribution was made in lieu of honoraria.
- **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 Representatives “I” and “R” are invited to appear as honored guests. Registrant “B” contributes \$3,000 to the event, paying one of the sponsors. “B” would disclose a payment of \$3,000 on August 1, 2008 payable to the sponsor with the notation that “Y,” “I,” and “R” are honored guests.

**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 now 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 amended federal election law to require disclosure – by the receiving campaign committee, leadership PAC, or political party – of certain contributions “bundled” by those persons registered to lobby or an employee listed on a federal lobbying disclosure report.

Specifically, the political committee receiving contributions is required to list the name, address, employer, and aggregate amount “bundled” of a lobbyist that “bundles” more than \$15,000 in a semiannual filing period. A bundled contribution is one that is (1) physically forwarded by the bundler to the campaign committee, or (2) received by the committee, but credited by the committee to the bundler through “records, designations, or other means” of recognizing the fundraising efforts of the bundlers. According to the legislative history, the credit for a bundler could be reflected with an honorary title, access to special events, or other benefits provided as a “reward” for successful fundraising.

This provision is not effective until three months after the FEC has issued final regulations to administer the bundling disclosure. At that point, this guide will be updated to reflect the specific requirements for filing.

#### **5. SANCTIONS**

The Honest Leadership and Open Government Act of 2007 added a new 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 a knowing violation of the lobbying disclosure reporting and other requirements is increased from \$50,000 to \$200,000.

#### **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.

## B. Lobbying Restrictions Regarding Contracts & Grants

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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. WHO MUST REGISTER

**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.

**“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, “In 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.*
- 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 G 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.

## **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).

## C. Lobbying Deductibility

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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.

### 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 or state 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 or state 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 not 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.

**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.
- 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 can report no lobbying expenses. 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:

$\frac{\text{lobbying labor hours}}{\text{total labor hours}} \times \text{total costs of operations} + \text{outside lobbying costs}$

**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 ten percent 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:

$$\frac{5,000}{50,000} (\times \$1,000,000) + \$25,000 = \$125,000$$

**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 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:

$$\$100,000 \times 175\% + \$25,000 = \$200,000$$

**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.

$$\$75,000 \times 225\% + \$25,000 = \$193,750$$

#### **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.

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 attorneys.*

**III. CONGRESSIONAL ETHICS**

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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:

A. Gifts & Entertainment ..... III-2

B. Travel ..... III-11

C. Honoraria ..... III-16

D. Congressional Post-Employment Rules ..... III-17

## A. Gifts & Entertainment

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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 gifts of substantial value from any source other than family members. 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 ...”.

However, 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 new rules passed by the House in January 2007. In short, the new rules divide gift-givers into two categories: lobbyists, foreign agents and entities that employ or retain lobbyists or foreign agents; and non-lobbyists. As a result, 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 are subject to the rules that existed before the amendments in September 2007. 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 more than \$50 and all gifts from the same source must not aggregate more than \$100 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.

**New Rules for Lobbyists, Foreign Agents, and Entities that Employ or Retain Lobbyists and Foreign Agents:** Under the new rules, House and Senate Members and their staff may no longer 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 any 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 affiliated with an organization (*e.g.*, a law firm or corporate DC office) counts against the annual \$100 gift limitation of both the individual and the organization.

**Buying down gifts is not allowed.** Members and staff cannot “buy down” the value of a gift to bring it within the \$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. The new 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.*

**Examples:** The following examples illustrate the application of the House and Senate gift limitation for non-lobbyists 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.
- 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.
- 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 that are of nominal value.
- 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.
- 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 (*e.g.*, caps, greeting cards, T-shirts, etc.).
- Food or refreshments of nominal value *not* offered as part of a meal.
- 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. Attendance at Widely Attended Events:**

- Guidance memoranda and advisory letters from both the House and Senate conclude that an event is 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.

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.

He/she can also accept a waiver of fees, *local* transportation, 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.
- 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, approval 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 has sent Jones a gift for her birthday. 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. 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-11). 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.
- 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, and are 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.).

- **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.
- **Cocktail reception for Members of a state Congressional delegation, paid for by a home-state company:** If the home-state food and drinks are provided for promotional value and the cost per individual attending is nominal, the delegation may attend.
- **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 recently released guidance noting that lobbyists and entities that employ or retain them may no longer buy items of nominal value, such as a cup of coffee or a doughnut, in a one-on-one type setting. However, these items may be offered as part of "a business meeting, reception, or similar gathering." The Senate has released guidance that implies a similar outcome. It notes that 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. That guidance also notes that food and drink of nominal value may 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.



## B. TRAVEL

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### 1. GENERAL RULES

**In general, these 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, recent changes to the travel rules now generally prohibit accepting travel from entities that employ or retain lobbyists. A few exceptions apply.

In connection with private 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.

**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 new 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 is 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 reimbursements for travel from registered lobbyists. The new 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 reimburse 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. In any case, Members and staff may not accept reimbursement for travel from entities that employ and retain lobbyists if a registered lobbyist accompanies the traveler on any portion on 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.
- 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.

- The Member or staff must submit the certification detailed below to the respective ethics committee before the trip and obtain prior approval for the trip from the committee.
- Travelers must send the various disclosures (certification, authorization, existing disclosures) regarding the trip to the Clerk of the House within 15 days of completing the travel.

## Effective Date.

The new House and Senate travel rules are now in effect. The new House and Senate travel disclosure forms appear at Appendices I and J.

## 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 new 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 new 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.

## 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 new House rules.
- All privately funded travel expenses for Senators and Senate staff must be itemized and disclosed within 30 days of return. House Members and staff must now make this disclosure within 15 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 new 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.*

## 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. 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.

## C. Honoraria

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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 percent or more of the GS-15 Executive Branch pay rate (*e.g.*, \$104,927 or more in calendar year 2004, the most recent year listed on the Senate and House websites).

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.

## D. CONGRESSIONAL POST-EMPLOYMENT RULES

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### 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 two absolute restrictions 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.

### **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 new 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 are two absolute restrictions 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
- 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 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 K and L.

## IV. EXECUTIVE BRANCH ETHICS

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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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B. Travel.....	IV-8
C. Honoraria.....	IV-11
D. Executive Branch Post-Employment Rules.....	IV-13

## A. GIFTS FROM OUTSIDE SOURCES

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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

**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.

**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 or coffee and 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).
- 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
- 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.

**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.

### 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 officials 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 new 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.

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, where the agency has determined that the employee’s attendance is in the agency’s interest.

*If the event sponsor is a prohibited source, there must be a written finding by the employee’s agency that the agency’s interest in the employee’s participation in the event outweighs concern that acceptance of the gift of free attendance may appear to improperly influence the employee in the performance of her official duties.* Factors to be considered in this determination include the importance of the event to the agency, the nature and sensitivity of any pending matters impacting the sponsor, the significance of the employee’s role in any such matter, the purpose of the event, the identity of other participants, and the monetary value of the gift of free attendance.



This 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.

- 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.”
- Employees *may* accept gifts of free attendance at meetings and similar functions on their own time or, when authorized, on excused absence.

**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.

#### **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;
- 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).
- 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 and the event is open to members from throughout the communications industry (widely attended gatherings exception).

## B. TRAVEL

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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.

- 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).
- 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.*

## C. HONORARIA

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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;
- 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).

## D. EXECUTIVE BRANCH POST-EMPLOYMENT RULES

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### 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.

### 2. PENALTIES

For each violation, an executive branch official can face criminal sanctions and civil penalties.



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.*

## V. APPENDICES

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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. Hard Money Limits On Individual Contributions
- C. Flow Charts for Lobbying Disclosure Act Registration
- D. Lobbying Disclosure Registration Form (Form LD-1)
- E. Lobbying Disclosure Quarterly Report Form (Form LD-2)
- F. Lobbying Disclosure Semi-Annual Report Form (Form LD-203)\*  
(\*Unavailable as of press date.)
- G. Lobbying Disclosure Form for Federal Contractors and Grantees (Form LLL)
- H. Comparison of Lobbying Activity Reportable Under Lobbying Disclosure Act and Non-Deductible Under Internal Revenue Code
- I. House Travel Authorization/Disclosure Forms
- J. Senate Travel Authorization/Disclosure Forms
- K. House Job Negotiation Notification and Recusal Forms
- L. Senate Job Negotiation Notification and Recusal Forms

## A. Overview of Federal Political Contribution Limits

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## Overview of Federal Political Contribution Limits

Contributor	Recipient					Aggregate Limits
	House or Senate Candidate Committee	Presidential Campaign (incl. VP)	National Party Committee <sup>1</sup>	State, District & Local Party Committee <sup>2</sup>	Political Action Committee (PAC) <sup>3</sup>	
<b>Individual<sup>4</sup></b>	\$2,300* per election <sup>5</sup>	\$2,300* per election <sup>5</sup> ( <u>but</u> only \$2,300 for entire election cycle if eligible for Presidential Election Campaign Fund payments) <sup>6</sup>	\$28,500* per year	\$10,000 per year limit (combined)	\$5,000 per year	\$108,200* biennial limit (\$42,700 to all federal candidates and \$65,500 <sup>7</sup> to all PACs and parties)
<b>Corporation, Incorporated Trade Assoc., or Other Incorporated Entity</b>	Prohibited	Prohibited	Prohibited (hard and soft money)	Prohibited	Prohibited	N/A
<b>Non-Multicandidate PAC<sup>8</sup></b>	\$2,300* per election <sup>5</sup>	\$2,300* per election <sup>5</sup> ( <u>but</u> only \$2,300 for entire election cycle if eligible for Presidential Election Campaign Fund payments) <sup>6</sup>	\$28,500* per year	\$10,000 per year limit (combined)	\$5,000 per year	N/A
<b>Multicandidate PAC<sup>8</sup></b>	\$5,000 per election <sup>5</sup>	\$5,000 per election <sup>5</sup> ( <u>but</u> only \$5,000 for entire election cycle if eligible for Presidential Election Campaign Fund payments) <sup>6</sup>	\$15,000 per year	\$5,000 per year limit (combined)	\$5,000 per year	N/A

\*See Notes to Chart on the reverse side of this document

## Notes to Chart:

\*These limits were adjusted for inflation in 2007 and will be indexed for inflation every two years thereafter.

<sup>1</sup> A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> Presidential campaigns (which include both the Presidential and Vice Presidential candidate) that become eligible to receive Presidential Election Campaign Fund payments for the general election may not receive any contributions for the general election. Consequently, contributions to such campaigns are limited to \$2,300 (\$5,000 in the case of a multicandidate PAC) for the primary (note contributions to an "exploratory committee" are considered contributions to the primary). This effectively means that an individual or non-multicandidate PAC may only contribute \$2,300 per election cycle to a Presidential campaign eligible to receive such funds and that a multicandidate PAC may only contribute \$5,000 per election cycle to such a campaign. On the other hand, if a Presidential campaign becomes eligible to receive Presidential Primary matching payments for the primary election, it may still receive \$2,300 (\$5,000 in the case of a multicandidate PAC) for the primary election. In addition, regardless of whether a Presidential campaign is eligible for such primary election or general election public funds, it may accept \$2,300 (\$5,000 in the case of a multicandidate PAC) for its "general election legal and accounting compliance" or GELAC fund, if it has established a fund. However, contributions to such a fund may only be used for legal and accounting expenses incurred in complying with the election laws, not also for election purposes.

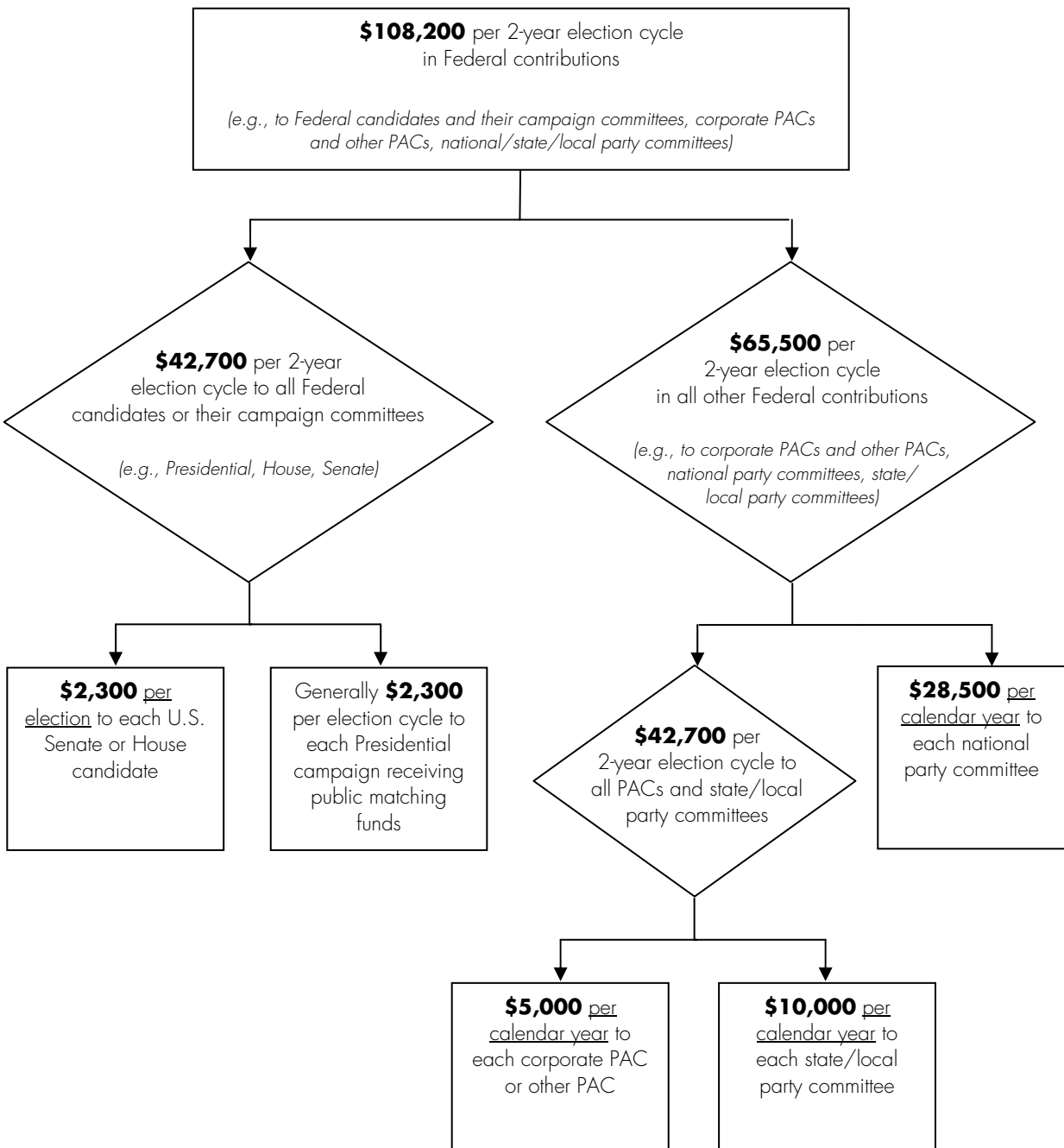
<sup>7</sup> Of this total, no more than \$42,700 may be contributed to state and local parties and PACs.

<sup>8</sup> 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.

## **B. Hard Money Limits On Individual Contributions**

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## Hard Money Limits on Individual Contribution

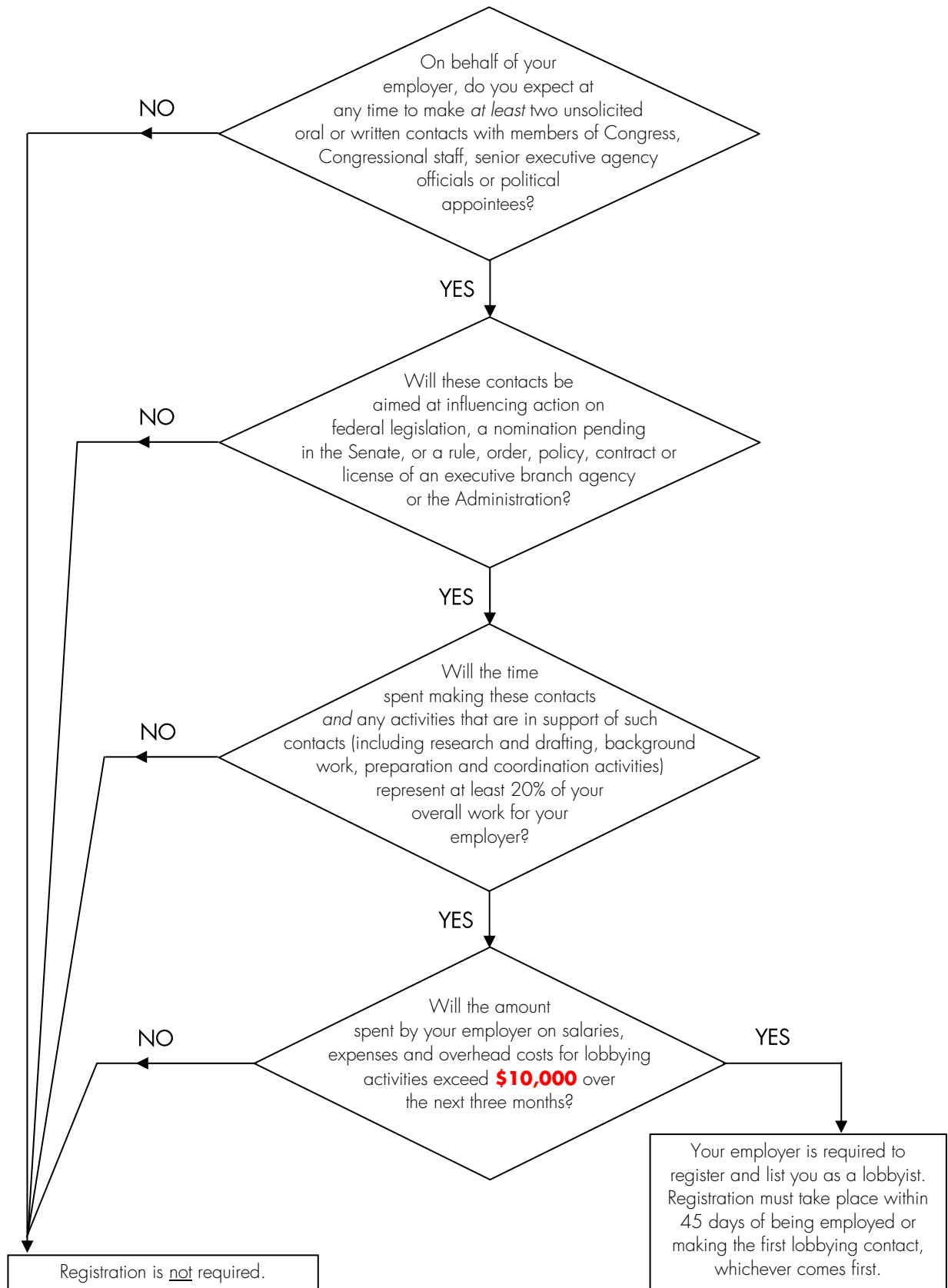


## C. Flow Charts for Lobbying Disclosure Act Registration

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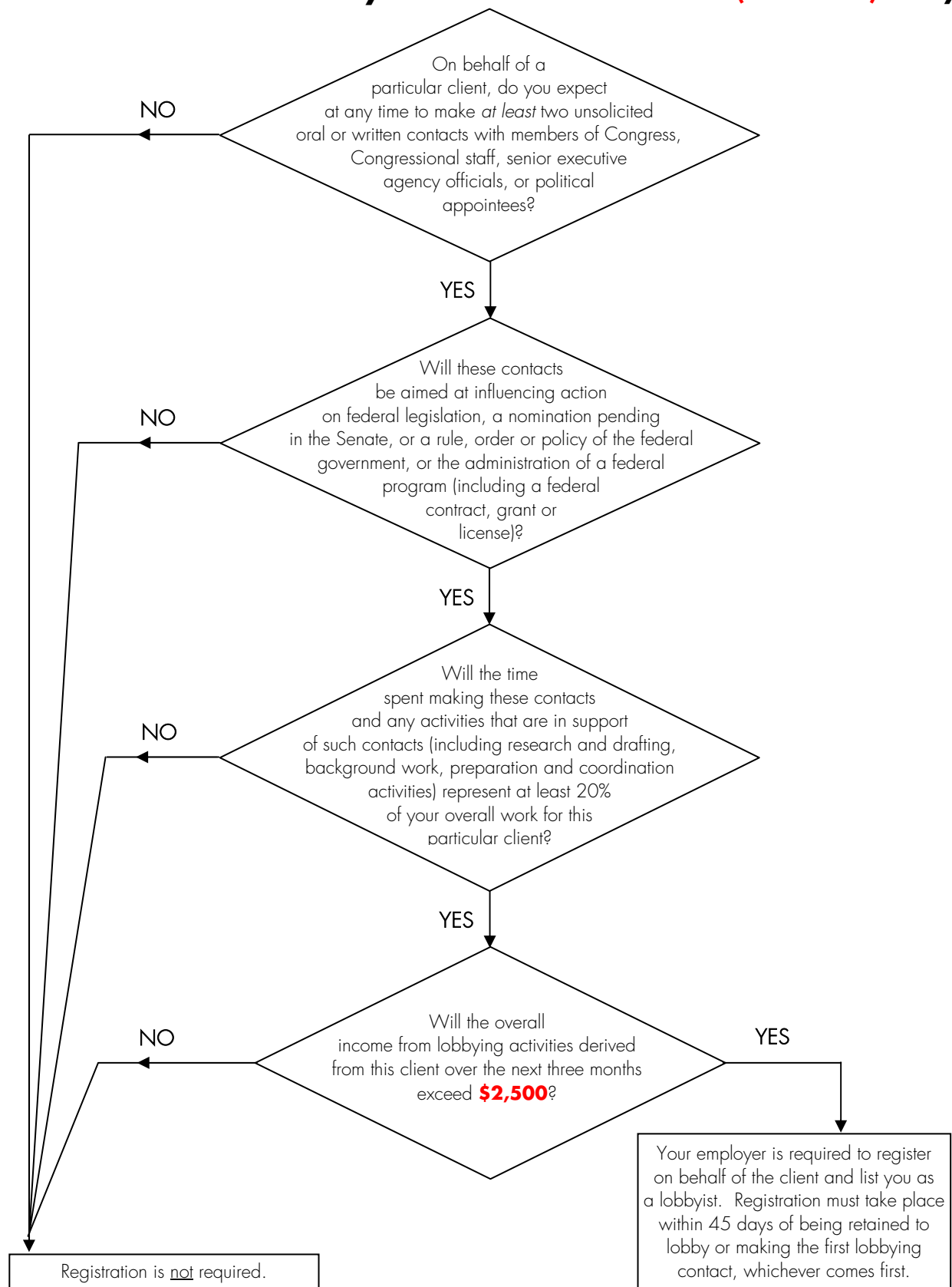


**Test Number 1 for Lobby Disclosure - For "in-house" lobbyists:**



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.

**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.

**D. Lobbying Disclosure Registration Form  
(Form LD-1)**

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# 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	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	Street City	Address		Principal place of business (city and state or country)	Amount of contribution for lobbying activities	Ownership %
		State/Province	Country			
_____	_____	_____	_____	_____	_____	_____ %
_____	_____	_____	_____	_____	_____	_____ %

Signature \_\_\_\_\_

Date \_\_\_\_\_

Printed Name and Title \_\_\_\_\_

# 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

[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

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.



## **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.

**E. 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

<b>1. Registrant Name</b> <input checked="" type="checkbox"/> Organization/Lobbying Firm <input type="checkbox"/> Self Employed Individual	
_____	
<b>2. Address</b> <input type="checkbox"/> Check if different than previously reported	
Address1 _____	Address2 _____
City _____	State _____ Zip Code _____ - _____ Country _____
<b>3. Principal place of business (if different than line 2)</b>	
City _____	State _____ Zip Code _____ - _____ Country _____
<b>4a. Contact Name</b> _____	<b>b. Telephone Number</b> _____ <b>c. E-mail</b> _____
	<input type="checkbox"/> International Number
<b>7. Client Name</b> _____	<input type="checkbox"/> Self <input type="checkbox"/> Check if client is a state or local government or instrumentality
	<b>5. Senate ID#</b> _____
	<b>6. House ID#</b> _____

**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	13. Organizations
<b>INCOME</b> relating to lobbying activities for this reporting period was:	<b>EXPENSE</b> relating to lobbying activities for this reporting period were:
Less than \$5,000 <input type="checkbox"/>	Less than \$5,000 <input type="checkbox"/>
\$5,000 or more <input type="checkbox"/> \$ _____	\$5,000 or more <input type="checkbox"/> \$ _____
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).	<b>14. REPORTING</b> Check box to indicate expense accounting method. See instructions for description of options.
	<input type="checkbox"/> <b>Method A.</b> Reporting amounts using LDA definitions only
	<input type="checkbox"/> <b>Method B.</b> Reporting amounts under section 6033(b)(8) of the Internal Revenue Code
	<input type="checkbox"/> <b>Method C.</b> Reporting amounts under section 162(e) of the Internal Revenue Code

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name and Title \_\_\_\_\_

**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   (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
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/>

19. Interest of each foreign entity in the specific issues listed on line 16 above  Check if None

**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.

Check the box if client is a state or local government or a department, agency, special district, or other instrumentality controlled by one or more state or local governments.

**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 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.
- 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.
- 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.**

**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

## 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	TAX	Taxation/Internal Revenue Code
ECN	Economics/Economic Development	TEC	Telecommunications
EDU	Education	TOB	Tobacco
ENG	Energy/Nuclear	TOR	Torts
ENV	Environmental/Superfund	TRD	Trade (Domestic & Foreign)
FAM	Family Issues/Abortion/Adoption	TRA	Transportation
FIR	Firearms/Guns/Ammunition	TOU	Travel/Tourism
FIN	Financial Institutions/Investments/Securities	TRU	Trucking/Shipping
FOO	Food Industry (Safety, Labeling, etc.)	URB	Urban Development/Municipalities
FOR	Foreign Relations	UNM	Unemployment
FUE	Fuel/Gas/Oil	UTI	Utilities
GAM	Gaming/Gambling/Casino	VET	Veterans
GOV	Government Issues	WAS	Waste (hazardous/solid/interstate/nuclear)
HCR	Health Issues	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 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.

*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.

**F. Lobbying Disclosure Semi-Annual Report Form  
(Form LD-203)\***

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(\*Unavailable as of press date.)

**G. Lobbying Disclosure Form for Federal Contractors and Grantees  
(Form LLL)**

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# DISCLOSURE OF LOBBYING ACTIVITIES

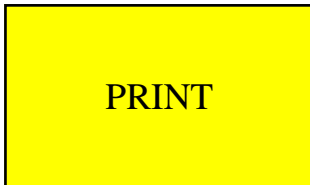
Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _ _
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> :  Congressional District, <i>if known</i> : 4c	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, <i>if known</i> :	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> : _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> 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: _____	
<b>Federal Use Only:</b>		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 employee of 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 organizational level 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.

**H. 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

<b>Federal Lobbying Disclosure</b>	<b>Federal Tax Deductibility</b>
<b>Grassroots Lobbying:</b> 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.	<b>Grassroots Lobbying:</b> Grassroots efforts are always non-deductible.
<b>Administrative Lobbying:</b> 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.).	<b>Administrative Lobbying:</b> 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.).
<b>Legislative Lobbying:</b> 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.	<b>Legislative Lobbying:</b> 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.
<b>Testimony:</b> Testimony does not have to be disclosed.	<b>Testimony:</b> Testimony which is compelled by subpoena or federal or state law is deductible; all other testimony is non-deductible.
<b>De Minimis Rule:</b> An entity does not have to register under the LDA if it expects to spend <b>\$10,000</b> or less over any <b>3-month</b> 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 <b>\$2,500</b> during any <b>6-month</b> period. If registered though, a report must be filed even if no lobbying has occurred during the relevant quarterly reporting period.	<b>De Minimis Rule:</b> If an entity expends <b>\$2,000</b> 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).
<b>State Lobbying:</b> Only federal lobbying is covered. It is inappropriate to disclose state lobbying activities.	<b>State Lobbying:</b> State and federal lobbying activities are covered.
<b>Expense Reporting Specificity:</b> Round to the nearest <b>\$10,000</b> .	<b>Expense Reporting Specificity:</b> Precise reporting is required.

**I. House Travel Authorization/Disclosure Forms**

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**U.S. House of Representatives  
Committee on Standards of Official Conduct**

**PRIVATE SPONSOR TRAVEL CERTIFICATION FORM  
(provide directly to each House invitee)**

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 XXV, 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. The trip sponsor should NOT submit the form directly to the Committee.

*Private sponsors are urged to submit this form to each House invitee at least 30 days before travel is scheduled to begin. The failure to provide the Committee with adequate time to review the form and attachments may result in the invitee not receiving approval for the trip. The submission of an incomplete form will delay the review process. Before completing this form, sponsors are urged to carefully review the Committee's private travel guidelines and advisory memoranda detailing the rules and restrictions for private travel, as well as the instructions for completing this form. Sponsors should call the Committee with any questions prior to submitting the form. Please type form.*

1. Sponsor(s) (who will be paying for the trip): \_\_\_\_\_  
\_\_\_\_\_
2. I represent that the trip will not be financed (in whole or in part) by a federally-registered lobbyist or a registered foreign agent (*signify "yes" by checking box*):
3. I represent that the trip sponsor(s) has not accepted from any other source funds earmarked directly or indirectly to finance any aspect of the trip (*signify "yes" by checking box*):
4. Is travel being offered to an accompanying family member of the House invitee(s)?  Yes  No
5. Provide names and titles of ALL House invitees; for each invitee, provide explanation of why the individual was invited (include additional pages if necessary): \_\_\_\_\_  
\_\_\_\_\_
6. Dates of travel: \_\_\_\_\_
7. Cities of departure – destination – return: \_\_\_\_\_  
\_\_\_\_\_
8. Attached is a detailed agenda of the activities taking place during the travel (*i.e.*, an hourly description of planned activities) (*signify "yes" by checking box*):
9. 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 federally registered lobbyist or registered foreign agent:  or
  - c. The trip is for attendance at a one-day event *and* lobbyist involvement in planning, organizing, requesting, or arranging the trip was *de minimis* under the Committee's travel regulations.
10. If travel is for participation in a one-day event (*i.e.*, if you checked Question 9(c)), check one of the following:
  - a. One-night's lodging and meals are being offered:  or
  - b. Two-nights' lodging and meals are being offered:If "b" is checked, explain why the second night is warranted: \_\_\_\_\_  
\_\_\_\_\_

11. If the trip is not sponsored by an institution of higher education, I represent that a federally-registered lobbyist or foreign agent will not accompany House Members or employees on any segment of the trip (*signify "yes" by checking box*):
12. Private sponsors must have a direct and immediate relationship to the purpose of the trip or location being visited. Describe the role of each sponsor in organizing and conducting the trip: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. Describe each sponsor's organizational interest in the purpose of the trip: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
14. Describe the type and class of the transportation being provided. Indicate whether coach, business-class or first-class transportation will be provided. In addition, for travel via aircraft, please indicate if travel is being offered on a commercial flight, chartered flight or on an aircraft operated or paid for by a carrier not licensed by the Federal Aviation Administration to operate for compensation or hire (*i.e.*, a private aircraft). If first-class fare is being provided, or if travel is via chartered or private aircraft, please provide an explanation describing why such travel is warranted: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
15. 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). (*signify "yes" by checking box*):
16. 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 or organized *specifically with regard* to congressional participation:   
If "b" is checked, detail the cost per day of meals (approximate cost may be provided): \_\_\_\_\_  
\_\_\_\_\_
17. Reason for selecting the location of the event or trip: \_\_\_\_\_  
\_\_\_\_\_
18. Name of hotel or other lodging facility: \_\_\_\_\_
19. Cost per night of hotel or other lodging facility (approximate cost may be provided): \_\_\_\_\_  
\_\_\_\_\_
20. Reason(s) for selecting hotel or other lodging facility: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. TOTAL EXPENSES FOR EACH PARTICIPANT:

<input type="checkbox"/> actual amounts <input type="checkbox"/> good faith estimates	Total <i>Transportation</i> Expenses per Participant	Total <i>Lodging</i> Expenses per Participant	Total <i>Meal</i> Expenses per Participant
For each Member, Officer, or employee			
For each accompanying family member			

	<i>Other</i> Expenses (dollar amount)	Identify Specific Nature of "Other" Expenses (e.g., taxi, parking, registration fee, etc.)
For each Member, Officer, or employee		
For each accompanying family member		

22. I represent that reimbursement for miscellaneous travel expenses for the trip, such as travel to and from airports, security costs, interpreter fees, visa application fees, and similar expenses, will be for actual costs incurred and are necessary for the purpose of the trip (*signify "yes" by checking box*):

23. I certify that the information contained in this form is true, complete, and correct to the best of my knowledge.

Signature: \_\_\_\_\_

Name and title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

Email Address: \_\_\_\_\_

The Committee staff may contact the above individual above if additional information is required.

If there are any questions regarding this form please contact the Committee at the following address:

Committee on Standards of Official Conduct  
 U.S. House of Representatives  
 HT-2, The Capitol  
 Washington, DC 20515  
 (202) 225-7103 (phone)  
 (202) 225-7392 (general fax)  
 (202) 226-7172 (fax for travel approvals)

*Version date 4/2007 by Committee on Standards of Official Conduct*

**U.S. House of Representatives  
Committee on Standards of Official Conduct**

**INSTRUCTIONS FOR FILLING OUT THE PRIVATE SPONSOR TRAVEL  
CERTIFICATION FORM**

1. *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.
2. *I represent that the trip will not be financed (in whole or in part) by a federally-registered lobbyist or a registered foreign agent:* House Members and staff may not accept travel funded by a lobbyist or registered foreign agent, even when the lobbyist or foreign agent will be reimbursed by a client or employer.
3. *I represent that the trip sponsor(s) has not accepted from any other source funds earmarked directly or indirectly to finance any aspect of the trip:* All financial contributors to the trip must qualify as sponsors and should be listed as a sponsor in response to question 1.
4. *Is travel being offered to an accompanying family member of the House invitee(s)?* Check yes or no. House Rules permit Members and House staff to accept travel benefits for one accompanying family member if offered by the trip sponsor.
5. *Provide names and titles of ALL House invitees; for each invitee, provide explanation of why the individual was invited:* You must list every 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 the individual's official duties. The explanation should demonstrate a connection between the trip and each invitee's official duties.
6. *Dates of Travel:* State the dates of departure and return.
7. *Cities of departure – destination – return:* For example, an appropriate entry might read: "DC – Detroit – DC". Include additional destinations if there will be more than one. Do not list the names of airports, times of flights, or cities where travelers will have an airport layover (this information should be included in the attached detailed agenda).
8. *Attached is a detailed agenda of the activities taking place during the travel:* The agenda should be a detailed, hour-by-hour agenda. Include the names of speakers and the subjects of briefings. The agenda should also include information regarding the time spent on travel to and from the destination, as well as local travel. Travel will not be approved if the agenda includes an excessive amount of either unscheduled time and/or opportunities for recreational activities, even if such activities are at the personal expense of the invitees.

9. *I represent that (check one of the following):* Check only one box in response to this question. “Institutions of higher education” generally includes accredited public and private colleges or trade schools located in the U.S. and its territories; such entities should check box “a,” regardless of whether they employ or retain a federal lobbyist or foreign agent. Entities other than institutions of higher education that do not employ or retain a federal lobbyist or foreign agent should check box “b.” Entities other than institutions of higher education that do employ or retain a registered lobbyist or foreign agents may sponsor travel only for one-day events. For such trips, lobbyist involvement must be “*de minimis*” as defined by Committee regulations (see question 12).
10. *If travel is for participation in a one-day event, check one of the following:* Complete this question only if you checked box “c” in response to question 9. For travel to one-day events sponsored by an entity that retains or employs a lobbyist, 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 regulations.
11. *If the trip is not sponsored by an institution of higher education, I represent that a federally-registered lobbyist or foreign agent will not accompany House Members or employees on any segment of the trip:* House Rules prohibit Members and employees from being accompanied by registered lobbyists or foreign agents while traveling. This rule does not prohibit lobbyist or foreign agent participation in briefings or meetings that occur at the destination.
12. *Private sponsors must have a direct and immediate relationship to the purpose of the trip or location being visited. Describe the role of each sponsor in organizing and conducting the trip:* The sponsor(s) (the entity or entities paying for the trip) should be the entity primarily responsible for organizing the trip. Travel may not be accepted from an entity that merely contributes money towards the travel and is not otherwise involved in planning or conducting the trip.
13. *Describe each sponsor’s organizational interest in the purpose of the trip:* Briefly describe the interest or purpose of each sponsor in the trip.
14. *Describe the type and class of transportation being provided:* See directions on form.
15. *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, Members and staff may not accept local transportation in connection with recreation or entertainment.
16. *I represent that either:* 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 to all other attendees as part of the event. For events put on specifically for Members or staff, meal expenses must be “reasonable” in accordance with Committee regulations.

17. *Reason for selecting the location of the event or trip:* The destination of a trip must be related to its purpose. Travel to a location of an event organized without regard to congressional participation (for example, annual meetings of business or trade associations) is presumptively reasonable.
18. *Name of hotel or other lodging facility:* Include the names of all hotels and lodging facilities to be used during the trip.
19. *Cost per night of hotel or other lodging facility:* Self-explanatory. Trip sponsors 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.
20. *Reason(s) for selecting hotel or other lodging facility:* For events held 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. When the trip is held specifically for Members or staff, include rationale such as proximity to the site to be visited or to the airport.
21. *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.
22. *I represent that reimbursement for miscellaneous travel expenses for the trip, such as travel to and from airports, security costs, interpreter fees, visa application fees, and similar expenses, will be for actual costs incurred and are necessary for the purpose of the trip:* Members and staff may not accept a lump sum based on an estimate of incidental expenses.
23. *Certification Information:* Self-explanatory.

**THE TRIP SPONSOR SHOULD PROVIDE A COPY OF THE COMPLETED FORM, INCLUDING ALL ATTACHMENTS, TO EACH HOUSE MEMBER OR EMPLOYEE INVITED ON THE TRIP.**



**U.S. House of Representatives  
Committee on Standards of Official Conduct**

**PRIVATELY SPONSORED TRAVEL: TRAVELER FORM  
For Members, Officers and Employees  
(submit directly to the Committee)**

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 XXV, 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 Private Sponsor Travel Certification Form.

*Members, officers and employees seeking approval for travel are urged to submit all forms to the Committee at least **30 days** before travel is scheduled to begin. The failure to provide the Committee with adequate time to review the form and attachments may result in the invitee not receiving approval for the trip. A copy of this form will be made available for public inspection. Please type form. **Form (and any attachments) may be faxed to the Committee at (202) 225-7392.***

1. Name of Member, officer or employee (traveler): \_\_\_\_\_
  
2. Sponsor(s) (who will be paying for the trip): \_\_\_\_\_  
\_\_\_\_\_
  
3. Travel destination(s): \_\_\_\_\_
  
4. a. Dates of travel: \_\_\_\_\_  
b. Will you be extending the trip at your personal expense?  Yes  No  
If yes, dates at personal expense: \_\_\_\_\_
  
5. a. Name of accompanying family member (if any): \_\_\_\_\_  
b. Relationship to Member/Officer:  Spouse  Child  Other (specify): \_\_\_\_\_
  
6. a. Did the trip sponsor answer "yes" to Question 9(c) on the Trip Sponsor form (*i.e.*, the travel is being sponsored by an entity that employs a lobbyist)?  Yes  No  
b. If yes, check one of the following:  
(1) Approval for one-night's lodging and meals is being requested:  or  
(2) Approval for two-nights' lodging and meals is being requested:   
If "(2)" is checked, explain why the second night is warranted: \_\_\_\_\_  
\_\_\_\_\_
  
7. Private Sponsor Travel Certification Form is attached, including agenda, invitee list, and any other attachments (*indicate that form is attached by checking box*):

8. Explain why participation in the trip is connected to your official or representational duties:

\_\_\_\_\_  
\_\_\_\_\_

9. I certify that the information contained in 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/Committee: \_\_\_\_\_

Office address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

**NOTE: You must complete the contact information fields above, as Committee staff may need contact you if additional information is required.**

**FOR STAFF:  
TO BE COMPLETED BY YOUR EMPLOYING MEMBER:**

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.

\_\_\_\_\_  
Signature of Employing Member

Date: \_\_\_\_\_

If there are any questions regarding this form please contact the Committee:

Committee on Standards of Official Conduct  
U.S. House of Representatives  
HT-2, The Capitol  
Washington, DC 20515  
(202) 225-7103 (phone)  
(202) 225-7392 (fax)

Original  Amendment

**U.S. House of Representatives  
110<sup>th</sup> Congress**

**MEMBER / OFFICER  
POST-TRAVEL DISCLOSURE FORM**

This form is for disclosing the receipt of travel expenses from a private source for meetings, speaking engagements, fact-finding trips or similar events in connection with official duties. You need not disclose government-funded or political travel on this form, or travel that is unrelated to official duties. This form does not eliminate the need to report all privately-funded travel on the Member or officer's annual Financial Disclosure Statement. In accordance with clause 5 of House Rule 25, complete this form and file it with the Clerk of the House of Representatives, B-106 Cannon House Office Building, within **15 days** after travel is completed. The Clerk is to make these forms available to the public as soon as possible after they are received. *Obtain the dollar amounts from the sponsor; if exact dollar amounts are unavailable, provide a good faith estimate.*

Name of Member or Officer (print or type): \_\_\_\_\_

Name of Accompanying Family Member (if any): \_\_\_\_\_

Relationship to Member/Officer:  Spouse  Child  Other (specify): \_\_\_\_\_

Date of Departure and Date of Return: \_\_\_\_\_

Dates at personal expense: \_\_\_\_\_

Itinerary (cities of departure – destination – return): \_\_\_\_\_

\_\_\_\_\_

Sponsor(s) (who paid for the trip): \_\_\_\_\_

\_\_\_\_\_

Describe meetings and events attended (attach additional pages if necessary): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attached to this form are EACH of the following (*signify "yes" for each item by checking the corresponding box*):

1.  the Private Sponsor Travel Certification Form completed by trip sponsor, including all attachments;
2.  the Privately-Sponsored Travel Approval Form completed by the Member or officer; **and**
3.  the Committee on Standards' letter approving my participation on this trip.

I represent that I participated in each of the activities reflected in the sponsor's agenda (*signify "yes" by checking box*):

If not, explain: \_\_\_\_\_

\_\_\_\_\_

**TRIP EXPENSES:**

	Total Transportation Expenses	Total Lodging Expenses	Total Meal Expenses
For Member or Officer:			
For accompanying family member:			

	Other Expenses (dollar amount)	Specific Nature of Expenses (e.g., taxi, parking, registration fee, etc.)
For Member or Officer:		
For accompanying family member:		

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 listed above 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 OR OFFICER: \_\_\_\_\_

DATE: \_\_\_\_\_

*Version date 4/2007 by Committee on Standards of Official Conduct*

**U.S. House of Representatives  
110<sup>th</sup> Congress**

**EMPLOYEE  
POST-TRAVEL DISCLOSURE FORM**

This form is for disclosing the receipt of travel expenses from private sources for meetings, speaking engagements, fact-finding trips or similar events in connection with official duties. You need not disclose government-funded or political travel on this form, or travel that is unrelated to official duties. This form does not eliminate the need to report all privately-funded travel on the annual Financial Disclosure Statements of those persons required to file them. In accordance with clause 5 of House Rule 25, complete this form and file it with the Clerk of the House of Representatives, B-106 Cannon House Office Building, within **15 days** after travel is completed. The Clerk is to make these forms publicly available as soon as possible after they are received. *Obtain the dollar amounts from the sponsor; if exact dollar amounts are unavailable, provide a good faith estimate.*

Name of Employee (print or type): \_\_\_\_\_

Name of Accompanying Family Member (if any): \_\_\_\_\_

Relationship to Employee:  Spouse  Child  Other (specify): \_\_\_\_\_

Date of Departure and Date of Return: \_\_\_\_\_

Dates at Personal Expense: \_\_\_\_\_

Itinerary (cities of departure – destination – return): \_\_\_\_\_

\_\_\_\_\_

Sponsor(s) (who paid for the trip): \_\_\_\_\_

\_\_\_\_\_

Describe meetings and events attended (attach additional pages if necessary): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attached to this form are EACH of the following (*signify "yes" for each item by checking the corresponding box*):

1.  the Private Sponsor Travel Certification Form completed by trip sponsor, including all attachments;
2.  the Privately-Sponsored Travel Approval Form completed by the employee; **and**
3.  the Committee on Standards' letter approving my participation on this trip.

I represent that I participated in each of the activities reflected in the sponsor's agenda (*signify "yes" by checking box*):

If not, explain: \_\_\_\_\_

\_\_\_\_\_

**TRAVEL EXPENSES:**

	Total Transportation Expenses	Total Lodging Expenses	Total Meal Expenses
For employee:			
For accompanying family member:			

	Other Expenses (dollar amount)	Specific Nature of Expenses (e.g., taxi, parking, registration fee, etc.)
For employee:		
For accompanying family member:		

I certify that the information contained in this form is true, complete, and correct to the best of my knowledge.

SIGNATURE OF EMPLOYEE: \_\_\_\_\_

DATE: \_\_\_\_\_

I authorized this travel in advance. I have determined that all of the expenses listed above 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: \_\_\_\_\_

SIGNATURE OF SUPERVISING MEMBER: \_\_\_\_\_

DATE: \_\_\_\_\_

*Version date 4/2007 by Committee on Standards of Official Conduct*

**J. Senate Travel Authorization/Disclosure forms**

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## 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 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 agents 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 lobbyist 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 lobbyist 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 Section 501(c)(3) of the Internal Revenue Code of 1986 and no registered lobbyist 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
<input type="checkbox"/> Good Faith estimate <input type="checkbox"/> Actual Amount				

17. State whether a) the trip involves an event that is arranged or organized *without regard* to congressional participation **or** b) the trip involves events that are 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 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 agent 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 agent to serve on the board of an organization that is sponsoring travel, as long as the lobbyists or foreign agent 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 employee 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.

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 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 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 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 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; description may be by kind or category of educational activity.
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. Attached 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 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 Committee regulations.
18. *Reason for selecting the location of the event or trip:* The location of the trip must be related to its purpose.

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 or entertainment:* The only recreational or entertainment activities that will be approved by the Committee are those that are provided to all attendees and are an integral part of an event.
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 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.

FILE FORM WITH:  
SECRETARY OF THE SENATE  
OFFICE OF PUBLIC RECORDS  
232 HART BUILDING  
WASHINGTON, DC 20510

# EMPLOYEE ADVANCED TRAVEL AUTHORIZATION AND DISCLOSURE FORM

Amendment (if checked, re-sign and date prior to filing)

**PART 1:** Complete this section in advance of travel:

Name of individual: \_\_\_\_\_

Travel expenses paid by (list all sources): \_\_\_\_\_

Travel date(s): \_\_\_\_\_

Destination(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:**

I, \_\_\_\_\_ hereby authorize \_\_\_\_\_  
(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)

**PART 2:** Complete within 30 days of returning from the travel and file both pages of the completed form with the Office of Public Records in Room 232 of the 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 paid for me, as set out above:

FILL IN THE APPROPRIATE LINES AND INCLUDE ANY EXPENSES REIMBURSED OR PAID FOR AN ACCOMPANYING SPOUSE OR DEPENDENT CHILD. DO NOT TOTAL. (Attach additional pages if necessary).

	Transportation Expenses	Lodging Expenses	Meal Expenses	Other Expenses (Amount & Description)
<input type="checkbox"/> Good Faith estimate <input type="checkbox"/> Actual Amount				

Provide a description of all meetings and events attended. See Senate Rule 35.2(c)(6). (Attach additional pages if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Employee)

I HAVE MADE A DETERMINATION THAT THE EXPENSES SET OUT IN PART 2 IN CONNECTION WITH TRAVEL DESCRIBED IN PART I, ARE NECESSARY TRANSPORTATION, LODGING, AND RELATED EXPENSES AS DEFINED IN RULE 35.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Supervising Senator/Officer)

**PART 3:** Both pages of this form, along with a copy of the Private Sponsor Travel Certification Form completed by the trip sponsor(s), MUST be provided to the Office of Public Records, Room 232 of the Hart Building, within thirty (30) days after the travel is completed.



**FILE FORM WITH:  
 SECRETARY OF THE SENATE  
 OFFICE OF PUBLIC RECORDS  
 232 HART BUILDING  
 WASHINGTON, DC 20510**

## SENATORS AND OFFICERS: DISCLOSURE OF TRAVEL EXPENSES

Amendment (if checked, re-sign and date prior to filing)

This disclosure, along with a copy of the Private Sponsor Travel Certification Form completed by the trip sponsor(s), MUST be provided to the Office of Public Records, Room 232 of the Hart Building, within thirty (30) days after the travel is completed.

In compliance with Rule 35.2(a) and (c), I \_\_\_\_\_,  
*(Name of Senator/Officer)*

make the following disclosures with respect to travel expenses that have been or will be reimbursed/paid for me.

Travel expenses paid by (list all sources): \_\_\_\_\_

Travel date(s): \_\_\_\_\_

Destination(s): \_\_\_\_\_

Name of accompanying family member (if any): \_\_\_\_\_

Relationship to Member/Officer:  Spouse  Child

FILL IN THE APPROPRIATE LINES AND INCLUDE ANY EXPENSES REIMBURSED OR PAID FOR AN ACCOMPANYING SPOUSE OR DEPENDENT CHILD. DO NOT TOTAL. (Attach additional pages if necessary).

	Transportation Expenses	Lodging Expenses	Meal Expenses	Other Expenses (Amount & Description)
<input type="checkbox"/> Good Faith estimate <input type="checkbox"/> 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)*

**K. House Job Negotiation Notification and Recusal Forms**

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**United States House of Representatives  
Committee on Standards of Official Conduct**

**MEMBER/EMPLOYEE  
Notification of Negotiations or  
Agreement for Future Employment**

1. Pursuant to House Rule XXVII, clauses 1-3 (as amended by S.1, § 301(a)),

I am required to notify the Committee on Standards of Official Conduct 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 \_\_\_\_\_, 2008 with the following private entity:

\_\_\_\_\_.

3. I understand and acknowledge that, pursuant to this rule, I must recuse myself from any official matter that would present a conflict of interest or give the appearance thereof, in connection with the above-named entity, and that I must notify the Committee in writing of such recusal.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Submit ORIGINAL to: Committee on Standards of Official Conduct  
HT-2, The Capitol

NOTE: Forms may not be filed by fax.

**United States House of Representatives  
Committee on Standards of Official Conduct**

**Statement of Recusal for  
MEMBERS**

1. This is to notify the Committee that, pursuant to House Rule XXVII, clauses 1 and 4 (as amended by S.1, § 301(a)), 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  
\_\_\_\_\_, 2008.

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. I recognize that this provision means that I cannot act directly or through others in deciding, approving, or disapproving official matters that will present a conflict of interest or the appearance of a conflict of interest, nor may I recommend, investigate, advise, or otherwise contribute to or influence such official matters. To comply with this provision, any official matter involving the above-named entity must be managed without my direct or indirect participation.
3. I will promptly inform the Committee in writing if I withdraw my recusal statement.
4. I recognize that this form will be made available for public review by the Clerk of the House.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Submit ORIGINAL to: Committee on Standards of Official Conduct  
HT-2, The Capitol

Submit COPY to: Clerk of the House  
Legislative Resource Center  
B-106 Cannon

NOTE: Forms may not be filed by fax.

**United States House of Representatives  
Committee on Standards of Official Conduct**

**Statement of Recusal for  
HOUSE EMPLOYEES**

1. This is to notify the Committee that, pursuant to House Rule XXVII, clauses 2 and 4 (as amended by S.1, § 301(a)), 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  
\_\_\_\_\_, 2008.

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. I recognize that this provision means that I cannot act directly or through others in deciding, approving, or disapproving official matters that will present a conflict of interest or the appearance of a conflict of interest, nor may I recommend, investigate, advise, or otherwise contribute to or influence such official matters. To comply with this provision, any official matter involving the above-named entity must be managed without my direct or indirect participation.
3. I will promptly inform the Committee in writing if I withdraw my recusal statement.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Submit ORIGINAL to: Committee on Standards of Official Conduct  
HT-2, The Capitol

NOTE: Forms may not be filed by fax.

**L. Senate Job Negotiation and Recusal Forms**

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**FILE FORM WITH:  
 SECRETARY OF THE SENATE  
 OFFICE OF PUBLIC RECORDS  
 232 HART BUILDING  
 WASHINGTON, DC 20510**

## 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.

<b>Name of Senator</b>	
<b>Name of Private Employer(s)</b>	
<b>Date of Commencement of Negotiations/Arrangement and Recusal as required by Rule 37.14(a)</b>	

For your information, the relevant Senate rules 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.

**If you have any questions, please call the Senate Ethics Committee staff at 224-2981.**

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

# DISCLOSURE BY SENIOR STAFF OF EMPLOYMENT NEGOTIATIONS AND RECUSAL

## (Non-Public Disclosure to the Ethics Committee)

If you are a senior staffer member making \$126,975 or more a year in CY 2008, in addition to notifying your supervising Senator of job negotiations you have with a prospective private employer, you now must also file this form with the Ethics Committee (220 Hart Building) within three days of starting these negotiations or arrangements. These forms will not be made public. You can use additional sheets if necessary.

<b>Name of Senate Staffer</b>	
<b>Employing Senate Office or Committee</b>	
<b>Name of Private Employer(s)</b>	
<b>Date of Commencement of Negotiations/Arrangement and Recusal as required by Rule 37.14(c)</b>	

For your information, the relevant Senate rules read as follows:

Senate Rule 37, Paragraph 14(c) states that: “[a]n employee of the Senate earning in excess of 75 percent of the salary paid to a Senator shall notify the Select Committee on Ethics that he or she is negotiating or has any arrangement concerning prospective private employment. The notification under this subparagraph shall be made not later than 3 business days after the commencement of such negotiation or arrangement. An employee to whom this subparagraph applies shall recuse himself or herself from (i) any contact or communication with the prospective employer on issues of legislative interest to the prospective employer; and (ii) any legislative matter in which there is a conflict of interest or an appearance of a conflict for that employee under this subparagraph; and notify the Select Committee on Ethics of such recusal.”

The Senate Ethics Manual states: “[as] negotiations with prospective employers advance, there necessarily comes a point where it is imperative that a staffer inform his or her supervising Senator of negotiations, so that the Senator may make an informed decision as to how best to protect against a conflict of interest.”

**If you have any questions, please call Committee staff at 224-2981.**

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_



1601 K Street NW  
Washington, DC 20006  
t: 202.778.9000  
f: 202.778.9100

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