

The Laws About Lobbying for or Against Nominees for the New Administration

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President-Elect Trump's potential nominees for the Cabinet and other high-level offices in his second Administration have been at the top of the news for the past several weeks. You, your company, your trade association, your 501(c)(4), and even your charity may be for or against the whole slate or individual potential nominees. Regardless of your stance on these individuals, if a nomination ultimately is subject to confirmation by the Senate, then efforts to influence the nomination and confirmation may be subject to regulation under the Lobbying Disclosure Act (LDA) and the tax laws. Managing and tracking such lobbying activity is very important for the Fourth Quarter LDA report due on January 20, 2025, the 2025 First Quarter LDA report, and thereafter, for tax returns due for nonprofits, for tax calculations for for-profits, for trade association dues notices, and for the continued charity status of 501(c)(3)s.

Lobbying under the LDA

Under the federal LDA, communicating directly with covered government officials such as Members of Congress, congressional staff, the Executive Office of the President, and certain political appointees is regulated as lobbying when those communications are about, among other things, the nomination or confirmation of a person subject to Senate confirmation. This means that such communications (and preparation for those communications) are reportable lobbying expenses on the quarterly Forms LD-2. Moreover, such direct communications and preparation also could trigger federal lobbyist registration if one employee hits both the 20%-quarterly-time threshold and the more-than-one-lobbying-contact threshold. Note that communicating before the Inauguration with the President-Elect or any of his potential staffers or potential nominees

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law
Thomas W. Antonucci
Partner
202.719.7558
tantonucci@wiley.law

Practice Areas

Election Law & Government Ethics
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would not be defined under the LDA as lobbying since they are not government officials until sworn in.

If a company, trade association, or other nonprofit corporation uses the tax code to report their LDA expenditures, then direct communications about the nominations or confirmations with government officials would also count toward the LDA registration thresholds and be reportable on the quarterly LDA reports.

Lobbying under the Tax Code

Tax-exempt organizations, such as trade associations, 501(c)(4) organizations, and 501(c)(3) charitable and educational organizations are subject to tax rules on their lobbying activities. As referenced above, direct communications with government officials about the nominations and confirmations would be lobbying under the tax code. In addition, grassroots communications related to a nomination could also be lobbying under the tax code. These grassroots communications could take the form of TV or radio ads, newspaper ads, billboards, social media posts, emails, letter campaigns, or other communications advocating for or against a nominee.

For trade associations or 501(c)(4) organizations that have members, these direct and grassroots lobbying communications would impact the information that needs to be reported on the annual tax information return (IRS Form 990), as well as the estimate of non-deductible lobbying expenses that needs to be included on members' dues statements. For 501(c)(3)s, these types of lobbying activities would also need to be reported on the IRS Form 990 and would need to be included for purposes of staying within the limits on lobbying expenditures for charities that have made the 501(h) election. And, for non-electing charities, these activities would need to be monitored and controlled so as not to become more than an "insubstantial" part of the organization's activities.

Businesses and other for-profit concerns, regardless of whether they are registered under the LDA, may not deduct lobbying expenses for tax purposes. Such nondeductible expenses may include certain direct and grassroots lobbying communications about the nomination and confirmation of the high-level political appointees discussed above. Substantial activity may impact the bottom line at the end of the tax year.

Wiley's Election Law & Government Ethics attorneys cover all aspects of lobbying law, from the tax laws to the LDA to state and local laws. We advise charities, 501(c)(4)s, trade associations, and for-profit concerns as to lobbyist registration triggers, reporting requirements, and the tax ramifications.