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The following is intended to provide a brief overview of the various potential registration and reporting requirements under federal and Colorado laws with respect to the lobbying activities of most social sector organizations, both nonprofit and for-profit, including public charities, social welfare organizations and other forms of organization with a social change mission. The lobbying limitations imposed on tax-exempt organizations by the Internal Revenue Code are described in the section entitled “Taxation of Nonprofits” and are not reiterated here.

1. Federal Registration and Reporting

Organizations that engage in a specified amount of lobbying activities and contacts through personnel that receive financial or other compensation are required to register and file disclosure reports under the Lobbying Disclosure Act of 1995, as amended. Other than religious orders, tax-exempt churches, and their integrated auxiliaries, all social sector organizations, nonprofit as well as for-profit, which otherwise meet the thresholds on lobbying contacts and overall expenses (discussed below) must register and file reports.
The federal Lobbying Disclosure Act is intended to reach “professional lobbyists”—those paid to lobby on behalf of an employer or client. Thus, if a social sector organization engages in covered “lobbying contacts” through its own staff, that organization must register, as well as the individual employee/lobbyist. If lobbyists employed by an outside lobbying firm engage in covered “lobbying contacts” on behalf of a social sector client, the outside lobbying firm must register and identify its client, but the social sector organization itself is not required to register.

All federal lobbying registrations and reports must be filed electronically at a single location. This single filing covers registration for both the Secretary of the Senate’s Office and the Office of the Clerk of the House.

A social sector organization is required to register its employees/lobbyists if it meets the following two conditions:

First, it must have one or more paid employees who make more than one “lobbying contact” per quarter and who spend at least 20% of their total time for the employer on “lobbying activities” over a quarterly reporting period. A “lobbying contact” is a written, oral, or electronic communication to a “covered” federal official, which includes a Member of Congress, congressional staff, and certain senior executive branch officials, with respect to the formulation, modification or adoption of a federal law, regulation, rule or policy. Lobbying contacts do not include the acts of testifying or submitting written testimony and do not include lobbying of state or local legislators or governmental bodies. “Lobbying activities” include not only “lobbying contacts” but also background activities and other efforts supporting lobbying contacts. A Section 501(c)(3) organization that has elected the safe harbor formula under Section 501(h) of the Code has the option of using the Lobbying Disclosure Act’s definition of “lobbying activities” or the Internal Revenue Code’s definition of “influencing legislation” to determine the organization’s reporting obligation.

Second, the organization must have spent $11,500 or more in a quarterly reporting period on “lobbying activities.” The $11,500 includes salaries, overhead, and other expenses, as well as payments to an outside lobbyist during the three-month reporting period. If an organization hires an outside lobbyist or a lobbying firm, then the outside lobbyist or his/her lobbying firm must register on behalf of the client/organization if (a) it makes more than one lobbying contact with a covered official, (b) he/she spends at least 20% of his/her time for that client on lobbying activities, and (c) his/her/its total income from that client for lobbying exceeds $3,000.
Lobbyists are required to be registered within 45 days after making a lobbying contact or being employed to make a contact. Information on the registration form includes: identification of the lobbyist, or organization with employee/lobbyists; the client or employer; identification of any foreign entity and its contributions over $5,000, if the foreign entity owns 20% of the client and controls, plans or supervises its activities; and a list of the general issue areas on which the registrant expects to be lobbying.

b. Reports

Quarterly and semi-annual reports are required to be filed by registrants. Quarterly reports are to be filed within 20 days after the end of the calendar quarter. Among other items, these reports must include not only the issues lobbied but the bill numbers and earmarks lobbied and the Houses of Congress and federal agencies contacted. They must also include a good faith estimate of lobbying expenditures, or income from clients in excess of $5,000 (rounded to the nearest $10,000).

The semi-annual reports are due on January 30 and July 30 and must contain numerous disclosures, including, for example, the names of all political committees established or controlled by the lobbyist or registered organization; disclosures of contributions of more than $200 to federal candidates or officeholders, political committees, or leadership PACs; and funds disbursed for events to honor covered government officials, to entities that are named for or “in recognition” of such officials and to entities that are controlled or designated by such officials. The name of each presidential library and inaugural committee to which contributions of at least $200 were made during the semi-annual period must be reported. Additionally, registrants are required to provide a certification that the organization or person filing the report has read and is familiar with the rules of the House and Senate regarding gifts and travel and that they are compliant with the rules.

Registrants can download forms by following instructions on this site: http://lobbyingdisclosure.house.gov/index.html

c. Penalties

Amendments in 2007 to the Lobbying Disclosure Act increased the civil penalties for violations of the Act and for failing to remedy a defective filing from $50,000 to $200,000. In addition, the amendments imposed criminal penalties for “knowingly and corruptly” failing to comply with the Act, with a maximum of five years’ imprisonment.

d. Grassroots Lobbying

The Lobbying Disclosure Act only applies to “direct” lobbying—direct communications with covered federal officials. “Grassroots” lobbying is not covered. An organization that
engages only in grassroots lobbying will not be required under the Act to register and report.

e. Congressional Gift and Travel Rules

The Lobbying Disclosure Act, as amended, imposes civil and criminal penalties on registered lobbyists or corporations that employ them for violations of congressional gift and travel rules. The Act expressly prohibits any registered lobbyist, any organization that employs them (and is required to register), and any employee required to be listed as a lobbyist from making a “gift” or providing “travel” to a member or staffer (and other “covered officials”) if the registrant “has knowledge that the gift or travel may not be accepted” under House and Senate rules.

The congressional gift and travel rules, and the numerous exceptions to those rules, are extremely detailed and particularly restrictive with regard to registered lobbyists. No attempt will be made here to summarize those rules. Any questions concerning the applicability of the congressional gift and travel rules to specific situations should be addressed to counsel with specific expertise in this area of law.

f. Federal Funds and Grants

Grant money and funds under federal contracts may not be used by nonprofits and other organizations for lobbying or for other advocacy or political activities unless authorized by Congress. These restrictions apply to both direct and grassroots lobbying at the federal, state and local levels.

g. Resources

The House gift and travel rules are available at

The Senate gift and travel rules are available online at

Office of the Clerk, United States House of Representatives, Guide to the Lobbying Disclosure Act (Effective January 1, 2008; Revised June 9, 2009),
http://lobbyingdisclosure.house.gov/amended_lda_guide.html#footnote


2. **Colorado Registration**

Lobbying registration and reporting in Colorado is governed by **Colo. Rev. Stat. §§ 24-6-101 to -309 (2008)**, entitled the “Colorado Sunshine Act” (the “Act”), **8 Colo. Code Regs. § 1505-8 (2008)**, and the Joint Rules of the Colorado Senate and House of Representatives. Under **Colo. Rev. Stat. § 24-6-305** (2008), the Colorado Secretary of State (the “Secretary”) is charged with implementing and administering the Act’s statutory requirements, including the registration of lobbyists.

**a. Overview: Professional Lobbyist vs. Volunteer Lobbyist**

**Colo. Rev. Stat. § 24-6-303 (2008)**, which sets forth the registration requirements for lobbyists, creates a distinction between a “professional” lobbyist and a “volunteer” lobbyist. Only professional lobbyists are required to register with the Secretary, while volunteer lobbyists are required to register with the Chief Clerk of the House of Representatives. A professional lobbyist is an “individual who engages himself or is engaged by any other person for pay or for any consideration for lobbying.”

‘Professional lobbyist’ does not include any volunteer lobbyist. The definition of “person” is broad under Colorado law because it includes an individual, limited liability company, partnership, committee, association, corporation, or any other organization or group of persons. Therefore, there is no exemption for a professional lobbyist who lobbies on behalf of a nonprofit corporation because such a corporation is included in the definition of “person.”

**b. Definition of “Lobbying”**

The definition of “lobbying” is also broad under Colorado law. Under **Colo. Rev. Stat. § 24-6-301(3.5)(a) (2008)**, “lobbying” means communicating directly, or soliciting others to communicate, with a covered official for the purpose of aiding or influencing:

(I) the drafting, introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, or veto by any covered official on: (A) any bill, resolution, amendment, nomination, appointment, or report, whether or not in writing, pending or proposed for consideration by either house or the general assembly or committee thereof, whether or not the general assembly is in session; [or] (B) any other matter pending or proposed in writing by any covered official for consideration by either house of the general assembly or a committee thereof, whether or not the general assembly is in session;

(III) the convening of a special session of the general assembly or the specification of business to be transacted at such special session; [or]
(IV) the drafting, consideration, amendment, adoption, or defeat of any rule, standard, or rate of any state agency having rule-making authority.

For sections (I) and (III), “covered official” means the governor, lieutenant governor, or a member of the general assembly. For section (IV), “covered official” means: (1) a member of a rule-making board or commission, or (2) a rule-making official of a state agency that has jurisdiction over the subject matter of a rule, standard, or rate.

c. Exclusions

There are certain activities that are excluded from the definition of “lobbying” under Colorado law. First, “lobbying” does not include communications made by a person in response to a statute, rule, regulation, or order requiring such a communication. Second, “lobbying” does not include communications by a person who appears before a committee of the general assembly or a rule-making board or commission solely as a result of an affirmative vote by such a body: (1) issuing a mandatory order or subpoena commanding that the person appear and testify, or (2) making such a person a respondent in such a proceeding. Third, “lobbying” does not include communications made by an attorney-at-law when such communications are made on behalf of a client whose name has been identified and when such communications constitute the practice of law subject to control by the Colorado judicial branch. Fourth, “lobbying” does not include duties performed by employees of the legislative department. Finally, the Act permits persons who are not “otherwise registered as lobbyists” to give testimony at or provide information to committees of the general assembly or public hearings of state agencies; however, they must clearly identify themselves and the interest for which they are testifying or providing information.

d. Professional Lobbyist Registration

Professional lobbyists, before engaging in “lobbying,” are required to register with the Secretary by filing an electronic registration statement at http://www.elections.colorado.gov/DDefault.aspx?tid=86. The fee for filing a registration statement is $40.00. The registration statement must contain the professional lobbyist’s: (1) full legal name, business address, and business telephone number; (2) the name, address, and telephone number of any person by whom he is employed; (3) the name, address, and telephone number of any person for whom he will be lobbying; and (4) the name, address, and telephone number of any person by whom the professional lobbyist or firm organized for professional lobbying is paid or is to be paid for such lobbying. Registration is effective until July 1 of the next year, and a professional lobbyist must file an updated registration statement on or before July 15 of each year unless he or she ceases to be a professional lobbyist. A professional lobbyist must pay a $40 fee each time he or she files an updated registration statement. Upon written request,
the Secretary may waive the registration fee for a professional lobbyist for a nonprofit corporation if: (1) the lobbyist derives his or her lobbyist compensation solely from the organization, and (2) the lobbyist’s organization is operating under financial hardship conditions, or the lobbyist will have particular interest in only one issue or bill and does not intend to lobby throughout the state fiscal year (July 1 to June 30).

e. Public Information

The Secretary operates and maintains the following website that allows the public to view a directory of professional lobbyists:
http://www.elections.colorado.gov/Default.aspx?tid=86. To ensure the effective implementation of this project, each professional lobbyist must retain his or her records for a period of five years. Moreover, “it is unlawful for any person to employ for pay or any consideration, or pay or agree to pay any consideration to, an individual to engage in lobbying who is not registered except upon the condition that such individual register forthwith.” The Secretary updates the directory of professional lobbyists within 24 hours after each registration statement filing.

f. Volunteer Lobbyist Registration

Unlike professional lobbyists, volunteer lobbyists are not required to register with the Secretary. Instead, volunteer lobbyists are required to register with the Chief Clerk of the House of Representatives. A volunteer lobbyist is an “individual who engages in lobbying and whose only receipt of money or other thing of value consists of nothing more than reimbursement for actual and reasonable expenses incurred for personal needs, such as meals, travel, lodging, and parking, while engaged in lobbying . . .” The “volunteer” lobbyist may also be reimbursed for “actual expenses incurred in informing the organization making the reimbursement or the members thereof of his lobbying. Because a volunteer lobbyist does not have to register with the Secretary, he or she does not have to pay the registration fee of $40.00. Moreover, the Secretary does not operate and maintain a website that allows the public to view a directory of volunteer lobbyists; rather, the Chief Clerk of the House of Representatives maintains such a directory.

3. Colorado Disclosure Statements

Under COLO. REV. STAT. § 24-6-302 (2008), professional lobbyists must file monthly and annual financial disclosure statements with the Secretary if certain conditions are met. First, COLO. REV. STAT. § 24-6-302(2) (2008) states: “Any person who makes expenditures for gifts or entertainment purposes for the benefit of covered officials in the aggregate amount of $200 in a calendar year shall file disclosure statements with the [Secretary].” Second, COLO. REV. STAT. § 24-6-302(2.5)(a) (2008) states: “A registered professional lobbyist and any firm organized for professional lobbying purposes that employs such lobbyist shall file
disclosure statements . . . [and] such a disclosure statement . . . shall contain the gross income for lobbying since the prior month’s disclosure statement and the name and address of any person from whom gross income for lobbying is received totaling $100 or more.” Financial disclosure statements must be filed within 15 days after the end of the first calendar month in which any contribution or gross income for lobbying is received or any expenditure is made or incurred for lobbying. On or before July 15 of each year, a cumulative disclosure statement for the entire state fiscal year is due. The cumulative disclosure statement located at: 
http://www.elections.colorado.gov/WWW/default/Lobbyists/CumulativeDisclosureStatement08-08.pdf. Under COLO. REV. STAT. § 24-6-302(5) (2008), volunteer lobbyists do not have to file financial disclosure statements with the Secretary.

4. Colorado Gifts, Honoraria, and Other Benefits

a. Open Disclosure Law

Open disclosure law in Colorado imposes reporting requirements on particular gifts, honoraria, and other benefits received by certain public officials. COLO. REV. STAT. § 24-6-203 (2) (2008) states: “Every incumbent in or candidate elected to public office who receives from any other person any item described in subsection (3) of this section in connection with the incumbent’s or elected candidate’s public service shall file with the appropriate officer, on or before January 15, April 15, July 15, and October 15 of each year, a report covering the period since the last report.” “Public office” includes the “officer of governor, lieutenant governor, secretary of state, attorney general, state treasurer, state board of education, regents of the University of Colorado, the Colorado court of appeals, or the supreme court of Colorado.” The items described in subsection (3) of COLO. REV. STAT. § 24-6-203 (2008), which trigger the reporting requirements, include:

i) any money, including but not limited to a loan, pledge, advance of money, or a guarantee of a loan of money, with a value of $25 or more;
ii) any gift of any item of real or personal property, other than money, with a value of $50 or more;
iii) any loan of any item of real or personal property, other than money, if the value of the loan is $50 or more;
iv) any payment for a speech, appearance, or publication;
v) tickets to sporting, recreational, educational, or cultural events with a value of $50 or more for any single event, or a series of tickets to sporting events of a specific team scheduled during a season with a total value of $100 or more, or a series of tickets to cultural events of a specific performing company or organization with a total value of $100 or more;
vi) payment of or reimbursement for actual and necessary expenditures for travel and lodging for attendance at a convention or other meeting at which the
incumbent or elected candidate is scheduled to participate, unless the payment of or reimbursement for such expenditures is made from public funds, from the funds of an organization declared to be a joint governmental agency . . . or from the funds of any association of public officials or public entities whose membership includes the incumbent’s or elected candidate’s office or the governmental entity in which such office is held;

vii) any gift of meal to a fundraising event of a political party.

Notwithstanding these provisions, “no incumbent in or candidate to statewide elected office shall accept a gift of any money from any person who is a professional or volunteer lobbyist or from a corporation or labor organization.” “Statewide elected office” includes “officer of governor, lieutenant governor, secretary of state, attorney general, state treasurer, state board of education, regents of the University of Colorado, members of the general assembly, or district attorneys.”

b. Amendment 41

In November 2006, Colorado voters passed Referendum 41, which amended Article 29 of the Colorado Constitution. Due to this amendment, gifts from “professional” lobbyists are banned regardless of the amount. COLO. CONST. art. XXIX, § 3(4) states:

No professional lobbyist, personally or on behalf of any other person or entity, shall knowingly offer, give, or arrange to give, to any public officer, member of the general assembly, local government official, or government employee, or to a member of such person’s immediate family, any gift or thing of value, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of the general assembly, local government official or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist’s business or in connection with a personal or social event . . .

“Professional” lobbyist means “any individual who engages himself or herself or is engaged by any other person for pay or for any consideration for lobbying.” This amendment also prohibits statewide elected officeholders from lobbying other statewide elected officeholders for pay for two years following vacation of office, and creates an independent ethics commission having investigative and subpoena power.