

FEDERAL LOBBYING REPORT REQUIREMENTS & RESTRICTIONS
FREQUENTLY ASKED QUESTIONS
LD-2: DISCLOSURE OF LOBBYING EXPENSES
The State University of New York
September 2008

Q: What is the Lobbying Disclosure Act of 1995?

The Act, amended most recently in 2007, is a federal law requiring the disclosure of lobbying efforts, including those of the State University of New York, directed at Congress and the federal executive branch. The Act does not prohibit such efforts.

The Act requires SUNY to register its in-house lobbyists, and to report quarterly, beginning in 2008, the issues lobbied upon, and lobbying expenses incurred by in-house lobbyists and by third parties engaged in lobbying activities.

Q: Who is a lobbyist?

Any individual who is either employed or retained by a “client” for financial or other compensation, whose services include more than one lobbying contact; and whose “lobbying activities” constitute 20 percent or more of his or her services on behalf of that client during any three month period is considered a “lobbyist” per the Lobbying Disclosure Act (LDA).

A “client” is any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of the person or entity. An organization employing its own lobbyists is considered its own client for reporting purposes.

In filing federal lobbying reports, the State University of New York is both a *client* and a *registrant*.

Q: What are “lobbying activities”?

“Lobbying activities” include lobbying contacts and any efforts in support of such contacts, including preparation or planning activities, research and other background work that is intended, at the time of its preparation, for use in contacts and coordination with the lobbying activities of others.

Note: Lobbying activities may be engaged in by SUNY employees who are not registered as lobbyists, as well as by those who are registered lobbyists.

Q: What is a “lobbying contact” and why does it matter?

(A) DEFINITION.-The term "lobbying contact" means any oral or written communication (including an electronic communication) to a *covered executive 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.

Q: Who are “covered officials”?

Legislative Branch: Members of Congress, staff members of Members of Congress, congressional committees or caucuses, and the congressional leadership, and certain other congressional staff.

Executive Branch: The President and Vice President and their staffs, officials serving in Executive Level I through V positions (generally political appointees serving in jobs at the assistant secretary or deputy director level or above), military officers with a rank of Brigadier General or Rear Admiral, or above, and other federal employees serving in a “confidential, policy-determining, policy-making, or policy-advocating character.” This latter category includes all so-called “Schedule C” employees.

Q: Is a faculty member who communicates with a covered official regarding a federal contract or grant for her or his research engaging in lobbying activities?

Amendments in 1998 clarified that communications that are compelled by the action of a federal agency would include communications that are required by a federal agency contract, grant, loan, permit, or license are not considered lobbying contacts. Therefore, communications between faculty and staff with federal agencies in relation to federal research grants or contracts is not considered a lobbying contact and does not need to be reported as such.

Faculty are not retained by SUNY to provide lobbying contacts, as provided in the Act’s definition of lobbyist. In addition, faculty contract and grant-seeking efforts are not directly supervised, directed, or controlled by the SUNY; thus, it is fair to say that faculty are not representing SUNY as an institution when they seek support for their own research.

Q: Does SUNY System Administration file a lobbying report?

Yes. The official name of the form is called the “LD-2.”

Q: Does my campus need to file a lobbying report with the federal government?

No. As the SUNY campuses are not separate legal entities, SUNY will file one report on behalf of its campuses beginning in 2008.

Q: Why does my campus need to file federal lobbying information with SUNY System Administration?

All employee time spent in lobbying activities must be included in determining the organization's lobbying expenses, even if the employee does not meet the statutory definition of a "lobbyist." As campus faculty and staff are employees of the State University of New York, and individual campuses are not distinctly separate legal entities, any lobbying activity conducted by individuals at your campus must be reported to SUNY System Administration to be filed with the State University of New York quarterly lobbying reports.

Q: What is the significance of this Act for individuals who may engage in lobbying activities, but who do not spend 20 percent or more of their work time on lobbying activities, and therefore do not qualify as lobbyists?

SUNY has an obligation to make a good faith estimate of expenses associated with lobbying activities, even if those activities are engaged in by non-lobbyists. Such activities may be in support of the work of the SUNY's registered lobbyists, or, less frequently, may not be. Questions about whether the expenses associated with lobbying activities on your campus should be directed to the SUNY Washington, DC Office.

Q: When are lobbying reports due?

<u>Report</u>	<u>Due Date*</u>	<u>Coverage Period</u>
April Quarterly (Q1)	April 20th	January 1 through March 31
July Quarterly (Q2)	July 20th	April 1 through June 30
October Quarterly (Q3)	October 20th	July 1 through September 30
January Quarterly (Q4)	January 20 th	October 1 through December 31

**or the next business day should the filing date occur on a weekend or holiday.*

Q: Are there special forms that calculate expenses for lobbying activities?

The federal government does not provide these forms, but you will be provided with a form to complete by SUNY System Administration to assist in determining SUNY's reportable expenses.

The law requires a good faith estimate of the total expenses of its lobbying activities. As long as the registrant has a reasonable system in place and complies in good faith with that system, the requirement of reporting bottom line expenses or income would be met.

Organizations that employ in-house lobbyists may incur lobbying-related expenses in the form of employee compensation, office overhead, or payments to vendors which may include lobbying firms. Organizations must report expenses as they are incurred, though payment may be made later. If lobbying expenses are \$5,000 or more, the organization must provide a good faith estimate of the actual dollar amount rounded to the nearest \$10,000.

Q: Don't lobbying firms report expenses on their clients' behalf?

Yes, but to ensure complete reporting, the Secretary and Clerk have consistently required that organizations report all of their expenses incurred in connection with lobbying activities, including all payments to retained lobby firms, without considering whether any particular payee has a separate obligation to register and report under the LDA.

Logically, if an organization employing in-house lobbyists also retains a lobbying firm, the expense reported by the organization should be greater than the fees reported by the lobbying firm of which the organization is a client.

Q: Where should questions be directed about who may qualify as a lobbyist?

Individuals should contact the SUNY Washington, DC office which can help identify who qualifies as a SUNY lobbyist, and help to prepare the appropriate reporting forms under the Act.