



Lobbying Regulations on Non-Profit Organizations

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Summary

Public charities, religious groups, social welfare organizations and other non-profit organizations which are exempt from federal income taxation are *not* generally prohibited from engaging in all lobbying or public policy advocacy activities merely because of their tax-exempt status. There may, however, be some lobbying *limitations* on certain organizations, depending on their tax-exempt status and/or their participation as federal grantees in federal programs. Additionally, organizations (other than churches or their affiliates) which meet specified threshold expenditure requirements on lobbying activities and which engage in direct lobbying of federal officials must register employees who are paid to lobby, and must file reports on lobbying activities, under the Lobbying Disclosure Act of 1995, as amended.

As to the different categories of tax-exemption: charitable, religious or educational organizations which are exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, who may receive contributions from private parties that are tax-deductible for the *contributor*, may not engage in direct or grass roots lobbying activities which constitute a “substantial part” of their activities if they wish to preserve this preferred tax-exempt status. “Civic leagues or organizations not operated for profit but operated exclusively for the promotion of social welfare,” tax exempt under 26 U.S.C. § 501(c)(4), on the other hand, have no tax consequence expressed in the statute for lobbying or advocacy activities. (But note restrictions on 501(c)(4)’s receiving federal grants or loans). Labor and agricultural organizations, tax-exempt under Section 501(c)(5) of the Internal Revenue Code, and business trade associations and chambers of commerce, exempt from federal income taxation under Section 501(c)(6), also have no specific statutory limitations upon their lobbying activities as a result of their tax-exempt status. Private foundations are generally not allowed to lobby.

A provision of the 1995 Lobbying Disclosure Act, commonly called the “Simpson Amendment,” prohibits section 501(c)(4) civic leagues and social welfare organizations from engaging in any “lobbying activities,” even with their *own* private funds, if the organization receives any federal grant, loan, or award. Because of the definitions under the Lobbying Disclosure Act, however, the “Simpson Amendment” limitations do not appear to apply to any “grass roots” lobbying or advocacy, nor to lobbying of state or local officials, and the amendment also exempts certain other official communications or testimony.

Finally, federal contract or grant money may not be used for any lobbying, unless authorized by Congress. No organization, regardless of tax status, may be reimbursed out of federal contract or grant money for any lobbying activities, or for other advocacy or political activities, unless authorized by Congress. This applies to direct or “grass roots” lobbying campaigns at the state, local or federal level (but exempts providing technical and/or factual information related to the performance of a grant or contract when in response to a documented request). The provision of law at 18 U.S.C. § 1913, as amended, as well as the so-called “Byrd Amendment,” would also generally prohibit the reimbursement or payment from federal grants or contracts of the costs for “lobby” activities.

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This report is intended to provide a brief overview of the various potential restrictions or regulations within federal law on the lobbying activities of non-profit organizations. Public charities, social welfare organizations, religious groups, and other non-profit, tax-exempt organizations are *not* generally prohibited from engaging in all lobbying or public policy advocacy merely because of their federal tax-exempt status. There may, however, be some limitations and restrictions on lobbying by certain non-profit organizations, as well as general public disclosure and reporting requirements relative to lobbying activities of most organizations.

There are, in fact, several overlapping laws, rules and regulations which may apply to various non-profits which engage in lobbying activities. In some instances, the rules and restrictions that apply may be determined by the section of the Internal Revenue Code under which an organization holds its tax-exempt status. In other instances, certain rules and regulations may apply depending on the type of non-profit organization and whether it receives federal grants, loans or awards. Finally, organizations, depending on the amount and type of lobbying in which they engage, may be required to file public registration and disclosure reports under the federal Lobbying Disclosure Act of 1995, as amended. It should be emphasized that the definitions of the terms “lobbying” or “advocacy,” and which particular activities may be encompassed in or excluded from those terms, may vary among the different regulations, rules, and statutes.

Tax Code Status and Lobbying

Section 501(c)(3) Charitable Organizations

Organizations which are exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) are community chests, funds, corporations or foundations “organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes.” These charitable organizations, which have the advantage of receiving contributions from private parties which are tax-deductible for the *contributor* under 26 U.S.C. § 170(a), are limited in the amount of lobbying in which they may engage if they wish to preserve this preferred federal tax-exempt status.¹

The general rule for a charitable organization exempt from federal taxation under § 501(c)(3) is that such organization may not engage in lobbying activities which constitute a “substantial part” of its activities.² In 1976, a so-called “safe harbor” was offered to 501(c)(3) organizations where they could elect to come within specific percentage limitations on expenditures to assure that no

¹ 26 U.S.C. §§ 501(c)(3), 501(h), 4911, 6033; see IRS Regulations at 55 F.R. 35579-35620 (August 31, 1990), 26 C.F.R. Parts 1, 7, 20, 25, 53, 56, and 602.

² 26 U.S.C. § 501(c)(3). The Supreme Court has upheld the loss of the special tax-exempt status of charitable, 501(c)(3) organizations if they engage in “substantial” lobbying. *Regan v. Taxation With Representation of Washington*, 461 U.S. 540 (1983). The Court noted that although lobbying is a protected First Amendment right, and although the Government may not indirectly punish an organization for exercising its constitutional rights by denying benefits to those who exercise them, lobbying activities are not necessarily one of the contemplated “exempt functions” of these charitable or educational organizations for which they have received the preferred tax status. Since contributions to the 501(c)(3) organization by private individuals are eligible for a deduction from the donor’s federal income tax, the Government is in effect “subsidizing” those private contributions to the organization (through loss of tax revenue), and the Court found that Congress does not have to “subsidize” such lobbying activities through preferred tax status for contributions if it does not choose to do so, as long as other outlets for the organization’s unlimited, protected First Amendment expression exist. *Id.* at 544-546.

violations of the “substantial part” rule would occur, or they could remain under the old, unspecified “substantial part test.”³ The specific statutory limitations upon organizational expenditures for covered lobbying activities (the “expenditure test” limitations) for electing 501(c)(3) organizations are as follows:

- 20% of the first \$500,000 of total exempt-purpose expenditures of the organization, then
- 15% of the next \$500,000 in exempt-purposes expenditures, then
- 10% of the next \$500,000 in exempt-purpose expenditures, and then
- 5% of the organization’s exempt-purpose expenditures over \$1,500,000;
- up to a total expenditure limit of \$1,000,000 on lobbying activities.
- There is currently a separate “grass roots” expenditure limit of 25% of the “direct” lobbying limits.⁴

The activities covered under the tax code limitations on “lobbying” by charitable organizations generally encompass both “direct” lobbying as well as “grass roots” lobbying (for which there is a separate included expense limitation). “Direct” lobbying entails direct communications to legislators, and to other government officials involved in formulating legislation (as well as direct communications to an organization’s own members encouraging them to communicate directly with legislators), which refer to and reflect a particular view on specific legislation. Indirect or “grass roots” lobbying involves advocacy pleas to the general public which refer to and take a position on specific legislation, and which encourage the public to contact legislators to influence them on that legislation.

The definitions of and the specific exemptions from the term “lobbying” are important in observing the expenditure limitations on an organization’s activities. For example, not all public “advocacy” activities of an organization are considered “grass roots lobbying.” As noted expressly by the IRS: “... clear advocacy of specific legislation is not grass roots lobbying at all unless it contains an encouragement to action.”⁵ Furthermore, not all communications to legislators are considered “direct lobbying.” The definition of “lobbying” for purposes of the tax code limitations expressly *exempt* activities such as:

- (a) making available nonpartisan analysis, study or research involving independent and objective exposition of a subject matter, even one that takes a position on particular legislation as long as it does not encourage recipients to take action with respect to that legislation;

³ Religious organizations are not permitted to make the election to come within the specific monetary lobbying guidelines under 26 U.S.C. § 501(h), 26 U.S.C. § 501(h)(5). See IRS Form 5768, for election to come within “expenditure test.”

⁴ See 26 U.S.C. § 4911(c)(2).

⁵ 1990-39 Internal Revenue Bulletin, at p. 7. A communication “encourages a recipient to take action” if it (1) states that the recipient should contact legislators; (2) provides a legislator’s phone number, address, etc; (3) provides a petition, tear-off postcard, or similar material to send to a legislator; or (4) specifically identifies a legislator who is opposed, in favor, or undecided on the specific legislation, or is on the committee considering the legislation, if the communication itself is “partisan” in nature and can not be characterized as a full and fair exposition of the issue. *Id.* at 7.

(b) technical advice or assistance given at the *request* of a governmental body;

(c) so-called “self-defense” communications before governmental bodies, that is, communications on those issues that might affect the charity’s existence, powers, duties, tax-exempt status, or deductibility of contributions to it; and

(d) contacts with officials unrelated to affecting specific legislation, even those that involve general discussions of broad social or economic problems which are the subject of pending legislation.⁶

Section 501(c)(4) Civic Organizations

Organizations which are tax exempt under section 501(c)(4) of the Internal Revenue Code are generally described as “[c]ivic leagues or organizations not operated for profit but operated exclusively for the promotion of social welfare” If a civic league or social welfare organization is tax exempt under § 501(c)(4) of the Internal Revenue Code, there is generally no tax consequence for lobbying or advocacy activities (as long as such expenditures are in relation to their exempt function). In fact, in upholding the limitations on lobbying by 501(c)(3) charitable organizations against First Amendment challenges, the Supreme Court noted that a 501(c)(3) organization could establish a 501(c)(4) affiliate through which its First Amendment expression could be exercised through unlimited lobbying and advocacy.⁷ The 501(c)(4) affiliate should be separately incorporated, keep separate books, and spend and use resources which are not part of or otherwise paid for by the tax-deductible contributions to the 501(c)(3) parent organization.⁸ While 501(c)(4) organizations’ lobbying activities are generally unrestricted, if a 501(c)(4) organization receives federal funds in the form of a “grant” or loan, then there are express restrictions on its “lobbying activities,” discussed below.

Section 501(c)(5) Labor Organizations and 501(c)(6) Trade Associations

Labor and agricultural organizations are tax-exempt under section 501(c)(5) of the Internal Revenue Code, and business trade associations and chambers of commerce are exempt from federal income taxation under section 501(c)(6). Neither labor or agricultural organizations, nor business trade associations or chambers of commerce, have any specific limitations upon their lobbying activities as a result of their tax-exempt status.⁹

⁶ 26 U.S.C. § 4911(d)(2); 26 C. F. R. § 56.4911-2(c)(1) - (4).

⁷ *Regan v. Taxation With Representation of Washington*, *supra* at 544-546 (Opinion of the Court), see also 552-553 (Blackmun concurring).

⁸ See discussion of a 501(c)(3) setting up a 501(c)(4) lobbying affiliate in Smucker, *The Nonprofit Lobbying Guide*, Second Edition, 68-69 (Independent Sector 1999).

⁹ Note, however, pass-through rules concerning reporting requirements and non-deductibility as business expenses of dues paid to associations which lobby. Omnibus Budget Reconciliation Act of 1993, 26 U.S.C § 162(e)(3), 26 U.S.C. § 6033(e)(1). See discussion in Hopkins, *The Law of Tax-Exempt Organizations*, 8th Edition, § 20.8 (2003).

Veterans' Organizations - Section 501(c)(19)

Veterans' organizations are in a unique situation concerning lobbying, as compared to other non-profits, in that veterans' groups may engage in unlimited lobbying activities relevant to their functions, while at the same time are able to benefit from contributions to them that are tax deductible to the donor.¹⁰ This preferred tax position available only to veterans' groups has been justified as a policy choice of Congress to benefit those that have served the nation in its armed forces.¹¹

Private Foundations

Private foundations (as opposed to "public" charities) are generally restricted from lobbying, in a practical sense, by tax provisions which penalize expenditures by the private foundation for most forms of lobbying activities (although the law expressly exempts from the definition of lobbying such activities as issuing "nonpartisan analysis, study or research," and engaging in so-called "self-defense" lobbying).¹² Private foundations differ from public charities generally in the manner in which they are funded, in that private foundations receive a certain percentage of their funds from other than contributions from the general public or from the Government, and instead receive large bequests from those associated with the foundation and/or receive substantial amounts of their revenue from the investment income from the foundation's financial holdings.¹³

Receipt of Federal Funds

501(c)(4) Organizations Receiving Federal Grants

Restrictions on "lobbying activities" by certain non-profit groups, as a condition to receiving federal grants and loans, were enacted into law in 1995. Section 18 of the Lobbying Disclosure Act of 1995¹⁴ places statutory restrictions upon the lobbying activities of non-profit civic and social welfare organizations which are tax-exempt under section 501(c)(4) of the Internal Revenue Code. This provision, which is commonly called the "Simpson Amendment," prohibits section 501(c)(4) civic leagues and social welfare organizations from engaging in any "lobbying activities," even with their *own* private funds, if the organization receives any federal grant, loan, or award.¹⁵

The restrictions of the Simpson Amendment originally covered all 501(c)(4) organizations which received federal monies by way of an "award, grant, *contract*, loan or any other form."¹⁶ The term "contract," however, was subsequently removed from the provision by P.L. 104-99, Section 129,

¹⁰ 26 U.S.C. § 501(c)(19) (describing veterans' organizations); 26 U.S.C. § 170(c)(3), 2055(a)(4), 2522(a)(4) (tax deductibility of contributions to veterans' groups).

¹¹ *Regan v. Taxation With Representation of Washington*, *supra* at 550.

¹² 26 U.S.C. § 4945(d),(e).

¹³ 26 U.S.C. § 509.

¹⁴ P.L. 104-65, 109 Stat. 691, 703-704, as amended by P.L. 104-99, Section 129, 110 Stat. 34.

¹⁵ *See now* 2 U.S.C. § 1611.

¹⁶ P.L. 104-65, Section 18, 109 Stat. 704 (emphasis added).

leaving the prohibition on lobbying activities with an organization's own funds as a condition to the receipt of federal moneys only upon 501(c)(4) grantees and those seeking an award or loan, but allowing unlimited lobbying activities with organizational funds for 501(c)(4) contractors of the federal government. The Simpson Amendment now reads: "An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan."

The legislative history of the provision clearly indicates that a 501(c)(4) organization may separately incorporate an affiliated 501(c)(4), which would not receive any federal funds, and which could engage in unlimited lobbying.¹⁷ The method of separately incorporating an affiliate to lobby (or to receive and administer federal grants), which was described by the amendment's sponsor as "splitting," was apparently intended to place a degree of separation between federal grant money and private lobbying, while permitting an organization to have a voice through which to exercise its protected First Amendment rights of speech, expression and petition.¹⁸ As stated by Senator Simpson: "If they decided to split into two separate 501(c)(4)'s, they could have one organization which could both receive funds and lobby without limits."¹⁹

It may also be noted that while § 501(c)(4)s which receive certain federal funds may not engage in "lobbying activities," the term "lobbying activities" as used in the "Simpson Amendment" prohibition in Section 18 of the Lobbying Disclosure Act is defined in Section 3 of that legislation to include only direct "lobbying contacts and efforts in support of such contacts" such as preparation, planning, research and other background work intended for use in such direct contacts.²⁰ A "lobbying contact" under the Lobbying Disclosure Act is an "oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official" which concerns the formulation, modification or adoption of legislation, rules, regulations, policies or programs of the Federal Government.²¹ Organizations which use their own private resources to engage only in "grass roots" lobbying and public advocacy (including specifically any communication that is "made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication")²² would, therefore, not appear to be engaging in any prohibited "lobbying activities" under this provision. The Lobbying Disclosure Act's definitions of "lobbying activities" and "lobbying contacts" exclude, and do *not* independently apply to activities which consist only of "grass roots" lobbying and public advocacy.²³

¹⁷ H.Rept. 104-339, 104th Congress, 1st Session, at 24 (1995).

¹⁸ See comments by the sponsors of provision, Senator Simpson and Senator Craig, at 141 *Congressional Record* 20041-20042, 20052-20053 (July 24, 1995).

¹⁹ 141 *Congressional Record*, *supra* at 20045 (Senator Simpson), see also Senator Simpson's explanation of "splitting," *id.* at 20052, 20053.

²⁰ 2 U.S.C. § 1602(7), P.L. 104-65, Section 3(7).

²¹ 2 U.S.C. § 1602(8), P.L. 104-65, Section 3(8).

²² Note this express exception to the term "lobbying contact," at 2 U.S.C. § 1602(8)(B)(iii), P.L. 104-65, Section 3(8)(B)(iii).

²³ Broader limitations on public "advocacy" and lobbying by organizations receiving federal grant money, and on entities wishing to do business with federal grantees, which had been considered by the House as appropriations riders in the 104th Congress (commonly known as the "Istook Amendment," e.g., H.R. 2127, 104th Congress, H.J.Res. 114, 104th Congress), were not enacted into law.

Similarly, since the term “lobbying activities” relates only to the direct lobbying of covered *federal* officials, the “Simpson Amendment” would not appear to limit in any way an organization’s use of its own private resources to lobby state or local legislators or other state or local governmental bodies or units. While direct lobbying of the Congress, or of certain high level executive branch officials, is covered under the Lobbying Disclosure Act as a “lobbying contact,” and thus by definition a “lobbying activity,” the acts of testifying before a congressional committee, subcommittee, or task force, or of submitting written testimony for inclusion in the public record of any such body, or of responding to notices in the Federal Register or other such publication soliciting communications from the public to an agency, or responding to any oral or written request from a Government official for information, are expressly exempt from the definition of a “lobbying contact,” and thus in themselves can not qualify as a “lobbying activity.”²⁴

Restrictions on Use of Federal Funds Generally

Broad prohibitions on the use of *federal* monies for lobbying or political activities have been in force for a number of years. Express restrictions on the use of grant funds by non-profit organizations were adopted in 1984 as part of uniform cost principles for non-profit organizations issued by the Office of Management and Budget (OMB) in OMB Circular A-122, and are now incorporated into the Federal Acquisition Regulations. Under current federal provisions, no contractor or grantee of the federal government, regardless of tax status, may be reimbursed out of federal contract or grant money for their lobbying activities, or for political activities, unless authorized by Congress.²⁵ These restrictions generally apply to attempts to influence any federal or state legislation through direct or “grass roots” lobbying campaigns, political campaign contributions or expenditures, but exempt any activity authorized by Congress, or when providing technical and/or factual information related to the performance of a grant or contract when in response to a documented request.

In addition to these restrictions of general applicability on the use of federal contract or grant money for lobbying activities, there may be specific statutory limitations and prohibitions on particular federal moneys or on particular federal programs.²⁶ Appropriation riders, for example, may also expressly limit the use of federal monies appropriated in a particular appropriations law for lobbying, or “publicity or propaganda” campaigns directed at Congress by private grant or contract recipients.²⁷

Under the provisions of federal law commonly referred to as the “Byrd Amendment,” federal grantees, contractors, recipients of federal loans or those with cooperative agreements with the federal government, are expressly prohibited by law from using federal monies to “lobby” the Congress, federal agencies, or their employees, with respect to the awarding of federal contracts, the making of any grants or loans, the entering into cooperative agreements, or the extension, modification or renewal of these types of awards.²⁸ Federal contractors, grantees and those

²⁴ See 2 U.S.C. 1602(8)(B), for list of 18 exceptions to the term “lobbying contacts.”

²⁵ Federal Acquisition Regulations (FAR), 48 C.F.R. §§ 31.205-22; 31.701 *et seq.*, encompassing principles in OMB Circular A-122, ¶B21, as added 49 F.R. 18276 (1984).

²⁶ See, e.g., 42 U.S.C. § 2996(f)(a)(5), *re* Legal Services Corporation contractors and grantees.

²⁷ Note discussion of anti-lobbying appropriations provisions and grant funds in Government Accountability Office, *Principles of Federal Appropriations Law*, Vol. I, at 4-219 to 4-227 (Third Ed. January 2004).

²⁸ 31 U.S.C. § 1352(a).

receiving federal loans and cooperative agreements must also report lobbying expenditures from non-federal sources which they used to obtain such federal program monies or contracts.²⁹

Agencies of the Federal Government which administer loans, grants and cooperative agreements have issued common regulations implementing the “Byrd Amendment.”³⁰ The restrictions of the “Byrd Amendment” apply to the making, with an intent to influence, any communications to or appearances before Congress or an agency on a covered matter. Any “information specifically requested by an agency or Congress is allowable at any time,”³¹ and certain other contacts are allowable depending on the timing and nature of the communication with respect to a particular solicitation for a federal grant, contract or agreement.

In 2002 a federal statute in the criminal code concerning lobbying with appropriated funds was amended to expand its applicability and prohibition beyond merely officers and employees of the Federal Government, while substituting civil fines for the former criminal penalties for violations of the law. That provision of law, at 18 U.S.C. § 1913, prohibits the use of federal appropriations to pay for any “personal services, advertisement, telegram, telephone, letter, printed or written matter ... intended or designed to influence” Members of Congress, or officials of any governmental units, on policies, legislation or appropriations.³² Originally enacted in 1919, the law had applied only to the use of federal funds by officers and employees of the Federal Government, and had extended its prohibitions only to the use of such funds for certain lobbying campaigns directed at Congress.³³ However, after the 2002 amendments the law now appears to apply to recipients of all federal monies appropriated by Congress, and extends its prohibitions to activities to influence not only the Congress, but also public officials at all levels of Government.³⁴ Contractors and grantees of the Federal Government may not seek reimbursement from a federal grant or contract for, nor charge off to a federal contract or grant, the costs of lobbying and similar public policy advocacy.

Required Disclosures of Lobbying Activities

Lobbying Disclosure Act of 1995, as Amended

Organizations which engage in a particular amount of lobbying activities (which must include more than one direct lobbying contact of a covered federal official) through personnel compensated to lobby on the organization’s behalf will be required to register and to file disclosure reports under the Lobbying Disclosure Act of 1995, as amended.³⁵ Other than for tax-

²⁹ 31 U.S.C. § 1352(b).

³⁰ 55 F.R. 6735-6756 (February 26, 1990).

³¹ 55 F.R. 6739.

³² 18 U.S.C. § 1913, as amended by P.L. 107-273, § 205(a); 116 Stat. 1778, November 2, 2002.

³³ See Section 6 of the Third Deficiency Appropriations Act, FY1919, 41 Stat. 68, chapter 6, § 6, July 11, 1919. As to its applicability only to federal employees, see *Grassley v. Legal Services Corporation*, 535 F.Supp. 818, 826 n.6 (S.D. Iowa 1982). While the new law eliminates the criminal penalties and substitutes civil fines, there is no indication that anyone had ever been indicted under the provision from its enactment in 1919 to its amendment in 2002.

³⁴ Certain exceptions are provided for federal employees communicating directly to officials concerning the need for legislation or appropriations, and the possibility of a national security or defense exemption.

³⁵ P.L. 104-65, 109 Stat. 691, December 19, 1995, as amended by the Lobbying Disclosure Technical Amendments Act, P.L. 105-166, April 6, 1998, and the “Honest Leadership and Open Government Act of 2007,” P.L. 110-81, 121 Stat. 735, September 14, 2007.

exempt religious orders, churches, and their integrated auxiliaries (which are exempt from registration, reporting, and disclosure under the Lobbying Disclosure Act³⁶), there is no general exclusion or exception from the disclosure and registration requirements for other non-profit organizations which otherwise meet the thresholds on lobbying contacts and overall expenditures for lobbying activities.

The Lobbying Disclosure Act of 1995 was intended to reach so-called “professional lobbyists,” that is, those who are *compensated* to engage in lobbying activities on behalf of an employer or on behalf of a client.³⁷ When registration is required for organizations which engage in covered “lobbying contacts” through their own staff, such registration is done by the organization, rather than by the individual employee/lobbyist. That is, the *organization* which has employees who qualify as “lobbyists” for the organization (so-called “in-house” lobbyists) must register and identify its employees/lobbyists.³⁸ All lobbying registrations and reports are to be filed electronically, and may now be filed at a single location for both the Secretary of the Senate’s Office and the Office of the Clerk of the House.³⁹

An organization will be required to register its employee/lobbyists when it meets two general conditions. First, it must have one or more compensated employees who engage in covered “lobbying,” that is, who make more than one “lobbying contact,” and who spend at least 20% of their total time for that employer on “lobbying activities” over a three-month reporting period.⁴⁰ A “lobbying contact” (in reference to the requirement that an employee/lobbyist make more than one “lobbying contact” per quarter) is a direct oral or written communication to a covered official, including a Member of Congress, congressional staff, and certain senior executive branch officials, with respect to the formulation, modification or adoption of a federal law, rule, regulation or policy.⁴¹ The term “lobbying activities” (in reference to the 20% time threshold), however, is broader than “lobbying contacts,” and includes “lobbying contacts” as well as background activities and other efforts in support of such lobbying contacts.⁴² Secondly, for an organization to register its lobbyists/employees, the organization must have spent, in total expenses for such “lobbying activities,” \$10,000 or more in a quarterly reporting period.⁴³ The \$10,000 amount will include any money paid to an outside lobbyist to lobby on the organization’s behalf during the reporting period. If an organization hires an *outside* lobbyist, then that outside lobbyist or outside lobbying firm will register on behalf of that client/organization when the lobbyist or lobbying firm meets the required threshold for contacts and income, and will identify that organization as a “client.”⁴⁴

³⁶ See exemptions from definition of covered “lobbying contact,” 2 U.S.C. § 1602(8)(B)(xviii), for churches and religious orders that are exempt from filing federal income tax returns under 26 U.S.C. § 6033(a)(2)(A).

³⁷ H.Rept. 104-339, 104th Cong., 1st Sess. at 2 (1995).

³⁸ 2 U.S.C. § 1603(a)(2). If an organization hires an outside lobbyist or lobbying firm, then that outside lobbyist, if meeting the income and activities thresholds, must register as a lobbyist and list the organization as a “client.” 2 U.S.C. § 1603(a)(1), (3).

³⁹ For instructions and forms, see <http://lobbyingdisclosure.house.gov/index.html>.

⁴⁰ 2 U.S.C. § 1602(10).

⁴¹ 2 U.S.C. § 1602(8)(A).

⁴² 2 U.S.C. § 1602(7).

⁴³ 2 U.S.C. § 1603(a)(3)(A)(ii). The threshold amount is adjusted every four years, 2 U.S.C. § 1603(a)(3)(B).

⁴⁴ An outside lobbyist needs to register for a particular client when it makes more than one lobbying contact with a covered official, and when its total income from that client for lobbying related matters exceeds \$2,500, in a three month (quarterly) filing period. 2 U.S.C. § 1603(a)(3)(A)(i).

Under the act, a “lobbyist” needs to be registered within 45 days after first making a lobbying contact or being employed to make such a contact. Registration will be with the Clerk of the House who will forward such registration to the Secretary of the Senate. The information on the registrations will generally include identification of the lobbyist, or organization with employees/lobbyists; the client or employer; an identification of any foreign entity, and disclosure of its contributions of over \$5,000, if the foreign entity owns 20% of the client and controls, plans, or supervises the activities of the client, or is an interested affiliate of the client; and a list of the “general issue areas” on which the registrant expects to engage in lobbying, and those on which he or she has already lobbied for the client or employer.⁴⁵ In addition to listing the “client” of a lobbyist in the case of, for example, a “coalition” or association which hires a lobbyist, identification must also be made of any organization other than that client-coalition which contributes more than \$5,000 for the lobbying activities of the lobbyist in a three-month reporting period and “actively participates” in the planning, supervision, or control of the lobbying activities.⁴⁶

In addition to the *registration* of lobbyists, quarterly and semi-annual reports are required to be filed. The *quarterly* reports are to cover the periods January 1 - March 31, April 1 - June 30, July 1 - September 30, and October 1 - December 31. These reports are to be filed within 20 days of the end of the applicable period, and will identify the registrant/lobbyist, identify the clients, and provide any needed updates to the information in the registration; identify the specific issues upon which one lobbied, including bill numbers, earmarks, and any specific executive branch actions; employees who lobbied; Houses of Congress and federal agencies contacted; any covered interest of a foreign entity; and provide a good faith estimate of lobbying expenditures (by organizations using their own employees to lobby), or income from clients (estimated by outside lobbying firms/practitioners) in excess of \$5,000 (and rounded to the nearest \$10,000.⁴⁷ The *semi-annual* reports are to identify the names of all political committees established or controlled by the lobbyist or registered organization; the name of each federal candidate or officeholder, leadership PAC, or political party committee to which contributions of more than \$200 were made in the semi-annual period; the date, recipient, and the amount of funds disbursed: (i) to pay the costs of an event to honor or recognize a covered government official; (ii) to an entity that is named for a covered legislative branch official, or to a person or entity “in recognition” of such official; (iii) to an entity established, maintained, or controlled by a covered government official, or an entity designated by such official; and (iv) to pay the costs of a meeting, conference, or other similar event held by or in the name of one or more covered government officials, unless the events, expenses or payments are in a campaign context such that the funds provided are to a person required to report their receipt under the Federal Election Campaign Act (2 U.S.C. § 434). The name of each presidential library foundation and each presidential inaugural committee to whom contributions of \$200 or more were made in the semi-annual reporting period must also be reported.⁴⁸ Additionally, in the semi-annual reports registrants are required to provide a certification that the person or organization filing (i) “has read and is familiar with” the rules of the House and Senate regarding gifts and travel, and (ii) had not provided, requested, or directed

⁴⁵ 2 U.S.C. § 1604(b).

⁴⁶ 2 U.S.C. § 1603(b)(3), as amended by P.L. 110-81, Section 207. There are certain exceptions to listing separately participating organizations if such groups are listed publicly on the coalition’s website (unless the organization plans, supervises or controls the activities of the coalition, and then it must be listed in the registration statement).

⁴⁷ 2 U.S.C. § 1604(a)-(c), as amended by P.L. 110-81, Sections 201(a) and 202.

⁴⁸ 2 U.S.C. § 1604(d), as added by P.L. 110-81, Section 203.

that a gift or travel be offered to a Member or employee of Congress “with knowledge that the receipt of the gift would violate” the respective House or Senate rule on gifts and travel.⁴⁹

The Lobbying Disclosure Act, in addition to covering only those who are compensated to lobby, as a prerequisite to coverage applies only to those whose activities may be described as “direct” lobbying, that is, direct communications or contacts with covered officials. The registration and disclosure requirements of the law are not separately triggered by “grass roots” lobbying by persons or organizations. That is, an organization or entity which engages only in grass roots lobbying, regardless of the amount of “grass roots” lobbying activities, will not be required under the Lobbying Disclosure Act provisions to register its members, officers or employees who engage in such activities.⁵⁰

The Lobbying Disclosure Act also exempts from the definition of “lobbying contacts” the activities of lobbying state or local legislators or other state or local governmental bodies or units. Furthermore, while direct lobbying of Congress, or of certain high level executive branch officials, is covered under the Lobbying Disclosure Act as a “lobbying contact,” the acts of testifying before a congressional committee, subcommittee, or task force, or of submitting written testimony for inclusion in the public record of any such body, or of responding to notices in the Federal Register or other such publication soliciting communications from the public to an agency, are expressly exempt from the definition of a “lobbying contact,” and thus in themselves cannot qualify as a “lobbying activity.”⁵¹

Certain public charities, that is, those that have “elected” the specific expenditure limit test for lobbying under 26 U.S.C. § 501(h), will have the option, under the Lobbying Disclosure Act, of using the Internal Revenue Code definitions of “influencing legislation,” rather than the Lobbying Disclosure Act definitions of “lobbying activities” to determine the organization’s reporting obligations.⁵² This option was provided so that such groups would need to have only one set of internal record controls and standards dealing with “influencing legislation” under both the tax code and the lobbying disclosure law.⁵³ Since the definition of “influencing legislation” under the tax code is different than the definition of “lobbying activities” under the lobbying law, an eligible organization may need to decide which definition is more advantageous to use, from both a tax and record-keeping standpoint, as well as in relation to the extent and nature of its planned public policy activities.⁵⁴

⁴⁹ 2 U.S.C. § 1604(d)(1)(G), as added by P.L. 110-81, Section 203.

⁵⁰ Specifically excluded from the definition of a “lobbying contact” is any communication “made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication.” 2 U.S.C. § 1602((8)(B)(iii).

⁵¹ See 2 U.S.C. 1602(8)(B), P.L. 104-65, Section 3(8)(B) for list of 18 express exceptions to the term “lobbying contacts.”

⁵² 2 U.S.C. § 1610(a),(c).

⁵³ H.Rept. 104-339, *supra* at 23.

⁵⁴ For a discussions of several considerations, see Richard L. Winston, “The Lobbying Disclosure Act of 1995 and the Tax Code Elections,” *Tax Notes*, 1391-1399 (June 3, 1996); and Robert A. Boisture, Independent Sector, “What Charities Need to Know To Comply With the Lobbying Disclosure Act of 1995,” in *Complying With the Lobbying Disclosure Act of ‘95 and the New Gift Act Restrictions*, 185-208 (Glasser Legal Works, 1996).

Tax Code Disclosures

Most tax-exempt, non-profit organizations (other than churches) having annual gross receipts of over \$25,000 must file with the IRS a Form 990 which is open to public inspection. Charitable 501(c)(3) organizations must also file Schedule A with Form 990, providing the reporting of lobbying expenditures, that is, expenses for “influencing legislation” under the Internal Revenue Code definitions. “Electing” organizations (electing the “expenditure test” for lobbying limits under 26 U.S.C. § 501(h)) must also compute and allocate expenses attributable to “grassroots” lobbying, as well as to “direct” lobbying; but non-electing organizations (under the “substantial part” test) must provide to the IRS a “detailed” description of their lobbying activities, information not required from “electing” organizations.

Additional Reading

Alliance for Justice, *Worry-Free Lobbying for Nonprofits: How to Use the 501(h) Election to Maximize Effectiveness*, 1999, 2003.

<http://www.afj.org/assets/resources/resources2/Worry-Free-Lobbying-for-Nonprofits.pdf>

Robert A. Boisture, for Independent Sector, “What Charities Need to Know To Comply With the Lobbying Disclosure Act of 1995,” in *Complying With the Lobbying Disclosure Act of ‘95 and the New Gift Act Restrictions*, pp. 185-208 (Glasser Legal Works 1996).

Comment, “Guiding Lobbying Charities Into A Safe Harbor: Final Section 501(h) and 4911 Regulations Set Limits for Tax-Exempt Organizations,” 61 *Miss. L.J.* 157 (Spring 1991).

John A. Edie, *Foundations and Lobbying: Safe Ways to Affect Public Policy* (Council on Foundations, 1991).

Bruce H. Hopkins, *The Law of Tax-Exempt Organizations*, Eighth Edition (2003).

Bruce R. Hopkins, *Charity, Advocacy and the Law* (1992).

Bob Smucker, *The Non-Profit Lobbying Guide*, Second Edition, 1999 (Charity Lobbying in the Public Interest, Independent Sector).

http://www.clpi.org/CLPI_Publications.aspx

Richard L. Winston, “The Lobbying Disclosure Act of 1995 and the Tax Code Elections,” *Tax Notes*, 1391-1399 (June 3, 1996).

U.S. House of Representatives, Office of the Clerk, “Guide to the Lobbying Disclosure Act,” December 2007 (amended January 25, 2008).

http://lobbyingdisclosure.house.gov/amended_lda_guide.html

CRS Reports

CRS Report 96-264, *Frequently Asked Questions About Tax-Exempt Organizations*, by (name red acted).

CRS Report RL31126, *Lobbying Congress: An Overview of Legal Provisions and Congressional Ethics Rules*, by (name redacted).

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