NATIONAL INSTITUTE FOR
LOBBYING & ETHICS

Path Forward For The Future

Introduction

This document contains recommendations first discussed in 2008 by the American League of Lobbyists Work Force on Lobbying, which the National Institute For Lobbying & Ethics has adopted as part of its LDA reform recommendations. Some members of the NILE Task Force were also members of the ALL Working Group in 2008. The American League of Lobbyists nor the Association For Government Affairs Professionals exist today and why NILE was created. NILE serves as the professional association representing the lobbying profession.

The Constitution guarantees the right of all Americans to "petition the government for a redress of grievances." When doing so, many need and utilize the services of a professional lobbyist to help them convey their views and advocate their particular interests to federal policymakers. Lobbyists play a critical role in assisting individuals, public and private organizations and federal, state and local governmental entities exercise this Constitutional right. Both how lobbyists *actually* perform our representational duties and how the public *perceives* we are doing so are extremely important in maintaining public trust and confidence in our democratic system.

Accordingly, the National Institute For Lobbying & Ethics is committed to assuring that lobbyists are knowledgeable professionals who act in an ethical and proper manner. NILE has adopted the American League of Lobbyists Code of Ethics, a model used by other states and by lobbyists in other nations. Honesty, integrity, and the professionalism of lobbyists are among the highest priorities in NILE's Code.[1] Its preamble makes this forceful statement:

> *"To help preserve and advance public trust and confidence in our democratic institutions and the public advocacy process, professional lobbyists have a strong obligation to act always in the highest ethical and moral manner in their dealings with all parties."*

[1] Those of us who care so deeply about these fundamental principles believe that without high standards, public trust in our government system will continue to erode.

Not only must professional lobbyists act in the highest ethical and moral manner, but our activities must be transparent to and understood by the public. Therefore, NILE is advocating for transparency in the lobbying process and for expanding the usefulness to the public of information about the activities of lobbyists. We have done so based on the belief that transparency is essential if the public is to understand what lobbyists do and recognize that we serve an important and legitimate role in strengthening, instead of undermining, the democratic process.

It is because of our responsibility to help maintain public confidence and trust in our system of government and in the lobbying profession that one of its first actions NILE took in 2016 was to establish a permanent Task Force on Lobbying. We recognized that in fact much of the lobbying process is not transparent because it is not disclosed to the public. This clearly contributes significantly to the misunderstanding of lobbying and of the important, necessary and legitimate role the lobbyists play. We also saw that the public has growing concerns over certain lobbying practices and a strong perception that most lobbyists and the elected officials with whom they deal all too often are acting in sinister ways to corrupt and undermine our democratic institutions.

For example, a *Washington Post poll* published on August 10, 2011, found that 80% of all Americans say they are dissatisfied with the way the political system is working, "up dramatically from late 2009." The same poll found that only 17% of the public would vote to re-elect their own congressional representative, down from 34% just two months earlier. Another poll conducted by *NewsMax* on November 4, 2014 found 79% of voters were unhappy with Washington. And finally, an August 29, 2016 poll conducted by the *Washington Examiner* found that 96% of Trump voters were angry with the performance of Congress.

These are historically low numbers that reflect significant public concerns about our system of government. Such concerns relate both to the actions and inactions of elected officials and to citizen's perceptions of such officials' interactions with lobbyists. It also is widely recognized that many people view our profession quite negatively, but given the fact that lobbyists are an integral part of our nation's representative system of government, it is not surprising that the public's view of lobbying is closely tied and similar to their view of the elected officials whom we lobby.

While there are various reasons for the public's concerns, we believe that a major cause is the increased number of unfair and politically motivated attacks on lobbyists. Many politicians have sought to gain political advantage by deflecting public attention away from their own actions or inactions and legislative failures by unfairly blaming lobbyists. They accuse lobbyists of always acting for unsavory "special interests" instead of for the "public interest," which members of the public typically tend to equate with their own special interests. Such attacks often include claims that most lobbyists are corrupting the governmental process by constantly "buying" support for their positions from elected officials through huge campaign contributions.[2]

[2] We acknowledge that there have been lapses by some in our profession just as there are lapses by individuals in every profession, including elected officials. However, when individual lobbyists do act improperly, the entire lobbying profession should not be condemned any more than the medical profession should be vilified for the bad acts of some physicians. Nonetheless, when a single lobbyist is alleged to have made mistakes, media coverage tends to be overblown and the story is front-page news, often portraying the lobbyist's alleged misdeeds as reflective of those of the entire lobbying profession.

There are those among us who believe the unjustified attacks and the public's negative view of lobbyists are cyclical and that they will subside in due time even if lobbyists do not respond. Most of us in this profession do not share that view. We believe the attacks will continue and cannot be allowed to go unanswered because this will further weaken our profession, increasing public doubts about the functions we perform and further undermining public trust in our democratic process. In short, we feel that negative public perceptions of lobbying, whether based largely on unmerited criticisms in the media or otherwise, must be addressed. NILE is strongly committed to doing so. That is why it is so imperative that we issue these recommendations so that the public can better understand our commitment as professionals to offer real solutions to what we believe are real problems that cause much of the public to have a low opinion of elected officials and lobbyists and to lack trust in our governmental process.

Transparency - One of the issues we must confront concerning transparency is evidence that some lobbyists are de-registering in order to call themselves consultants, strategists, advisors or anything other than lobbyists. There are a variety of reasons for de-registering, but in many instances it clearly is the perception that being called a "lobbyist" will harm a person's career. However, whatever their reason, those who have deregistered but are still engaged in public policy advocacy do not file the disclosure forms required of registered lobbyists. Those who do not register, therefore, operate without the transparency that is so important to NILE, the American public, and the integrity of our democratic process and of the lobbying profession.

While de-registration is a concern, the far greater transparency problem is the number of people who have never registered as a lobbyist. We believe that literally thousands of people are paid to influence federal public policy decisions on behalf of various interests by engaging in lobbying activities who are not registering as lobbyists and disclosing their activities. This situation arises in part due to LDA provisions that provide exceptions from disclosure for certain interests. It also occurs in large part due to other provisions that define "lobbyist" and "lobbying activities" very narrowly. The result is that many paid advocates who are actively seeking to influence legislative and other governmental policy decisions either actually are not required to register and disclose their activities, or they can simply adopt interpretations of these provisions (which are rarely enforced) so as to avoid doing so.

Simply put, a very large statutory "transparency gap" exists that should be closed so that the full spectrum of lobbying activities is transparent and disclosed to the public. Accordingly, the Task Force has developed proposals to close this gap by requiring these undisclosed "lobbyists" to register and file public disclosure reports.

Recommending Fundamental Changes – The Task Force's members are aware that our disclosure recommendations chart new territory. For example, some parties may feel they have tremendous personal economic advantages under the current system and seek to preserve it. Others may be simply comfortable with that system and be reluctant to change. Nevertheless, we strongly believe that for NILE to meet its duty to the public and to the lobbying profession we must confront these tough issues, and that now is the time to do so. To the extent that it can be said that lobbyists are part of the real problems affecting the federal governmental process and the public's negative perceptions, then it is imperative that we assume our share of the responsibility to propose effective solutions to those concerns.

By making the far-reaching but needed recommendations set forth later in this report, NILE is demonstrating that our profession is not disregarding public concerns or improper practices. It shows that we are serious about supporting fundamental changes that will improve our governmental process and the public's trust and confidence in it, as well as their respect for the lobbying profession. Moreover, forthrightly addressing these concerns will help counter the unjustified attacks on the lobbying profession that have intensified significantly in recent years. It also will ensure a more level regulatory playing field for professional lobbyists because essentially all individuals who are paid to lobby will be subject to comparable regulations and some will not have disproportionate and improper influence based on their campaign fundraising activities.

Need for Broad-Based and Constructive Dialogue – What we propose is by no means limited to the good of the lobbying profession. Rather, as its name declares, *A Road Map to The Future of Lobbying: The Ways Lobbying Has Changed and What it Means to for the Profession, Public Officials, and the Public.* Our document addresses key challenges elected officials, interest groups and the lobbying profession all face in the eyes of the general public, and increasingly in the eyes of many "Washington insiders" who have concluded systemic changes in the current process need to be adopted.

Working alone, NILE cannot implement solutions to the fundamental systemic problems that are causing the public to lose trust in the effectiveness of their government. This road map is intended to help generate widespread serious discussions and further recommendations about what we and others who share our goals can collectively do to reform the lobbying process and to restore and maintain strong public trust in our democratic system and in the lobbying profession. We want to work as cooperatively and constructively as possible with other interested parties to develop and pass the meaningful legislative reforms that should come out of these discussions. While there will surely be differences of opinion with our initial recommendations, we will work with any group or individual who comes to the table with constructive criticism and a desire to reach agreement. It is our sincere hope that Congress, the White House, lobbying professionals and other stakeholder groups will support the recommendations in this road map and work with NILE to improve and implement them and to develop other reforms that may be needed.

SECTION I: LOBBYING DISCLOSURE ACT

Overview of the LDA's Requirements for Registration of Lobbyists

The LDA is seriously lacking from a transparency perspective because certain of its key definitions are flawed and do not require what many knowledgeable observers believe to be literally thousands of people who are engaged in what are clearly lobbying activities to register as lobbyists. Therefore, they do not have to disclose to the public such basic information as who they are, who they are working for, what they are doing, who they are contacting or seeking to influence, and what they are being paid.

NILE believes that all individuals who are actively engaged in lobbying activities should be treated comparably, without having arbitrary and outdated provisions that require some to disclose their

activities while others perform their lobbying work without disclosure. Accordingly, the Task Force is proposing a number of legislative reforms that will address these definitional deficiencies and will require far more individuals to be registered as "lobbyists" and to disclose their "lobbying activities." We believe that such enhanced disclosure will begin the process of restoring the public's confidence and trust in our democratic process.

In order to understand the reforms we are proposing to the LDA and why such changes are needed, one must first be familiar with the LDA's provisions. We believe that it is especially important to understand the statute's key definitions, and therefore we now will highlight the major definitional provisions which relate to our proposals, and thereafter will explain why changes are needed and how the reforms we are proposing will address the LDA's primary shortcomings.

Key LDA Definitions

1. **"Registrant"** – Under the LDA, lobbyist registrations must be filed by the employer (termed the "registrant") of an individual who meets the definition of being a "lobbyist." The registrant may be: (1) a "**lobbying firm**" which is a "person or entity" that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity;" [3] or (2) a "person or entity" whose employees act as lobbyists on its own behalf (herein termed "**lobbying organization**").[4]

2. **"Lobbyist"** – The term "lobbyist" is defined to mean *"any individual who is employed or retained by the client for financial or other <u>compensation</u> for services that include <u>more than one lobbying contact</u> other than an individual whose lobbying activities constitute <u>less than 20 percent of the time</u> engaged in the services provided by such individual to that client over a 3-month period."* (<u>Underlining</u> added for emphasis.)

3. **"Lobbying Activities"** – The term "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 the coordination of lobbying activities of others*."

4. **"Lobbying Contact"** – The LDA provides that a "lobbying contact" means "*any oral or written communication (including an electronic communication) to a covered executive*

[3] "Person or entity" is defined by the LDA as "any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or State or local government." An "organization" is defined as "a person or entity other than an individual." The term "lobbying firm" also includes a self-employed individual who is a lobbyist.

[4] A "lobbying organization" also is deemed to be a "client" for purposes of the registration and reporting requirements.

branch official or a covered legislative branch official that is made on behalf of a client with regard to—(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals); (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government; (iii) 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); or (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate." (The definition then lists 19 exceptions that allow many common lobbying contacts and the individuals who make them to avoid disclosure.[5])

Anyone familiar with the realities of how lobbying is done today can readily see how the LDA's definitional flaws make much of the lobbying process opaque from the public's perspective. The essence of being a "lobbyist" is being paid by a client to influence public-policy, and to engage in "lobbying activities," which may or may not involve making "lobbying contacts" with public officials on behalf of the client. The LDA's fundamental premise does not recognize this reality. It provides that to be a "lobbyist" an individual must make "lobbying contacts" thereby exempting from registration and disclosure of their activities all those who do not make such direct contacts from registration and the disclosure of their activities all those who do not make such direct contacts but nevertheless engage in influencing governmental officials. The statute's definitions also contain exceptions, threshold levels for registration and reporting and other limitations that significantly curtail public disclosure.

ISSUE: Definition of "Lobbyist"

The LDA's definition of "lobbyist" has two basic defects:

"Lobbying Contact" Requirement – Even if an individual engages on a full-time basis in lobbying activities, the individual is not required to be registered as a "lobbyist" unless he or she makes more than one "lobbying contacts" (i.e., is compensated for direct oral or written contact with a covered public official on behalf of a client).[6] Lobbying campaigns today often involve having a team of firms and individuals working, some through direct contacts and others by indirect means, to influence legislators or other covered officials. Hundreds of millions of dollars are spent to hire public relations firms, political strategists, pollsters, advertising and media consultants, grassroots and coalition specialists, Internet and digital media experts and others who work to influence public policy decisions on behalf of their clients. Typically, these individuals and firms are heavily involved in activities that support of generate "lobbying contacts" by others but they do not make such contacts themselves. Thus, no registration and reporting is required, and their lobbying activity is completely undisclosed to the public.

[5] LDA Section 3(8)(B)(i)-(xix).

[6] See the LDA definition of "lobbying contact" quoted above. PL 104-65, December 19, 1995.

20% Threshold – To be deemed a "lobbyist" for purposes of the Act, an individual also must in a 3-month period spend 20% or more of his or her time working for a specific client on "lobbying" activities. The practical result of this threshold is that it excludes from registration and disclosure individuals who make significant lobbying contacts, but spend less than 20% of their time on such activities and therefore they fail to register and disclose their activities.

We believe that while some provisions can be made for certain *de minimis* activity, the 20% test is too broad and provides too large a loophole for avoiding public disclosure. Instead of having such a percentage test, we feel that an appropriate threshold would be to set a minimum number of hours that an employee or consultant must have engaged or be expected to engage in lobbying activities. However, hours alone are not necessarily an adequate test to capture all activity that should be disclosed. For example, the only lobbying activity engaged in on behalf of a client by a retired Senator employed by a lobbying firm might be making a single 10-minute advocacy phone call to one of his or her former Senate colleagues. He or she might be paid $10,000 for this potentially very valuable call, and yet no disclosure would be required if only an hourly threshold is applied. Therefore, we believe that a revised definition should be crafted so that in such cases the fee payment would trigger registration even if the hourly threshold was not met. On the other hand, in the case of an employee or consultant who engages in lobbying activities only occasionally (e.g., someone who is paid to arrange or participate in a yearly Washington "fly-in" lobby day), it seems appropriate to have an alternative so that this "citizen lobbying" type of activity does not always require registration. Thus, we are proposing certain refinements to help address that type of situation.

Task Force Recommendations:

In essence, we propose deleting the requirement that 20% of the individual's time working for a client or employer must involve "lobbying activities" and the "lobbying contact" requirement,[7] while retaining that the individual must receive financial or other compensation and adding three additional criteria: (a) the lobbying activities must involve 10 or more hours of services by the individual in a 3-month period (calendar quarter); (b) the individual must be employed or retained by a lobbying firm which has received or expects to receive compensation of $5,000 or more for the individual's services and related expenses involving the lobbying activities in a 3-month period; or (c) the individual must be employed by a lobbying organization which has expended or expects to expend $5,000 or more for the individual's services and related expenses involving the lobbying activities in a 3-month period.[8]

[7] Under the enhanced disclosure system we are proposing, any type of "lobbying activities" (which are defined to include both "lobbying contacts" and other types of lobbying activities) generally will trigger registration if the employee or consultant meets the minimum hourly threshold (or alternatively a fee or expenditure trigger is met). Therefore, we do not believe it necessary to retain a separate "lobbying contact" test, but we do retain the LDA's definition of "lobbying contact."

[8] By setting an expenditure level of $5,000 or more with respect to lobbying organizations, we believe that this will exclude most "citizen lobbyists" who may, for example, come to Washington one day per year to lobby on behalf of their employer and have their salary and expenses paid by the employer.

The Task Force's proposed definition of "lobbyist" is:

"The term 'lobbyist' means any individual who is employed or retained by or on behalf of or for the benefit of a client for financial or other compensation who has engaged in or is expected to engage in lobbying activities on behalf of that client provided: (a) the lobbying activities involve 10 or more hours of services by the individual in a 3-month period (calendar quarter); (b) the individual is employed or retained by a lobbying firm which has received or expects to receive compensation of $5,000 or more for the individual's services and related expenses involving the lobbying activities in a 3-month period; or (c) the individual is employed by or otherwise related to a lobbying organization which has expended or expects to expend $5,000 or more for the individual's services and related expenses involving the lobbying activities in a 3-month period."[9]

Issue: "Client Definition"

The LDA states that the *"term 'client' means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members."*

We believe that this definition needs further refinement to reflect the fact that in many cases a "lobbying firm" (the "employing firm") will employ or retain another "lobbying firm" (the "employed firm") to conduct lobbying activities on behalf of or for the benefit of the employing firm's client. In that type of situation, the employing firm's "client" is in effect and reality also the "client" of the employed firm (and the employed firm is not the "client" of the employing firm). The Task Force feels that this *de facto* client relationship should be clearly disclosed through the LDA so that the public can be aware of it.

Task Force Recommendations:

We propose that the definition of "client" be modified so that it is clear that when an employing firm hires an employed firm, as described above, and the "client" of the employing firm must also be listed as the "client" of the employed firm, and the employing firm should not be listed as the "client" of the employed firm.[10]

The definition of "client" could be modified to mean *"any person or entity that directly or indirectly employs or retains a lobbying firm for financial or other compensation to conduct lobbying activities on behalf or for the benefit of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct*

[9] Although it's not a definitional issue, we also would recommend that every person who becomes a registered "lobbyist" should be given a unique identification number. This would be helpful for administrative and disclosure purposes.

[10] Appropriate technical amendments also will be needed, as discussed subsequently, to provide the disclosure of compensation paid to the employed firm by the employing firm on behalf or for the benefit of the "client."

lobbying activities, the client is the coalition or association and not its individual members. In case of one lobbying firm that employs or retains another lobbying firm on behalf or for the benefit of a client, that client is also the client of the other employed or retained lobbying firm, and the lobbying firm that employed or retained the other lobbying firm is not that firm's client."

ISSUE: "Lobbying Activities"

The LDA's definition of "lobbying activities" lacks clarity in that it does not identify many of the common types of activities that are engaged in today in efforts to influence public policy decisions. Currently, many parties consider these activities as being outside the scope of the LDA's meaning of covered "lobbying activities." This definition also contains the requirement that the activity must be "*intended at the time it is performed, for use in contacts, and the coordination of lobbying activities of others."* This language enables individuals to claim that significant activities that were later used to support lobbying contacts or other types of lobbying activities were not initially undertaken for such purposes. Therefore, they do not report these as lobbying activities. Also, these definitional flaws may enable an individual who made lobbying contacts and engaged in such activities to avoid registration by claiming that since these activities are not counted as "lobbying activities," he or she did not meet the 20% time threshold required for registration.

Task Force Recommendations:

We believe that it is important to clarify more precisely what is intended to be considered lobbying for LDA purposes by refining the definition to specify that certain types of lobbying related activities are within the meaning of "lobbying activities." Accordingly, we propose deleting the current definition and replacing it with the following:

> *"The term 'lobbying activities' means lobbying contacts or activities in support of or undertaken in connection with such contacts (other than administrative types of activities or services such as typing, copying, printing, providing computer or telephone services or telephone answering) including, but not limited to:*
>
> 1. *Preparation and planning activities such as developing and refining strategy; research; analysis; polling; focus groups; scheduling meetings; and drafting of studies, reports, articles, proposed bills, amendments, hearing questions, briefing memos, statements and similar educational and advocacy materials;*
> 2. *Monitoring (e.g., attending hearings and meetings) and reporting on developments or potential developments related to matters that are, or reasonably could be expected to become, the subject of lobbying contacts or other lobbying activities;*
> 3. *Employing, retaining or managing of other persons or entities to engage in lobbying activities on behalf of another person or entity;*
> 4. *Providing assistance with respect to development, making or utilization of grassroots contacts that involve seeking to have a person or entity make contacts with or communications to a covered executive branch officials or covered legislative branch official or other party in connection with a matter of interest or concern to the client*

that is or can be expected to be the subject of lobbying contacts or other lobbying activities;

5. *Developing, managing and or engaging in the activities of formal or informal coalitions or groups for the purpose of making or supporting, in whole or in part, lobbying contacts or other lobbying activities; and*
6. *Making communications, such as advertising or mass media communications, including the use of digital media that are intended, or can be expected to be for the purpose of encouraging support or opposition by the general public or a segment thereof to matters that are the subject of lobbying contacts or other lobbying activities."*

This new definition of "lobbying activities" will help ensure that essentially all individuals who are being paid to engage in lobbying activities are registered as lobbyists and that the key details of their activities (e.g., who they are working for and what they are being paid) will be disclosed to the public.

ISSUE: Limiting Exceptions to "Lobbying Contact" Definition

"Lobbying contact" essentially means any oral or written communication (including an electronic communication) to a covered executive branch or covered legislative branch official made on behalf of a client in connection with federal legislation or federal policies.[11]

Task Force Recommendations:
With regard to the LDA's exceptions, we propose that:

a. **Public Communications Exemption** – Congress should refine the current exclusion for a communication that is "*made in a speech, article, publication or other material that is distributed or made available to the public, or through radio, television, cable television, or other medium of mass communications"* so that it does not exempt such activities when they are undertaken for compensation paid by or on behalf of a client and are intended to influence a covered executive branch or legislative branch official or are made in connection with other lobbying activities. Currently this exception is a huge loophole. In today's lobbying campaigns, large sums are often spent to pay individuals (or organizations) to make communications by such means in order to influence such officials, and yet these communications are not covered and can mislead the public and elected officials into believing, as they often do, that the person making the communication is not associated with and not being paid by a client in an effort to influence public policy decisions.

b. **Meeting Request Exemptions** – The LDA contains an exemption for a request for a meeting or similar "administrative" request if the request does not include an attempt to influence a covered official. Frequently, former Senate and House members or former covered executive branch officials who are not registered as lobbyists will personally make such a request, or have an assistant call on their behalf, to ask for a meeting with a

[11] See the LDA definition of "lobbying contact" quoted on page vii of this paper.

covered official for someone with whom they are associated. They do so because it is relatively easy for them to arrange such a meeting (compared to the request coming from the person who will actually attend the meeting) and in many cases to "telegraph" that they are involved and have a stake in and/or support the position or request of the meeting participant. We believe that this exception should not apply to such meeting requests made by or on behalf of a former covered legislative branch or executive branch official.

c. **Religious Organization Exception** – Congress should also delete the current exemption for lobbying contacts made by churches and religious orders. A number of religious organizations have substantial lobbying operations. With all due respect to religious and the religious organizations that represent them, we see no legitimate basis for providing an exception for such organizations and their lobbyists from having to register and report.

Exception from Registration for Lobbying Firms and Lobbying Organizations

Although not one of the exceptions from the "lobbying contact" definition, the statute contains a related exception for lobbying firms and lobbying organizations that we believe should be ended. Even if a client employs individuals who qualify as "lobbyists" under the LDA, the statute nonetheless also provides an exception from registration by the client if in the calendar quarter: (1) in the case of a lobbying firm the total income for matters relating to the client's lobbying activities does not exceed and is not expected to exceed $2,500; or (2) in the case of a lobbying organization, total expenditures, as estimated pursuant to the LDA's provision's, do not exceed or are not expected to exceed $10,000.[12]

SECTION 2: TASK FORCE'S CONCERNS AND RECOMMENDATIONS REGARDING LDA DISCLOSURES AND ENFORCEMENT

The preceding discussion outlines the task Force's concerns and recommendations regarding LDA definitions involving such key issues as when an individual must be registered as a "lobbyist" and what activities are considered "lobbying activities." The remainder of this section will address our concerns and recommendations with regards to when registrations should be filed, and, most significantly, what is required to be disclosed, as well as how the LDA's provisions can be administered and enforced more effectively.

ISSUE: Registration Timing

The LDA requires registration within 45 days after a lobbyist makes two lobbying contacts or engages in lobbying activities, or is employed or retained to make a lobbying contact or engage in lobbying activities. It is important to have reasonably prompt disclosure and current technology makes it less burdensome to do so than it may have been when the 45-day period was originally adopted.

[12] The LDA provides for periodic adjustments to these figure and they respectively currently are: (1) $3,000 and (2) $11,500. We propose applying the same provisions that are currently contained in the LDA for periodic adjustments to all dollar amounts listed in our various recommended reforms.

Task Force Recommendations:
With today's electronic filing requirements, we believe the registration time can be shortened considerably without posing compliance difficulty for registrants. We propose changing 45 days to 30-days for making such disclosures.

ISSUE: Disclosure of Specific Lobbying Issues

The LDA provides that the specific issues that lobbyists are lobbying on should be disclosed. In practice, however, many registrants provide only extremely general information such as: "appropriations"; "budget"; "aviation issues"; or "estate taxation." This does not provide the public with sufficient information to know what matters the lobbyist is working on. The current form that must be used to file quarterly reports on lobbying activities (LD-2) has a section (line 16) that asks the filer to state the "specific lobbying issues" for which he or she is lobbying, but it does not prevent a filer from leaving it blank and still being able to complete the filing. Little or no enforcement action typically is taken to see that more details are provided.

Task Force Recommendations:
We recommend clarifying that considerably more description is required. This can be done not only in the text of the LDA, but also in the administration of its provisions. In addition, the electronic efforts are needed to reinforce the importance of increased disclosure. In addition, the electronic filing forms might be modified so as to require more specific disclosures.

ISSUE: Disclosure of Office Contacted

The LDA only requires disclosure of whether a lobbyist contacts the Senate, House or a federal agency. It does not require listing the specific offices and individuals contacted. We carefully considered whether additional disclosures should be made regarding contacts made with covered legislative branch and covered executive branch officials. For example, some have suggested that lobbyists be required to report the name of each individual staff member they communicate with and further that every separate communication be disclosed in as close to real time as possible. We strongly disagree with such proposals (e.g., listing every individual contacted and each time they are contacted) which would not only be extremely burdensome, but also totally impractical and unworkable.[13] Requiring such detailed reporting would provide what literally would be a mountain of largely useless, if not misleading, information to the public and might impinge on the constitutionally protected right to petition Congress. It also is unnecessary because the public should recognize that a

[13] For example, lobbyists constantly run into and speak with Members and staff in the hallways of Congressional office buildings. The same visit to the building may produce two, three, or ten such unplanned contacts on perhaps two, three or more issues for which the lobbyist has registered. During the course of a single day, a lobbyist may have literally dozens of such in person contacts as well as numerous more by e-mail and telephone and in person at events off the Hill. It would be unreasonable to require lobbyists to keep and promptly disclose an accurate detailed log of each of these contacts and of the issues that were discussed, and in reality few, if any, could do so.

lobbyist will seek to communicate on the matters that the lobbyist is engaged to lobby on with relevant personnel in the offices of specific Senate and House members contacted by the lobbyist.

Task Force Recommendations:
We recommend keeping the same requirements in place as reasonable and practical.

ISSUE: Explanation of Activities

Current law requires reporting relatively little detail regarding the nature of most lobbying activities, apart from listing where contacts are being made with covered legislative or executive branch officials. However, the lobbying process now involves far more than simply contacting public officials, and many of the other activities can have a major, if not determinative, impact on officials' actions. Many of the additional lobbying firms and lobbyists who would be registering and filing disclosure reports are engaged in such activities without making "lobbying contacts." For example, if a firm is conducting a major grassroots lobbying program, but is not contacting covered public officials its activities remain undisclosed even if the firm's employees are registered as lobbyists. This is also the case with regard to the most of the activities of lobbyists who are contacting covered officials.

Task Force Recommendations:
Transparency obviously requires some reasonable degree of disclosure describing the general nature activities conducted by lobbyists, including the types of persons contacted who are not covered officials. However, while we believe that greater disclosure is needed regarding the nature of lobbying activities being conducted and persons contacted, we also feel that it is critically important not to require extensive detail. The purpose here should be to give the public a general idea of what is occurring, not a comprehensive report on everything that is being done. If extensive details had to be reported, it would be very burdensome and unworkable, especially for smaller lobbying firms, to have to list every specific activity and contact. Moreover, this also would reveal too much about a lobbyist's lobbying strategies. We believe that adequate transparency will be achieved if the disclosure requires a general description of the nature of the lobbying activities (e.g., "planning and executing media strategy") and of the types of parties being contacted who are not covered officials (e.g., "State and local print media"). Therefore, we recommend that the LDA be amended to require reports to include such a general description of these activities and contacts. To make such reporting less burdensome, this should be done, at least in part, by allowing the registrant to check applicable boxes on disclosure reports that list a broad range of common activities (e.g., "grassroots activities"; "polling"; "legislative monitoring"; drafting materials"; "contacting third-party groups").

Approved by the National Institute For Lobbying & Ethics Lobbying Task Force
January 30, 2017.