Federal Advocacy Guidelines: Overview of Rules & Disclosure Requirements for Lobbyists & Others Communicating with Congress

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Lobby Rules 101

- AAMC members can play an important role in influencing public policy decisions affecting their institutions
- Lobbying is a critical tool for achieving favorable and avoiding unfavorable legislative developments
- AAMC members are subject to different rules governing lobbying, depending on whether they are
  - Private institutions exempt under Section 501(c)(3)
  - Public/governmental institutions
Knowledge Is Power

• AAMC members need to understand the basic lobbying rules governing their institutions
• This presentation provides an overview of basic legal rules
• AAMC members should consult their government relations staff (or others responsible for monitoring advocacy activities) about particular institutional policies and practices.”
Sources of Rules Governing Your Lobbying Activities

- Federal Tax Laws
- Lobbying Disclosure Act
- State Restrictions

Responsibilities
- Understand the definitions and limits
- Track time and expenses
- Know the reporting obligations
- Consult with your institution about how to create an internal compliance program
Federal Tax Laws: Lobbying Limitations Under Section 501(c)(3)

• Section 501(c)(3) provides that “no substantial part” of an organization’s activities may consist of lobbying or attempting to influence legislation.

• An organization’s lobbying activities can be measured in two ways:
  – The common law “no substantial part” test, under which there is no safe harbor or definition as to what level of lobbying is considered “substantial.” Most AAMC members are likely to be subject to this definition.
  – The 501(h) “lobbying election,” which employs specific expenditure limits that cap out at $1,000,000 and provides amplified guidance on what constitutes lobbying. This option is generally used only by small organizations.

• The penalty for engaging in more than “insubstantial” lobbying is the loss of tax exemption; this penalty is highly unlikely for AAMC members.
The “No Substantial Part” Test

- There are two issues under the “no substantial part” test:
  – What activities are considered lobbying?
  – When are those activities considered “substantial”?
“No Substantial Part”: What Is Lobbying

• Lobbying is the attempt to influence **legislation**.
  – “Legislation” is action by Congress, a state legislature, a local council or a similar governing body, as well as action by the public in a referendum or ballot measure
    • Legislation is not limited to the subject matter of a bill that has been introduced; it also includes specific legislative proposals that an organization supports or opposes
  – Importantly, for tax purposes, legislation does **not** include regulatory (as opposed to legislative) matters in front of administrative bodies
“No Substantial Part”: What Is Lobbying

- There are two types of lobbying activities:
  - Direct lobbying, defined as an attempt to influence legislation through communication with:
    - Members or staff of a legislative body
    - Other government officials (executive branch) who participate in the formulation of legislation
  - Grassroots lobbying, defined as an attempt to influence legislation by communicating with the public to urge them to contact members of a legislative body to propose, support or oppose legislation
Nonpartisan Study, Analysis and Research

- Lobbying does not include the conducting or disseminating of the results of nonpartisan analysis, study or research.
- Analysis may conclude that legislation is appropriate to achieve a given objective, if it contains a “sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.”
- Report should be broadly disseminated and may not be distributed solely to those interested in only one side of a particular issue.
“No Substantial Part”: What's Not Lobbying

Technical Advice or Assistance

• Lobbying does not include the provision of technical advice to a governmental body, committee or subcommittee thereof in response to a written request by such entity that is made available on a bipartisan basis, such as at a committee or subcommittee hearing
  – The written request must be made in the name of the committee or subcommittee
  – Results must be disseminated to members of both parties

• The technical advice exception does not apply to advice provided at the request of an individual legislator
“No Substantial Part”: How Much Lobbying Is Substantial?

- The no-substantial-part test looks at both expenditures and activities.
- There is no bright-line test for percentage of expenditures or activities, although it is generally agreed that an organization that is below 5% of expenditures is not engaged in more than insubstantial lobbying activities.
501(h) Lobbying Election: Key Differences

- Bright-line test based only on annual expenditures (caps out at $1,000,000)
- Extensive regulations with very clear standards for direct and grassroots lobbying are not available to nonelecting organizations
  - E.g., for a communication to be considered grassroots lobbying, it must include a “call to action,” which is specifically defined to include one of four elements. A communication that does not include one of those elements is not grassroots lobbying
Organizations report lobbying activities on Forms 990 Schedule C.

Nonelecting organizations report lobbying amounts and the type of lobbying activities, as well as detailed descriptions for each.

Nonelecting and electing organizations need to maintain records of their direct and grassroots lobbying expenditures – including preparation and overhead expenses (based on a reasonable allocation method).
Lobbying Disclosure Act (LDA): The Basics

- **Purpose:** to increase public disclosure of the identity and general extent of the efforts of paid lobbyists to influence federal legislative and executive branch officials
- **Reaches:** (1) organizations that employ in-house “lobbyists” and (2) outside “lobbyists” and “lobbying firms”
- **Requires:**
  - Initial registration
  - Ongoing (quarterly) reporting of lobbying activities
  - Semiannual disclosure of certain contributions
  - Electronic reporting
    - Publicly available
    - Searchable database
LDA: Registration Thresholds

• An organization that lobbies must register if:
  – Its total lobbying expenses are expected to exceed $12,500 during a quarterly reporting period (periodically adjusted), and
  – It has an employee who is a “lobbyist”

• A lobbyist is any employee who:
  – Makes at least two “lobbying contacts” (cumulatively, not just in one quarter) and
  – Spends at least 20% of his or her time on “lobbying activities”
LDA: Lobbying Definitions

• Lobbying Contact:
  – Any oral, written or electronic communication with
    • A covered legislative branch official or
    • A covered executive branch official
  – Regarding:
    • Federal legislation (including legislative proposals) or a federal rule, regulation, executive order, or any other government program policy or position
    • Federal programs or policies (including contracts, grants, loans, permits or licenses)
    • Senate nominations
LDA: Lobbying Definitions

• Lobbying Activity:
  – Lobbying contacts and activities in support of lobbying contacts:
    • Preparation and planning
    • Research for use in lobbying contacts
    • Coordination with lobbying activities of others

• Note, the LDA is not concerned with state and local lobbying or grassroots lobbying
LDA: Key Exceptions

- Speeches, articles, publications or other materials that are distributed and made available to the general public
- Congressional committee, subcommittee or task force testimony
- Written information in response to a request by a covered official
- Comments submitted in response to a public notice
- Written comments filed on the record in a public proceeding
- Written petitions for agency action on the public record
- Participation on a federal advisory committee
LDA: Reporting and Recordkeeping

• Quarterly reports
  – Lobbying expenses (using IRC or LDA definitions, as applicable)
  – General lobbying issue areas (e.g., tax)
  – Specific lobbying issues (e.g., H.R. 4, the Pension Protection Act of 2006, all provisions relating to the regulation of charitable organizations)
  – Houses of Congress and federal agencies contacted
  – Lobbyists (including new lobbyists) with any activity in the general issue area
LDA: Reporting and Recordkeeping

• Semiannual Disclosures
  – Required of each organization and each active lobbyist
  – Reveal certain payments relating to government officials and certify compliance with House and Senate gift rules

• Recordkeeping
  – No specific recordkeeping method is required, but the system must be reasonable and allow the organization to collect the appropriate information to make accurate and timely filings
State-Level Restrictions

- Organizations that lobby may be subject to restrictions at the state and local levels
  - Organizations that are government entities may be prohibited from lobbying
  - Other organizations may be subject to state-level registration and disclosure rules similar to the LDA
  - State laws can widely vary