



Political Activity Law Alert Important Recent Developments

April 6, 2009

GAO Report on Lobbying Disclosure

In accordance with its obligations under the Honest Leadership and Open Government Act to perform random audits of Lobbying Disclosure Act ("LDA") reports and annually evaluate compliance with and enforcement of the Act, the Government Accountability Office recently released its 2009 report entitled "Observations on Lobbyists' Compliance with Disclosure Requirements." In the report, GAO identifies three main concerns regarding LDA compliance:

1. Although the LDA does not impose a specific records retention requirement, the audit report cites lobbyists' **inability to produce appropriate documentation** to support information included in their disclosure reports.
2. During conversations with lobbyists, GAO found that some lobbyists had a **misunderstanding of the applicable reporting requirements**. In particular, certain sole proprietors and small firms were confused about the need for both individual lobbyists and LDA registrants to file semiannual contributions reports.
3. The audit report suggests that the U.S. Attorney's Office for the District of Columbia should adopt a more structured approach in dealing with enforcement referrals from the House and Senate and **better focus its enforcement efforts** against lobbyists who fail to comply with the LDA.

Based on GAO's observations, and the seeming inevitability of future audit, lobbying organizations should reassess their LDA compliance processes. Despite the absence of a specific records retention provision, the report makes clear that LDA registrants can most efficiently dispose of a GAO audit by maintaining documentation sufficient to back-up the information included on the quarterly lobbying and semiannual contributions reports. By its own admission, GAO is placing an "increased emphasis" on the need for written supporting documentation and found inadequate documentation to justify the amount of lobbying income or expenses reported by LDA registrants in 14% of the audits conducted.

The complete GAO report is available here: <http://www.gao.gov/new.items/d09487.pdf>

Terminating Lobbyist Registrations

Prior to the enactment of HLOGA, many organizations reasonably determined to interpret the LDA lobbying registration thresholds expansively. As a result, many organizations registered employees who worked on government affairs teams or who engaged in a small amount of lobbying activities as lobbyists, even if those



employees did not actually meet the legal registration thresholds supplied in the LDA itself (the so-called "two contacts/20%" test).

In the wake of the increased scrutiny of lobbying in general and the increasingly stringent prohibitions imposed on registered lobbyists, many groups -- and many self-registered organizations in particular -- would do well to take a hard and fresh look at these issues and make a specific evaluation of the extent to which their employees actually meet the legal standards and therefore must remain registered. According to the LDA guidance from the Clerk of the House and the Secretary of the Senate, if an organization reasonably expects an employee not to meet the 20% lobbying activities threshold in the foreseeable future (including the current and subsequent calendar quarters), that employee's lobbying registration status may be terminated.

To terminate an employee's lobbyist registration, an organization must list the employee on Line 23 of its next quarterly lobbying report. Bear in mind, however, that employees who were registered as lobbyists at any time between January 1 and June 30, 2009, are still required to file a semiannual contributions report no later than July 30, 2009.

For more information on LDA compliance policies and procedures, please contact an attorney in the Political Activity Law Group.

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