



## Have You Registered Under the New Lobbying Act?

*If you have not yet registered under the new Act, your organization could face severe penalties.*

BY D. BENSON TESDAHL

**C**ongress has enacted a new Lobbying Disclosure Act, which took effect on January 1, 1996. Any nonprofit organization which conducts lobbying using paid in-house personnel should be thoroughly familiar with this Act. Indeed, failure to comply with the Act could subject an organization to a fine of up to \$50,000.

This article will cover the key provisions of the Act as they affect nonprofit organizations conducting lobbying with in-house personnel. (If organizations hire outside lobbyists, those lobbyists may have their own registration and reporting requirements, which are *not* addressed in this article.)

### Registration Requirements

The Act requires registration of organizations (including nonprofit orga-

nizations) that employ in-house lobbyists if both of the following two conditions exist:

**1** The organization has at least one employee who is a "lobbyist." (The Act defines a "lobbyist" as an employee who makes *more than one* "lobbying contact" for the organization *and* who devotes *20% or more* time to "lobbying activities." For further definitions of these and other terms in quotation marks, see the section titled "Definitions" later in this article.)

**2** The organization incurs or expects to incur expenditures for "lobbying activities" (both by its own personnel and by its outside lobbyists) of *more than \$20,000* in the six-month period from January 1–June 30 or from July 1–December 31.

Organizations satisfying these two criteria must register within 45 days after a "lobbyist" first makes a "lobbying contact" *or* is employed to make a lob-

bying contact, whichever is *earliest*. Thus, some organizations may have had to register as early as February 14, 1996.

The registration form asks for such information as:

- the registrant's name, address, telephone, place of business, and business activities
- the issues for which the registrant expects to lobby
- the name of each employee of the registrant who has lobbied for the organization.

### Reporting Requirements

No later than 45 days after June 30 and December 31, each registrant must file a semi-annual report on its lobbying activities. Thus, the first semi-annual report under the new Act will be due on or before August 14, 1996. The report must include, among other things:

- a list of the specific issues upon which a lobbyist engaged in lobby-

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*Ben Tesdahl is a tax attorney with Powers, Pyles, Sutter & Verville, 1275 Pennsylvania Avenue, N.W., Washington, D.C. 20004 (202-638-4817), where he specializes in the law of tax-exempt organizations. His firm is counsel to over 500 nonprofit and health care clients.*

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ing, including a list of bill numbers and reference to specific executive branch actions

- a list of the Houses of Congress and the federal agencies contacted by lobbyists for the registrant
- a list of the employees of the registrant who acted as lobbyists
- in the case of a registrant engaged in lobbying on its own behalf, a good-faith estimate of the total expenses that the registrant and its employees incurred in connection with lobbying.

Because you must report income and expenses in each semi-annual period, it is imperative that you establish good internal lobbying recordkeeping procedures. It's important to note that 501(c)(3) nonprofits which have elected under Internal Revenue Code Section 501(h) to comply with the expenditure test for lobbying can satisfy their reporting requirement by using the tax law definition of "influencing legislation" and the tax rules for computing lobbying expenditures. However, because the tax law definition of lobbying differs significantly from the definition under the Act, you should seek legal advice before electing to report lobbying expenditures under the tax rules.

## Disclosure and Enforcement

You need to file your registration forms and semi-annual reports with two officials: the Secretary of the Senate and the Clerk of the House. The Secretary and Clerk will retain these records for six years. During that time, they will make the forms available for public inspection and copying.

Lobbyists making *oral* lobbying contacts with "covered officials" must, upon the officials' request, state whether their lobbying firm or organization is registered. A lobbyist making a *written* lobbying contact to a covered official for foreign interests regulated by the Act must disclose that fact in the writing.

## If you have not yet registered, you may already have missed the deadline.

Anyone failing to remedy a defective filing within 60 days after receiving notice of the defect or failing to comply with any provision of the Act is subject to a civil fine of up to \$50,000.

### Definitions

To understand how broad Congress intended the new Act to be, you must understand how the Act defines key terms:

A "*lobbyist*" is any individual employed by an organization (for financial or other compensation) for services that include more than one "lobbying contact" (as defined below), other than an individual whose "lobbying activities" (as defined below) constitute less than 20 percent of that individual's time spent working for the organization over a six-month period.

"*Lobbying activities*" include not only lobbying contacts (as defined below), but also all preparation and planning activities, all research and other background work intended to be used in lobbying contacts, and all coordination with the lobbying activities of others. *Note:* 501(c)(3) nonprofits that have elected to comply with the lobbying expenditure test can use the definition of "influencing legislation" contained in Internal Revenue Code 4911 in lieu of this definition of "lobbying activities."

A "*lobbying contact*" is any oral or written communication (including electronic communication) to a "covered executive branch official" or a "covered legislative branch official" on behalf of an organization concerning any of the following:

- the formulation, modification, or adoption of federal legislation or legislative proposals
- the formulation, modification, or adoption of a federal rule, regula-

tion, executive order, or any other program, policy, or position of the U.S. government

- 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)
- a person's nomination for a position subject to Senate confirmation.

Despite this broad definition, the term "lobbying contact" has 19 exceptions in the Act. For example, a "lobbying contact" does *not* include any of the following:

- a speech, article, publication, or other material distributed to the public or through the media
- a request for a meeting or for the status of an action or any similar administrative request, as long as the request does not include an attempt to influence a covered official
- testimony given before a congressional committee, subcommittee, or task force for inclusion in the public record
- written information provided in response to a request by a covered official
- response to a notice in the *Federal Register* or similar publication soliciting public communications
- a petition for agency action made in writing and required to be a matter of public record
- a communication made by a church or its integrated auxiliary, a convention or association of churches, or a religious order that is exempt from filing an information return.

"*Covered officials*" include both executive branch and legislative branch



officials. A “covered executive branch official” includes: the President; the Vice President; any officer or employee in the Executive Office of the President; any officer or employee serving in Levels I–V of the Executive Schedule; members of the uniformed services at a pay grade above 0–7; and any officer or employee serving in a confidential, policy-determining, policy-making or policy-advocating position as described in 5 U.S.C. Section 7511(b)(2).

A “covered legislative branch official” includes: a member of Congress; an elected officer of the House or Senate; any employee of a member of Congress, a committee of the House and Senate, or the leadership staff of the House or Senate; a joint committee of Congress; and a working group or caucus organization to provide legislative services to members of Congress.

### What Is Not Covered by the Act?

This new Act is much more stringent than the prior lobbying law in its registration and reporting requirements. It does, however, contain a significant exemption from its requirements for those who merely make administrative inquiries (for example, asking legislators for meetings or for the status of an action).

The Act also does not cover lobbying by unpaid volunteers, lobbying at the state and local level, nor grass roots lobbying. In addition, there is a complete exemption under the Act for lobbying by churches and religious orders.

### Can You Still Collect Federal Funds?

The Act prohibits 501(c)(4) advocacy organizations that engage in lobbying activities from receiving any federal funds, such as a federal award, grant, contract, or loan. However, there are ways such organizations can receive government funds and continue to lobby. One permissible method is to create two related advocacy organizations; one conducts lobbying while the other receives federal government funds.

### Is It Too Late for You to Register?

If you conduct any federal-level lobbying using your own employees, you should carefully review the new Act and obtain copies of the registration and reporting forms. Indeed, if you have lobbied since January, you have probably already missed the deadline for registration. Nevertheless, in the early stages, regulators appear to be fairly lenient in enforcing the Act. Even if you are technically registering late, you should go ahead and register as soon as possible. ■

#### Selected References

Hopkins, Bruce R., *A Legal Guide to Starting and Managing a Nonprofit Organization*.  
 Hummel, Joan, *Starting and Running a Nonprofit Organization*.  
 Muehrcke, Jill, ed., *Law and Taxation, Leadership Series, Volumes I and II*.  
*Nonprofit Organizations' Business Forms, Disk Edition*.  
 Tesdahl, D. Benson, “An Overlooked Source of Fundraising Ideas—the IRS,” *Nonprofit World*, March–April 1995.  
 Tesdahl, D. Benson, “How Can You Be Sure Your Gift Is Properly Used?,” *Nonprofit World*, November–December 1995.

These resources are available through the Society for Nonprofit Organizations' Resource Center. To order, see the Society's *Resource Center Catalog*, included in this issue, or contact the Society at 6314 Odana Road, Suite 1, Madison, Wisconsin 53719 (800-424-7367).

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