

UNIVERSITY OF COLORADO
FEDERAL LOBBYING DISCLOSURE
AND
ETHICS COMPLIANCE

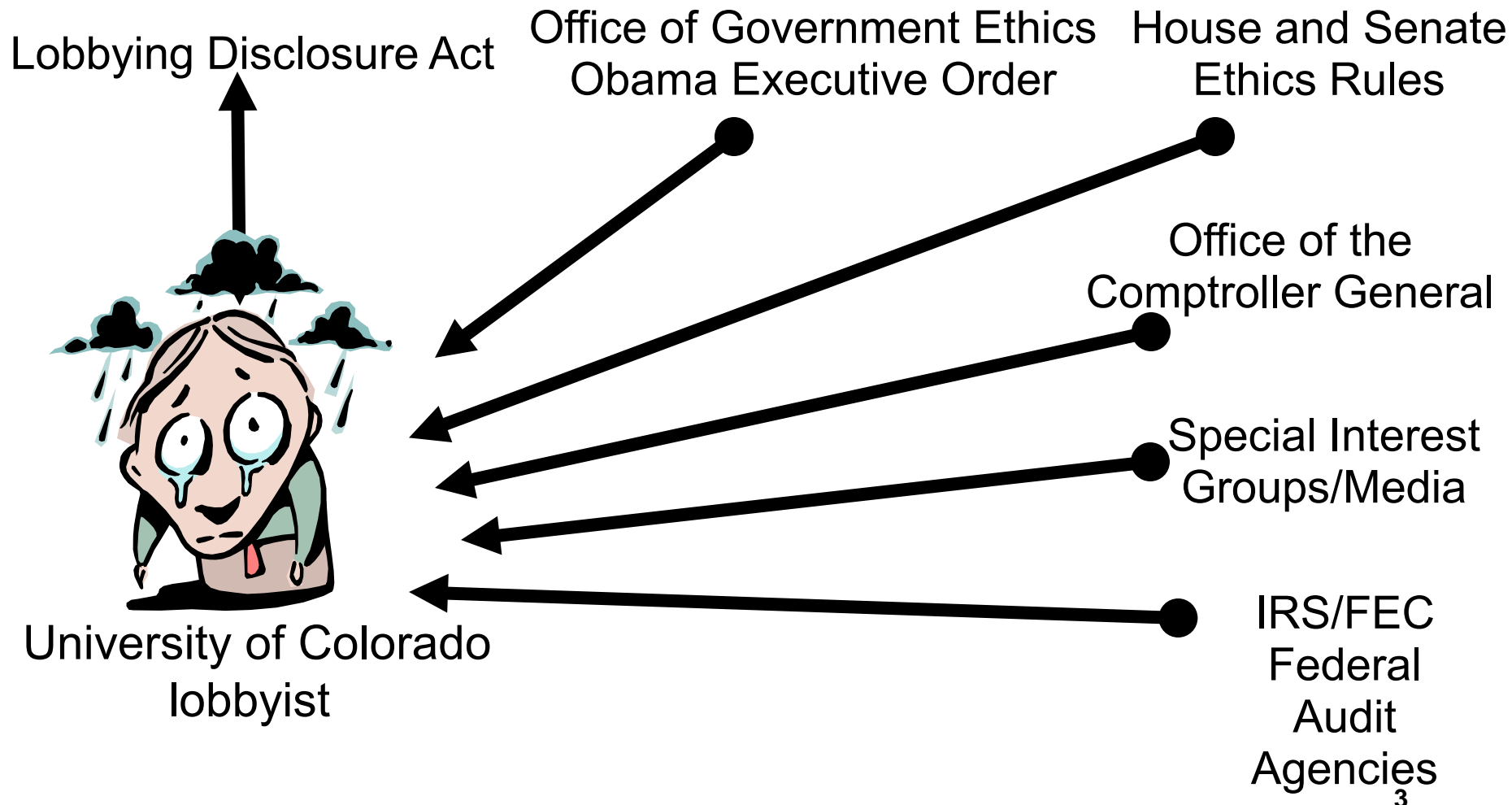
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February 5-7, 2013

Topics of Discussion

- Lobbying Disclosure - Five Years After HLOGA
- Calculation of Lobbying Expenses - Be Audit Ready
- Audits Abound - GAO, IRS, DCAA and Other Government Contract Audit Agencies
- Congressional and Executive Branch Gift and Travel Rules After HLOGA and Obama Executive Orders

The New World for Lobbyists



Lobbying Disclosure Act

- The LDA is intended to provide broad disclosure of both Legislative and Executive Branch lobbying activities
- Signed into law by President Clinton in 1995, updating prior Act
- Subsequent minor technical amendments
- Major changes were made by the Honest Leadership and Open Government Act of 2007 (HLOGA)

Lobbying Disclosure Framework

- The LDA is built around the set of definitions
 - lobbyist
 - covered legislative & executive branch officials
 - lobbying activities
 - Exceptions
- IRS regulations, FAR and Byrd Amendment contain other definitions
- Corporations and nonprofit groups may use alternative IRS definitions for LDA reports

Who is a Lobbyist?

The LDA defines a “lobbyist” using a three-part test:

1. More than one “lobbying contact” with covered officials
2. “Lobbying activities” constitute 20% or more of the services performed by that individual on behalf of his/her employer or client during any quarter
3. Total organization “lobbying expenses” of \$11,500 per quarter in the case of an employed “lobbyist” (or \$3,000 per quarter in income for a lobbying firm)

Who Must Register?

- Individuals are “lobbyists”. Any corporation, nonprofit or higher education institution that has at least one employee who meets the definition of a “lobbyist”, qualifies as a “registrant” and must register under LDA
- If an organization hires an outside person or entity that meets the definition of a “lobbyist” - then that outside person or entity must register under the LDA and disclose the hiring organization as the “client”
- Form LD-1 registration must be filed within 45 days
 - After lobbyist is employed or retained
 - After lobbyist employee makes second contact and meets 20% threshold;

Covered Contacts (LDA Definition)

- Oral, written or electronic communications with covered Legislative or Executive Branch official regarding:
- formulation, modification, or adoption of Federal legislation
 - formulation, modification, or adoption of a Federal rule, regulation, Executive order, policy or position
 - the administration or execution of a Federal program or policy (including the negotiation, award or administration of a Federal contract, grant, loan, permit or license)
 - the nomination or confirmation of a person subject to confirmation by the Senate

Covered Individuals (LDA Definition)

- A “Covered Legislative Branch Official” includes
 - Members of Congress
 - an elected officer of either House of Congress
 - employees of a Member, Committee, leadership staff, joint committee, working group or caucus

Covered Individuals (LDA Definition)

- A “Covered Executive Branch Official” includes
 - the President
 - the Vice President
 - any officer or employee in the Executive Office of the President
 - any Executive Schedule level I - V officer or employee
 - any member of the armed services at or above pay grade O-7 & above
 - “Schedule C” political appointees

“Lobbying Activities” (LDA Definition)

Lobbying activities means lobbying contacts **AND** efforts in support of such contacts including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others

Categories of Lobbying Expenses

- Calculation of time, overhead for all employees engaged in lobbying activities;
- Hard costs (travel, hotels, conference fees, meals)
- Payments to outside lobbying firms, vendors, consultants, coalitions
- Percentage of association dues for lobbying (ACE, AAU, APLU, AAMC, etc)

Develop User Friendly Records

- Maintain records of your “lobbying contacts” for each quarter using the quarterly tracking form

ATTACHMENT C

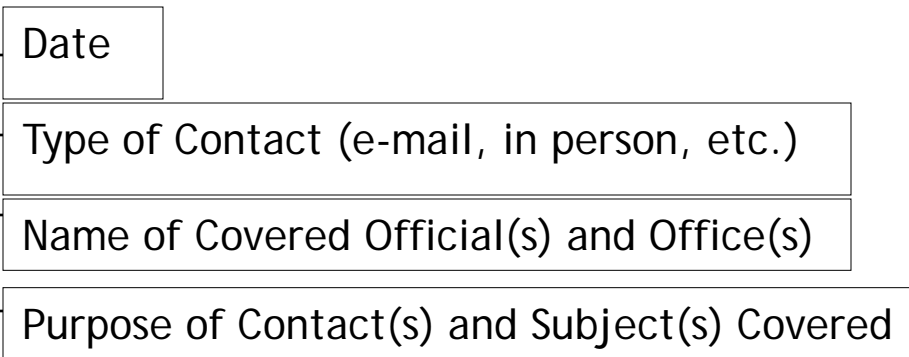
LOBBYING CONTACTS QUARTERLY TRACKING FORM

Instructions: For every “lobbying contact” that you make during the calendar quarter, please fill in the information requested below. If you make more than one contact on a particular date, you should identify each contact on a separate row. All time spent or expenses incurred on “lobbying contacts” and efforts in support of such contacts should be charged to the applicable lobbying charge code. This tracking form must be submitted to the Government Relations Department at the end of each calendar quarter. If you have any questions, please contact the Government Relations Department or the Legal Department.

Name: _____
Calendar Quarter: _____

Date	Type of Contact (i.e. – telephone call, in-person meeting, regular mail, e-mail, facsimile)	Name of Covered Official(s) and Office	Purpose(s) of Contact and Subject(s) Covered

If lobbying contacts were made, submit completed form to Government Relations Department at the end of the quarter



Special Issues When Using Outside Lobbying Firms

- Your retainer agreement language and your record keeping does matter
- Be specific regarding the scope of services and whether you anticipate lobbying activities
- The work of outside firms must be included in lobbying expenses in LDA
- A higher education institution and its outside firm may both need to register depending on the factual situation
- The LDA reports of a registrant and its outside firms should be consistent in disclosing lobbying expenses for LDA purposes

Surviving a Federal Audit

- Auditors want to see a system in place that tracks the type of information that must be provided; time sheets, collection of information
- Full disclosure of topics, sections of bills being lobbied
- GAO auditors ask to see documentation and how costs were allocated for all employees who are involved in lobbying activities
- Federal government auditors are asking more questions about lobbying and the nature of services performed by outside consulting firms

Semiannual LDA (LD-203) Reports

- Filed by Registrants and individual Lobbyists (1/30 and 7/30)
- Must disclose campaign contributions or donations to presidential libraries/inaugural committees >\$200
- Also expenditures with respect to legislative & executive branch officials:
 - For events honoring covered officials
 - to an entity named after or in recognition of such official
 - to an entity “established, financed, maintained or controlled” or an entity designated by such official
 - to pay for a meeting, retreat or conference held by or in the name of one or more officials

LD-203 Certification Requirement

- LDA reports filed by Registrant and each listed lobbyist must include certification that:
 - They have “read and [are] familiar with” the gift & travel rules
 - Have “not provided, requested, or directed” any gift or travel “with knowledge” of any violation of these rules
- Civil fines up to \$200,000 and criminal penalties up to 5 years in jail for a knowing violation
- Failure to properly file LD-203s is common cause of referrals to Justice Department

Lobbying Disclosure and Ethics Compliance Checklist

- Are proper records of calculations maintained?
- How does entity pay for lobbying expenses? How does entity pay for gifts/meals to Members of Congress and staff?
- Have university administrators and staff been trained about House and Senate gift and travel rules?
- Does university system obtain an acknowledgement from key employees that no gifts/travel have been offered to a Member of Congress or staff in violation of the rules?
- Are the Governmental Affairs officers/Public Affairs officers/Legal Counsel knowledgeable and prepared to answer any media questions that might arise?

Federal Gifts and Travel Rules

Common Questions



University of Colorado
Lobbyist

1. What is the scope of the gift ban on lobbyists?
2. What type functions may I host? Widely attended Events? Nominal Food?
3. Are Members/staff or Executive officials allowed to accept hosted travel? Length of trip? Lobbyist Involvement? Site visits?
4. **BASIC RULE - Member of Congress and staff and Executive Branch officials may NOT accept ANYTHING of value from ANYONE - whether personal or official - UNLESS acceptance is allowed under one of the Exceptions to the gift rules**

Members of Congress and staff may NEVER:

- Solicit a gift from any person who has interests before the Congress;
- Accept a gift that is linked to any official action that the individual has taken, or is being asked to take;
- Accept any other gift, unless specifically allowed under one of the provisions of the House/Senate gift rules.

NO GIFTS: EXCEPT

More than 20 Exceptions

to the NO GIFT Rule

Permitted Gifts

Personal Friendship Exemption



- Based on long-standing personal friendship
- Paid for personally
 - Not with Corporate credit card
 - Not Charged to the Firm
 - No Business Tax Deduction
- Reciprocal Gift giving
- History of the Relationship
- Similar Gifts to others

Widely Attended Event

- Widely Attended Event
 - At least 25 other than Members
 - Open to individuals from throughout a given industry or profession . . .
- Invitation came from the Sponsor of the Event (contributors are not sponsors)
- The attendance of the staff person is related to his or her official duties
 - Ceremonial role
 - Appropriate to duties

In Home Personal Hospitality (Senate)

- Meals and Lodging provided in a personal residence
- Nonlobbyist
- No reimbursement by employer

Charity Events

- Primary purpose to raise funds for IRC 170(c) organization
- Invitation only from the sponsor of the event
- Unsolicited
- May include waiver of fee, food, entertainment and instructional materials

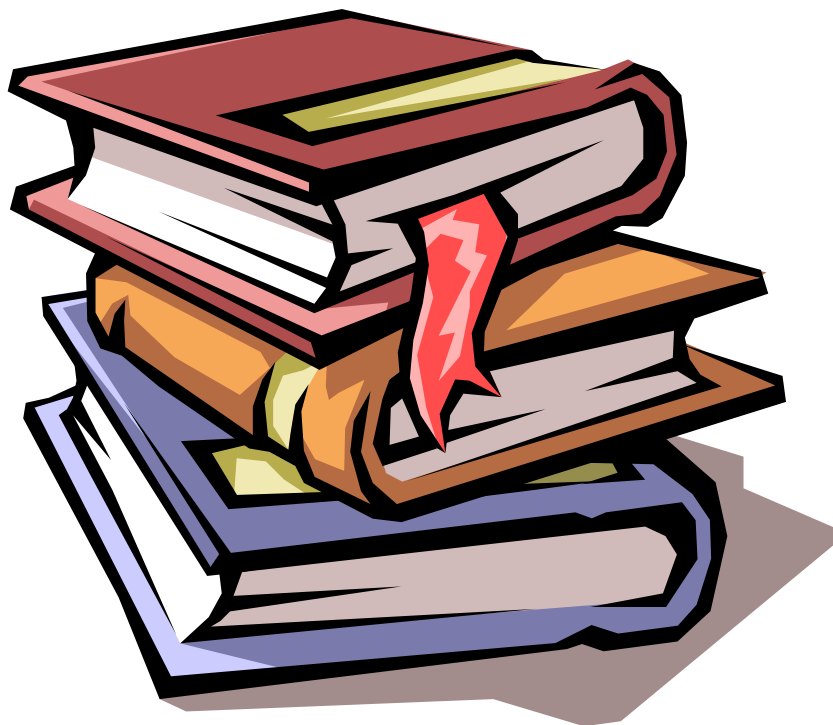
Educational Events

- lectures, seminars, discussion groups
- sponsored by universities, foundations, think tanks, or similar non-advocacy organizations
- does not extend to meals in connection with presentations by lobbyists
- does not extend to meals in connection with legislative briefings

Permitted Gifts

- Nominal food not part of a meal -- includes meeting snacks, reception food, light hors d'oeuvres, no one on one coffee or drinks with lobbyist
- Meals with small constituent groups (Senate)
- An item of "nominal" value - any item under \$10, greeting cards, baseball caps and T-shirts"

Permitted Gifts



- Books or other informational material
- Special plaques or awards
- Gifts provided by state or local government including public universities

General Travel Rules

- Privately sponsored travel by nonlobbyists is still allowed:
 - three days for a domestic trip
 - seven days for foreign travel
- Travel days don't count
- Travel must be for official purposes and no entertainment or recreation expenses

HLOGA Travel Restrictions

- Under HLOGA, privately sponsored travel may not be paid for by any lobbyist or organization employing or retaining an outside lobbyist (subject to a limited exception)
- Exception: Privately sponsored travel still may be paid by an entity employing a lobbyist if...
 - The distant event occurs on a single day and only one (or possibly two) nights of lodging is provided
 - There is only de minimis involvement by a lobbyist in funding or planning the trip and there is no special access during travel or at the destination

HLOGA Travel Restrictions (cont.)

- Sponsors must certify in advance (subject to penalties for false statements)
 - Purpose of trip
 - Source of funding
 - De minimis involvement of lobbyists
- Both members & staff must obtain advance approval and submit reports after travel is completed
- Travel must still be connected to meeting, speaking engagement, fact finding, or similar official event
- Entertainment & recreational expenses may not be paid
- Incidental meal expense (company cafeteria) or travel from airport allowable for site visits without pre-approval
- Expenses must be reasonable; Senate rules say alcohol is NOT a reasonable expense

HLOGA Travel Restrictions (cont.)

- General Exemption from Travel restrictions for Travel provided by public universities. No approval required by Ethics Committees.
- House rules treat private universities similar to any entity that does not retain a lobbyist
- Senate rules are stricter for private universities and treat private universities the same as 501(c)(3)s on three day trips, almost NO lobbyist involvement
- If public university joins with a private university to sponsor a joint Member or staff trip then all trip sponsors must follow the private university rules

Executive Branch Ethics Rules

- Generally, an Executive Branch employee may not accept gifts from “prohibited sources” (those seeking official action, doing business with the government or have interests that may be substantially affected by performance or non-performance of the employee’s official duties) or given because of the employee’s official position.

Executive Branch Exceptions

- a gift valued at \$20 or less, provided that the total value of gifts from the same person is not more than \$50 in a calendar year (employees of the same company are considered the same source).
- a gift based on family relationship or personal friendship
- gifts of free attendance at certain widely attended gatherings, provided the agency has determined in advance the attendance is in the interest of the agency
- modest refreshments

New Obama Executive Order Appointee Pledge

- Will accept no gift from lobbyist or registered lobbying organizations
- Will not work for 2 years on any matter substantially related to my former employer, or on any matter on which I lobbied
- Will not accept appointment to agency that I lobbied for 2 years, and upon leaving Administration will not communicate with former agency colleagues for 2 years
- Will not lobby any covered executive branch official or SES appointee for remainder of Administration

New Obama Executive Order Lobbyist Gift Restrictions

- Eliminates \$20 gift exception
- Cannot accept attendance at widely attended gatherings sponsored by registered lobbying organizations (other than 501(c)(3)s)
- no gifts from political organizations for participation
- Meals/travel reimbursement in connection with a speech or participation in a program is still okay and is NOT considered a gift
- Personal friendship exemption remains

Office of Government Ethics Draft Regulations Lobbyist Gift Restrictions

(Federal Register Vol. 76, No. 177
page 56330, September, 13, 2011)

- Adds new definitions to CFR Part 2635
- Removes many exemptions for all employees for gifts from lobbyists or registered lobbying entities
- Eliminates \$20 gift exception for gifts from lobbyists or entities registered under LDA
- Cannot accept attendance at (WAGS) sponsored by registered lobbying organizations
- Cannot accept gifts of attendance at Social Events from lobbyists or organizations registered under LDA

Avoiding Pitfalls

- Ensure a high level of understanding of the law
- Tailor your program to be as user friendly as possible based on your existing structures
- Create a culture of compliance - Make clear your organization places a premium on ethical conduct
- Institute “best practices” including advance approval, full reporting, knowledge of who to call
- When in doubt - Disclose - *but do not list individuals as lobbyists who do not meet the requirements. Registration has consequences.*
- Consider how any activity might “read” in the media

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UNIVERSITY OF COLORADO FEDERAL COMMUNICATIONS AND LOBBYING REPORT FORM

Use this form to provide information about your federal communications and lobbying activities and associated expenses. While not every contact reported on the form is a lobbying activity for purposes of Federal law, the university collects this data to ensure comprehensive and consistent reporting of lobbying activities and compliance with Federal tax laws applicable to the University.

I. Information about the Individual Making the Contact

Name: _____ Title: _____ Employee ID: _____ Phone: _____
 Email: _____ Campus: _____ Office/Department or College/School: _____

Name of Office of Government Relations Coordination Contact: _____

II. Information about the Federal Contact

Contact Date: _____
 Name: _____ Title: _____ Federal Office: _____
 Email: _____ Phone: _____

Location of Contact (If in-person): (ex: Washington, D.C. or Denver, CO)

Length of stay related to the contact:

Was this contact part of conference/professional association activities you attended? Yes No

Subject Matter (include Bill Number if applicable, subject/topic discussed, action requested):

UNIVERSITY OF COLORADO FEDERAL COMMUNICATIONS AND LOBBYING REPORT FORM

III. Employee Time

List the amount of time that was spent preparing for and carrying out the federal contact by you as well as by any other University of Colorado employee. (Estimated Compensation Expense will be calculated by the Office of Government Relations based upon this information).

Name of Employee(s)	Employee ID	Estimated Time (in hours)*

IV. Expenses

How was this contact paid for? Choose all that apply:

CU General Fund

CU Foundation

Other: _____

Please provide all expenses incurred to accomplish this contact (including travel).

Item	Amount
Office Supplies (including printing/copying costs)	
Travel:	
Air	
Other Transportation (Taxi, Mileage, Parking, etc.)	
Hotel	
Meals	
Other (describe)	
Total	

Please return the completed form by clicking SUBMIT or by clicking PRINT and faxing to:

Natalie Ellis
Office of Government Relations
Natalie.Ellis@cu.edu
(303) 831-9372 (fax)

For more information, contact:

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