

# Federal Lobbying and Ethics New Year Checklist

January 2009

The end of a calendar year and the beginning of the next is an opportunity to assess lobbying and ethics compliance programs in order to determine what needs to be addressed before undertaking lobbying activity in the new year. This includes assessments about education and training as well as preparations for the filing obligations in the new year. Below are some issues related to new year activities.

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### 2008 Filings Due in January

- The following 2008 Lobbying Disclosure Act (LDA) filings are due in January 2009:

- January 21: Fourth Quarter 2008 LDA Report (Form LD-2)

- January 30: Second Semiannual 2008 LDA Report (Form LD-203)

- The company/association and its registered federal lobbyists must file Form LD-203. Only the company/association is required to file Form LD-2.
- Any federal lobbyists added as new lobbyists in the second half of 2008 must file Form LD-203, as must any terminated federal lobbyists with a termination date after June 30, 2008. The report for such an employee, however, need only cover the time period the individual was registered as a federal lobbyist.

### Review of Lobbying and Ethics Processes

- The beginning of a new calendar year is an opportunity to institute a comprehensive review of the company's/association's lobbying and ethics policies, processes, internal rules and codes of conduct.
- The company/association should assess whether its processes comport with the LDA, with federal tax rules, and with state and local lobbying laws. Among other things, the entity should examine:
  - How it tracks and records time spent by employees engaged in lobbying activities for purposes of federal lobbying - reports, tax returns and state/local lobbying reports;
  - How it tracks out-of-pocket expenses incurred in connection with federal, state, grassroots and local lobbying;
  - How it calculates overhead, tracks administrative expenses and tracks issues lobbied;
  - How it determines whether the entity may certify to Congress on Form LD-203 compliance with the Congressional gift ban;
  - How it tracks and reports expenses related to covered officials that must be reported semiannually to Congress on Form LD-203;
  - How it determines whether an employee needs to register as a lobbyist; and
  - How it informs registered lobbyists and others of the ethical and campaign finance restrictions placed upon them by applicable law.

If a company or its subsidiaries have contracts with state or local governments, then the company also may need to review compliance with the various pay-to-play campaign finance laws that may limit or prohibit contributions by the company, its PAC, and, in some cases, its officers and other employees.

The company should educate its directors about the potential pitfalls of making state and local contributions in states where the company does business.

### **Choosing the Method for Filing 2009 LDA Reports**

- Each company or association may, at the beginning of each year, choose which method to use to file its 2009 LDA quarterly reports. The options are to use the definitions of lobbying found in the LDA (Method A) or the definitions of lobbying found in the Internal Revenue Code and the rules of the IRS (Method C).
- There are upsides and downsides to each method.
- Once the company or association picks a method for its first quarter 2009 LDA report, the company or association must use that method for the remainder of 2009.

### **Education and Training**

- Corporations and associations should have a training program in place to ensure that employees comply with applicable lobbying and ethics rules-both at the federal level and, if employing state and

local lobbyists, at the state and local level.

- Employees need to be reminded of the applicable statutes, regulations and company policies at least annually.
- More extensive training should be provided to registered federal lobbyists, those who support such lobbyists and to other employees who are likely to interact with federal officials.

### **Bundling Disclosure Rules**

- Sometime in 2009, the FEC will finalize the Explanation and Justification for the regulations related to disclosure of federal lobbyists, lobbyist employers and their PACs that bundle contributions.
- These rules will not create any reporting or other obligation for the lobbyists, lobbyist employers or corporate or association PACs. Instead, the reporting requirements will fall upon the recipient candidate committees, leadership PACs and political party committees.
- Nonetheless, the details of these rules may affect how lobbyists, their employers and their PACs participate in the federal election process.