

Audit Your LDA Process Now

March 2023

Twenty days after every calendar quarter, a Lobbying Disclosure Act (LDA) report (Form LD-2) is due, plus two more in July and January (Form LD-203). Every one of these filings is subject to the LDA as well as the criminal statute that prohibits filing false information with the federal government. And all of the LDA reports are publicly available for your competitors, political opponents, the media, and good governments to see. Thus, you should periodically evaluate your corporate or trade association processes for gathering, evaluating, and reporting the required information so that your LDA reports are timely, accurate, and complete.

The LDA is a complex statute that incorporates, depending on choices made, an even more esoteric part of the tax law. Nothing is particularly straightforward in the LDA, and facts have to be gathered in real time and then compared to the legal requirements in order to ensure that all is well. Some of the items to think about generally are as follows:

Are you gathering lobbying activity from all employees for just from those in government relations? If not the former, then you may be missing a material component of your lobbying costs. Are folks in government relations telling those who assist them (e.g., those in legal, policy, regulatory, or other parts of the company) that they are working on lobbying activities and should therefore track their time or fill out a quarterly lobbying questionnaire? Are these folks receiving the questionnaire? How about executives who oversee lobbying activities or, separately or in groups, make communications with Members of Congress or Congressional staff or Executive Branch officials about legislation or oversight issues? Are these executive receiving questionnaires?

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Practice Areas

Election Law & Government Ethics
Federal & State Lobbying

Is tax or accounting applying the right compensation figure to the lobbying hours reported by employees? Are these labor valuations being grossed up to cover overhead? If not, how is the overhead portion of the total lobbying costs being evaluated?

Is someone asking for the lobbying activities of various coalitions in which the company is involved? Are consultants to those coalitions determining what percentage of the coalition's activities are lobbying? Is anyone at the company double-checking this figure to see if it makes sense in light of the coalition's activities and the law?

Now that we are in a post-COVID situation, is anyone including their lobbying travel costs in the lobbying expenses? Does the association or company have a special accounting code to which to bill such lobbying costs? If so, is anyone downloading those costs every quarter.

Where are the lobbying records being stored – mostly likely in electronic format? Who has access to these documents? Are they slated to be destroyed any time soon as part of the company's document destruction policy?

Is the association or company using the tax or LDA method to file its quarterly LDA reports? If one or the other, why? Would it make sense and save administration costs or help prevent more employees from being designated as "lobbyists" if the association or company chose the other method?

For trade associations particularly, do the four quarterly LDA calculations equal the amount used to analyze the mandatory IRC 6033 notice to members? Or do you take out the political activity from your total nondeductible tax number?

Are inside counsel reviewing the draft quarterly reports? Outside counsel? Is the head of federal government relations eyeballing the hours spent lobbying by GR staff to make sure they make sense? Is everyone just putting down the same percentage of time every quarter?

For the semiannual LD-203, what is the procedure to gather information on events and sponsorships that might be reportable? Is the information being gathered in real time or only in July and January? Who makes the final determination for inclusion/exclusion? How about amendments for expenses uncovered later?

Is there gift-rule training for the whole company or association or just those who interact with government officials? Is LDA training annual or less often? Who in legal will answer any questions that arise about either gift issues or whether one is a lobbyist or not?

These questions are just the tip of the iceberg, and it is highly recommended that your association or company adopt written procedures on how it complies with the quarterly LD-2 requirements and the semiannual LD-203 requirements. Of course, if your organization also undertakes state lobbying, then the definitions, procedures, and protocols will be different for each.