

GAO Issues Lobbying Compliance Audit

Last week, the Government Accountability Office (GAO) issued its first [report](#) on lobbying compliance and enforcement, as required under the Honest Leadership and Open Government Act of 2007 (HLOGA). The report provides the GAO's findings on the extent to which lobbyists can support the information provided in their reports and registrations submitted under the Lobbying Disclosure Act (LDA), and its assessment of the Department of Justice's enforcement approach.

Although the report does not make findings or recommendations as to specific practices or omissions that violate LDA requirements, it reveals significant variations in practices among lobbyists and recommends the sharing of best practices among the lobbying industry. The report also recommends that the Department of Justice focus its resources on repeated instances of noncompliance, but provides little insight on which aspects of the reporting requirements might receive the most attention in the future.

The GAO based its report on a random sampling of 100 reports filed by lobbyists for the first quarter of 2008. GAO officials requested that each lobbyist in the sample provide support for its report, and interviewed these lobbyists about the new reporting requirements.

Most Registered Lobbyists Were Able to Support Their Filings

The report concludes that most lobbyists were able to provide support for their reports, while acknowledging the lack of detailed requirements or standards for documentation and record retention (although Senate and House guidance advise retention of filings and supporting documentation for at least six years). With regard to specific elements of the lobbying report, the ability of lobbyists to provide written support varied widely—from 91 percent for income and expense calculations, to 35 percent for documenting which individuals acted as lobbyists.

The GAO also reported wide variation in the types of documentation maintained by lobbyists. According to the report, most lobbyists supported their submissions with billing statements, invoices, or contracts. In addition, some lobbyists supported their submissions as to lobbying contacts and issues through e-mails or summaries of meetings with covered officials. According to the GAO, about half of the lobbyists maintained systems to track lobbying contacts and the amount of time spent on lobbying activities. The GAO further identified significant “over-reporting”—acknowledgments by lobbyists that they included individuals as lobbyists who did not meet the criteria, over-estimated their lobbying income, or reported contacts that had not ultimately taken place. Given the subjective nature of certain of the reporting requirements, heightened public scrutiny, and increased liability under HLOGA for false reports, it is not surprising that some lobbyists erred on the side of being overly inclusive.

The GAO separately analyzed whether newly registered lobbyists filed disclosure reports for the first quarter of 2008. Of the 1,460 new registrants for the first quarter, all but 7 percent appeared to file their quarterly reports. The GAO brought this to the attention of the Secretary of the Senate and Clerk of the House.

Lobbyists Identify Compliance Challenges, Seek Clear Guidance

About half of the lobbyists contacted by the GAO indicated they would prefer additional information on various aspects of reporting requirements. These included:

- The circumstances under which members of a trade association must be listed as affiliated organizations;
- The reporting of foreign entity interests;
- What activities count as “lobbying activities” under the LDA; and
- Application of the issue codes and the amount of detail required in describing lobbying activities.

Those lobbyists who were surveyed cited several constraints to complying with LDA and HLOGA requirements, including the new 20-day deadline for filing reports and the increased reporting frequency.

The GAO opined that “a vehicle for lobbying organizations to share information may assist some lobbyists in better ensuring the accuracy and completeness of information in their lobbying disclosure reports.” The report concludes that “the lobbying community could benefit from creating an organization to” share best practices for recordkeeping and establish minimum standards, provide training, and report annually to the Senate and House on areas of guidance needing clarification

Priorities and Resources of the United States Attorney’s Office

HLOGA increased civil and criminal penalties for violations of the LDA. The Secretary of the Senate and Clerk of the House refer cases of potential noncompliance to the United States Attorney’s Office for the District of Columbia. Although referrals have increased in recent years, the report indicates that no referrals had yet been received for the 2007 reporting period.

The GAO found that “[t]he Office does not have a formal, structured approach that enables them to readily prioritize matters that should be the focus of its resources.” As a result, the report recommends that the U.S. Attorney’s Office complete its plans to develop a “structured approach to focus limited resources on those lobbyists that continually fail to file as required or are otherwise not in compliance.” The U.S. Attorney for the District of Columbia generally concurred with this recommendation.

Contact Information

If you have any questions about the GAO report, LDA requirements, or an LDA audit inquiry or enforcement action, please contact:

[Nathan A. Brown](#)

[Stephen L. Braga](#)

[Colleen A. Conry](#)

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have.