

Lobbying, Gift, and Campaign Finance Compliance Briefing

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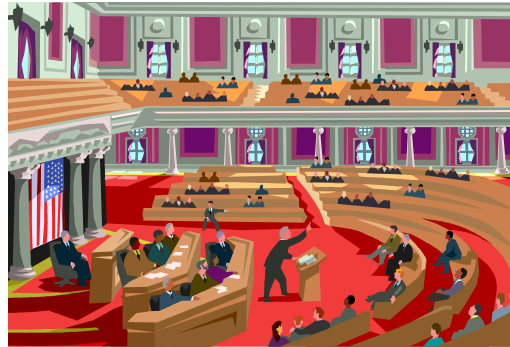
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Topics

- Lobbying Disclosure
- Gift Prohibitions and Exceptions
- Campaign Financing

Lobbying Disclosure



Federal Lobbying Disclosure

- Regulated by the Lobbying Disclosure Act (LDA) as amended by the Honest Leadership and Open Government Act of 2007:
 - Lobbying activities and expenses disclosed on Form LD-2
 - Other payments related to government officials disclosed on Form LD-203

LD-2

- LD-2 Reports (Due 20 days after close of calendar quarter):
 - Names of each “lobbyist” (and government positions held in preceding 20 years)
 - Parts of government lobbied
 - Issues/legislation lobbied (including bill names and numbers)
 - Affiliated organizations
 - Total expenses for “lobbying activities”

LD-2 (cont'd)

- Who is a “lobbyist”?
 - Two or more “lobbying contacts;” and
 - 20% of time on “lobbying activities” in a three-month period

LD-2 (cont'd)

- What are “lobbying contacts”?
 - Communications about legislation, government policy, programs, contracts or nominations with
 - “covered legislative branch officials”
 - “covered executive branch officials”

LD-2 (cont'd)

- What communications are exempt as “lobbying contacts”?
 - Discussion about subjects other than legislation, government policy, programs, contracts or nominations
 - Participation in most formal on-the-record proceedings such as congressional hearings or regulatory rulemaking
 - Requests for meetings, the status of a bill, or other administrative requests
 - Information provided in writing in response to a request by a covered official
 - Information required or otherwise compelled by subpoena, statute, or other government action
 - Grassroots efforts (contacting other parties to contact congressional officials)

LD-2 (cont'd)

- Who are “covered legislative branch officials”?
 - Members of Congress;
 - Elected officers of either House of Congress;
 - Employees of a Member of Congress, a committee of either House of Congress, the leadership staff of either House of Congress, a joint committee of Congress, and a working group or caucus organized to provide legislative services or other assistance to Members of Congress; and
 - Any other legislative branch employees/officers who occupy a position for at least 60 days for which the pay is 120 percent or more of the lowest GS-15 level pay

LD-2 (cont'd)

- Who are “covered executive branch officials”?
 - The President and Vice President;
 - Any officer or employee in the Executive Office of the President;
 - Any officer or employee serving in a position in Level I-V of the Executive Schedule;
 - Any member of the uniformed services whose pay grade is at or above O-7; and
 - “Schedule C” employees

LD-2 (cont'd)

- What are “lobbying activities”?
 - Include “lobbying contacts,” and any efforts in support of such contacts including preparation or planning, research and other background work that is intended, at the time of its preparation, for use in contacts and coordination with the lobbying activities of others

LD-2 (cont'd)

- The LD-2 disclosure of total expenses related to “lobbying activities” must include, for example:
 - Pro-rata portion of employee time and company overhead
 - Payments to vendors
 - Payments to trade associations attributed to lobbying
 - Travel and other incidental expenses

LD-203

- LD-203 Reports (Filed by registrant and individual lobbyists 30 days after close of the calendar semi-annual period)
 - Name of any PAC
 - Campaign contributions to candidates, leadership PACs, political parties of \$200 or more
 - Payments to Presidential libraries and inaugurals of \$200 or more
 - Payments in any amount:
 - to pay the cost of an event to honor or recognize an official;
 - to an entity that is named for, or to a person or entity in recognition of an official;
 - to an entity established, financed, maintained, controlled, or designated by an official; and
 - to pay the costs of a meeting, retreat, conference, or other similar event held by, or in the name of, an official

AND . . .

LD-203 (cont'd)

- Certification signed under penalty of perjury that:
 - Have read and are familiar with House and Senate gift rules; and
 - No improper gifts to Congressmen, Senators or staff

State Lobbying

- States (and many localities) define lobbying differently and impose their own disclosure and other obligations on organizations and individuals that engage in lobbying. Types of activities that may trigger lobbyist registration:
 - In-person contacts with government officials
 - Written correspondence, even absent face-to-face contact with government officials
 - Certain number of hours spent lobbying
 - Certain amount of money spent or paid for lobbying including “Goodwill Lobbying” – i.e., relationship building
 - Making expenditures (e.g., providing meals, entertainment, gifts, etc.) to public officials
 - Public advertising directly addressed to government officials and other “grassroots” lobbying

State Lobbying (cont'd)

- Just a few of the differences...
 - Terminology
 - Connecticut: Communicator Lobbyist vs. Client Lobbyist
 - Arizona: Designated Lobbyists, Lobbyists for Compensation, Authorized Lobbyists
 - Covered Branches of Government
 - Separate lobbying regimes for executive and legislative branches in some states (e.g., Kentucky), which often involve separate rules and regulatory agencies
 - Several states (e.g., Nebraska) only regulate one branch of government, while others (e.g., Oklahoma) even regulate contacts with judicial officials
 - Regulation of Goodwill Lobbying
 - Relationship-building is covered in some states (e.g., Vermont)

State Lobbying (cont'd)

- Just a few of the differences...

- Triggering Thresholds

- Washington – Exception for lobbying 4 days or less in 3 consecutive months and spending less than \$25
- Alabama – Expenditure lobbying threshold of \$100

- The Burden of Registration and Reporting

- Pennsylvania – Lobbyist and principals register, but only principal reports and lobbyist signs principal's report
- Kansas/New Hampshire – Principals do not register or report

- Record Retention Requirements

- Mississippi – 2 Years
- Wisconsin – 3 Years
- Washington, DC – 5 Years

State Lobbying (cont'd)

- Once lobbyist registration has been triggered:
 - File lobbying disclosure reports; and
 - Become familiar with additional restrictions under state or local law that apply specifically to lobbyists such as:
 - Lobbyist identification requirements;
 - Political contribution restrictions;
 - Gift limits and prohibitions; etc.

Gift Prohibitions and Exceptions



What Is A Gift?

- Anything of value given to a government official including:
 - Goods or services
 - Money
 - Lunches or dinners
 - Loans and credit
 - Tickets
 - Travel

Gift Ban – Congressional

- No gifts to Member of Congress, Senators or Staff from:
 - Entities registered pursuant to the Lobbying Disclosure Act; or
 - Individuals disclosed as lobbyists

Major Exceptions to Gift Ban – Congressional

(Out of 24 Exceptions)

- Fair Market Value received
- Political Contributions
- Personal Friendship
- Personal Hospitality
- Widely-Attended Events
- Receptions
- Charity Events
- Constituent Events (Senate Only)
- De minimis food, drink, or meal during a site visit (House Only)
- Nominal Value (less than \$10), baseball caps, t-shirts
- Plaques and commemorative items
- Certain highly regulated travel



Gift Ban – Federal Executive Branch Appointees

- No executive branch appointee may accept gifts from:
 - Entities registered pursuant to the LDA; or
 - Individuals disclosed as lobbyists

Major Exceptions to Gift Ban – Federal Executive Branch Appointees

- Anything for which fair market value is paid
- Gifts based on a personal relationship
- Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal
- Greeting cards and items with little intrinsic value intended solely for presentation such as plaques
- Travel related to official's duties accepted and approved by an agency under specific rules

Gift Ban – All Other Federal Executive Branch Employees

- No executive branch employee may accept gifts from a “prohibited source” who:
 - Is seeking official action or business with the employee’s agency; or
 - Is regulated by or has interests that may be affected by the employee’s agency
- Or because of the employee’s official position

Major Exceptions to Gift Ban - All Other Federal Executive Branch Employees

- \$20 limit (\$50 per year)
- Widely-attended gatherings
- Social invitations from disinterested sources
- Same exceptions as those for Executive Branch appointees

Gift Bans/Exceptions – State/Local

- States (and many localities) restrict gifts in different ways and have different gift exceptions
- Rules Vary by Jurisdiction
 - Some have explicit dollar limits while others apply a “smell test” or holistically examine the facts and circumstances
 - Others distinguish between lobbyists and non-lobbyists (e.g., California’s \$10 vs. \$460 limits)
- Different Sources of Regulation
 - Statutes
 - Administrative Rules
 - Executive Order
 - State House/Senate Rules
 - Agency Personnel Policy/Manual

Gift Bans/Exceptions – State/Local (cont'd)

- The most common examples of exceptions to state/local gift laws include:
 - Meals given in the presence of the donor;
 - Promotional and informational items (e.g., T-shirts, pens, books, etc.);
 - Plaques and awards of limited value;
 - Other items of *de minimis* value; and
 - Certain fact-finding travel expenses

Gift Bans/Exceptions – State/Local (cont'd)

- Personal gift restrictions can be avoided if the gift is provided to a government entity
 - Government entities may have approval or other requirements that apply to such gifts
 - In general, gifts to government entities should not be designated for use by a particular government official unless expressly permitted

Lobbying and Gift Law Survey



The image shows a login page for the "2014 LOBBYING AND GIFT LAW SURVEY" by Wiley Rein LLP. The page features a dark green header with the company logo on the left and the survey title in white text on a blue background. Below the header, there is a login form with a text input field containing "wileydemo" and a password field with six dots. To the right of the password field are links for "Forgot Login" and "Request Login". Below the form, there is a checked checkbox for "Remember Me (Disclaimer)" and a link for "Need Assistance? Contact Camille Dillio at 202.719.3184 or cdillio@wileyrein.com.". At the bottom right of the form area, there are two green buttons: "LOG IN" and a button with a right-pointing arrow. The page is framed by a light gray border.

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Campaign Financing



Federal Campaign Finance Law

- Use of corporate/business funds and resources generally prohibited
- Federal candidates may accept contributions from individuals and political committees (or “PACs”)
- An individual may contribute up to \$2,700 per election and a PAC may contribute up to \$5,000 per election

State/Local Campaign Finance Law

- States and localities impose their own source and amount restrictions on contributions to candidates for legislative and elected executive office
- Can included additional regulation such as:
 - Reporting
 - Lobbyist/lobbyist employer restrictions
 - Legislative session blackout periods
 - Restrictions on contributions from regulated industries
 - Pay-to-play

Pay-To-Play

- “Pay-to-Play” is the name given to laws designed to prevent persons from making political contributions (i.e., “paying”) in order to influence the award of a contract, grant, loan, agreement, etc. from a government entity (i.e., “playing”)

Pay-To-Play (cont'd)

- Regulation applies to entities that contract with state and local governments
- Can include political contribution reporting, limits, and prohibitions by companies, employees, spouses, political committees, and others associated with the contracting entity
- Penalties for violations of pay-to-play provisions can include:
 - Loss of current contract with the jurisdiction
 - Preclusion from future contracts with the jurisdiction
 - Civil penalties
 - Criminal penalties

Pay-To-Play (cont'd)

- Pay-to-play regimes exist at the federal level that apply to state and local contributions by persons in financial services, for example:
 - Municipal finance professionals
 - Investment advisors
 - Swap dealers
- 22 states have pay-to-play laws of one kind or another
 - Some state laws reach activities in the localities as well
- Many major localities have pay-to-play laws, including
 - New York City
 - San Francisco
 - Chicago
 - Cook County, Ill.

Conclusion

- Be mindful of lobbyist registration triggers
- No gifts to government officials unless specifically permitted
- Source and amount restrictions in campaign financing vary widely

THANK YOU

Questions?