

Make 2011 a Good One: Now Is the Time to Review Your Lobbying and Ethics Operations for the New Year

January 2011

The end of one calendar year and the beginning of the next is the perfect opportunity to take a step back and review your lobbying and ethics compliance programs. Incorporating an annual health check into your organization's routine now can help identify what educational, financial or other needs should be addressed before lobbying activity begins in earnest in the weeks and months ahead. A check-up can even help you identify short-and near-term filing deadlines to help you avoid the last-minute rush!

Below are some issues related to new year activities:

2010 Filings Due in January

- The following 2010 Lobbying Disclosure Act (LDA) filings are due in January 2011:
 - January 20: Fourth Quarter 2010 LDA Report (Form LD-2)
 - January 31: Second Semiannual 2010 LDA Report (Form LD-203)
- The company/association and its registered federal lobbyists must file Form LD-203. Only the company/association is required to file Form LD-2.
- Any federal lobbyists added as new lobbyists in the second half of 2010 must file Form LD-203, as must any terminated federal lobbyists with a termination date after June 30, 2010. The report for such an employee, however, need only cover the time period the individual was registered as a federal lobbyist.

Authors

Carol A. Laham
Partner
202.719.7301
claham@wiley.law

Review of Lobbying and Ethics Processes

- The beginning of a new calendar year is an opportunity to institute a comprehensive review of the company's/association's lobbying and ethics policies, processes, internal rules and codes of conduct.
- The company/association should assess whether its processes comport with the LDA, with federal tax rules, and with state and local lobbying laws. Among other things, the entity should examine:
 - How it tracks and records time spent by employees engaged in lobbying activities for purposes of federal lobbying-reports, tax returns and state/local lobbying reports;
 - How it tracks out-of-pocket expenses incurred in connection with federal, state, grassroots and local lobbying;
 - How it calculates overhead, tracks administrative expenses and tracks issues lobbied;
 - How it determines whether the entity may certify to Congress on Form LD-203 compliance with the Congressional gift ban;
 - Whether activity or communications rise to the definition of "lobbying" in a particular state;
 - How it tracks and reports expenses related to covered officials that must be reported semiannually to Congress on Form LD-203;
 - How it determines whether an employee needs to register as a lobbyist at the federal, state and/or local levels; and
 - How it trains registered lobbyists and others about the ethical and campaign finance restrictions placed upon them by applicable law.

If a company or its subsidiaries has contracts with state or local governments, then the company also may need to review compliance with the various pay-to-play campaign finance laws that may limit or prohibit contributions by the company, its PAC, and, in some cases, its officers and other employees.

Although the LDA does not mandate that lobbyists and lobbyist employers retain their records for a specific period of time, many states impose their own requirements on lobbyists and lobbyist employers to retain receipts, time sheets and other materials for certain defined-and often lengthy-periods of time. For example, did you know that states like California and Alaska require lobbyists and lobbyist employers to retain the underlying records for more than half a decade after the relevant report is filed? Particularly as states begin to increase the number of random audits of lobbyist filings, it is important to have processes in place to make sure that backup materials in support of these reports are not lost or destroyed.

The new year also is the perfect time to review your organization's contractual relationships with its external lobbyists. Most states prohibit lobbying on a contingency basis-*i.e.*, that payment will be conditioned on a particular legislative or administrative result. Some states have even extended their contingency fee prohibition into the government contracts arena. Entities buying or selling services to the government should take the time to evaluate whether these prohibitions may apply to their sales force.

Finally, grassroots lobbying campaigns and coalition activities also deserve special attention. While grassroots lobbying expenditures are not captured under the LDA, many states require some type of registration or reporting for television, radio or newspaper advertisements or other means of communicating with the general public about particular legislative or administrative issues. Coalition-related activity can trigger its own registration and reporting requirements, and it is important to think prospectively about how to structure any coalition to match both the goals of individual members as well as to address any concerns about disclosure and reporting.

Choosing the Method for Filing 2011 LDA Reports

- Each company or association may, at the beginning of each year, choose which method to use to file its 2011 LDA quarterly reports. The options are to use the definitions of lobbying found in the LDA (Method A) or the definitions of lobbying found in the Internal Revenue Code and the rules of the IRS (Method C).
- There are upsides and downsides to each method.
- Once the company or association picks a method for its first quarter 2011 LDA report, the company or association must use that method for the remainder of 2011.

Education and Training

- Corporations and associations should have a training program in place to ensure that employees comply with applicable lobbying and ethics rules-both at the federal level and, if employing state and local lobbyists, at the state and local levels.
- Employees need to be reminded of the applicable statutes, regulations and company policies at least annually.
- More extensive training should be provided to registered federal, state and local lobbyists, those who support such lobbyists and to other employees who are likely to interact with federal, state and local officials.