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The Lobbying Disclosure Act at 20: Analysis and Issues for Congress

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Summary

On December 19, 1995, President William Jefferson Clinton signed the Lobbying Disclosure Act (LDA) into law (2 U.S.C. §1601, *et seq*.). In his comments when signing the law, President Clinton identified a central question that continues to be an issue for lobbying laws: how can individual citizens' rights be balanced against the desire to regulate and potentially control the access of special interests to government? As lobbying laws have been developed in the United States, the balance between the right of "ordinary Americans" to petition the government and the access that professional lobbyists can have to Members of Congress and executive branch decisionmakers has been at the forefront.

The four major federal lobbying laws—the Foreign Agents Registration Act (FARA) of 1938, the Regulation of Lobbying Act (RLA) of 1946, the Lobbying Disclosure Act (LDA) of 1995, and the Honest Leadership and Open Government Act (HLOGA) of 2007—were enacted in response to changes in practice or perception surrounding lobbying. In most cases, the enactment, repeal, or amendment of lobbying laws was a response to multiple contextual changes that provided a policy window in which change was possible.

This report provides an retrospective and prospective analysis of the LDA on its 20th anniversary, using research conducted and data collected by the Bush School of Government and Public Service at Texas A&M capstone class over the 2014-2015 academic year. As the LDA turns 20, several issues, each already addressed to some extent in other statutes, have the potential to cause additional shifts in lobbying practices and perception. These include

- *Shadow lobbying*—when an individual who is paid to engage public officials on behalf of clients does not register as a lobbyist. Shadow lobbying may raise questions about what practices and activities should trigger lobbyist registration requirements.
- *Grassroots lobbying*—attempts to persuade government decisionmakers and influence policy outcomes by shifting public opinion and motivating citizens to take action, often by contacting Representatives and Senators. Grassroots lobbying is generally unregulated, although legislation has been introduced in the past that would require grassroots lobbying activities be registered and disclosed.
- *Revolving door*—when federal employees leave the government for employment in the private sector or the government hires former private sector employees for government jobs. There are a number of post-employment restrictions that impose limits on federal employees moving to the private sector, or former lobbyists moving to the public sector. Analysis of whether current restrictions strike a suitable balance, are too restrictive, or too permissive, may be instructive.

As these issues evolve, Congress has many options available to potentially amend existing lobbying laws. These include options to

- change the definition of lobbying;
- change disclosure thresholds for registered lobbyists; and
- adjust resources available for implementation and enforcement.

Additionally, Congress could choose not to amend existing lobbying laws and maintain current standards.

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Introduction

On December 19, 1995, the Lobbying Disclosure Act (LDA) became law.[1] Upon signing the LDA into law, President William Jefferson Clinton endorsed lobbying as a basic American right, while also providing context as to why such a law is necessary for a transparent and open government.

> Lobbying has its rightful place in our system. I believe every Member here and every Member who voted for this bill understands that and understands what a valuable role lobbying can play in the American system. At one time or another, just about every American citizen has wanted to be a lobbyist before the Congress on one issue or another.
>
> But ordinary Americans also understand that organized interests too often can hold too much sway in the halls of power. They know that in Washington an influence industry too often operates in secret and gets special privileges not available to most Americans. Lobbyists in the back room secretly rewriting laws and looking for loopholes do not have a place in our democracy. All the people should know what is done by people who affect public decisions.[2]

Commenting on the disparity between the right of "ordinary Americans" to petition the government and the access that professional lobbyists can have to Members of Congress and executive branch decisionmakers, President Clinton identified a central question: how can individual citizens' rights be balanced against the desire to regulate and potentially control the access of special interests to government?

Questions of access have often been asked, perhaps most prominently in American history by James Madison in the *Federalist Papers*. Madison called groups of individuals "who are united and actuated by some common impulse ... or interest," factions and recognized they had the right to form and advocate for their interests.[3] To address the potentially negative role of factions, or organized interests, Madison believed that two solutions existed: ban the formation of groups or encourage the existence of multiple groups. He advocated for the latter—allowing groups to proliferate so that no one group can dominate.

Translated to lobbying, the Madisonian ideal to provide all citizens the ability to contact government and express opinions has resulted in lobbying laws that focus on registration and disclosure—activities that do not impinge on the constitutional rights of citizens.[4] Requiring the registration of lobbyists and the disclosure of lobbying activities, rather than banning lobbying, can ensure that all citizens continue to have access to government and a protected right to petition.

This report provides a retrospective and prospective analysis of the LDA on its 20th anniversary. It begins with a historical summary of citizens' right to petition, the connection between the right to

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[1] P.L. 104-65, 109 Stat. 691, December 19, 1995; 2 U.S.C. §§1601-1614.

[2] U.S. President (Clinton), "Remarks on Signing the Lobbying Disclosure Act of 1995 and an Exchange With Reporters," *Public Papers of the Presidents of the United States: William J. Clinton, 1995*, book 2 (Washington: GPO, 1996), p. 1905, at http://www.gpo.gov/fdsys/pkg/PPP-1995-book2/pdf/PPP-1995-book2-doc-pg1904-2.pdf.

[3] James Madison, "Federalist 10: The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection," *Federalist Papers*, at https://www.congress.gov/resources/display/content/The+Federalist+Papers. Madison defined factions as "a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed [sic] to the rights of other citizens, or to the permanent and aggregate interests of the community."

[4] John G. Geer, Wendy J. Schiller, Richard Herrera, and Jeffrey A. Segal, *Gateways to Democracy: An Introduction to American Government, 3rd edition* (Boston, MA: Cengage Learning, 2015), p. 247; and Don Wolfensberger, *Factions and the Public Interest: Federalist No. 10 in 2001*, Wilson Center, Washington, DC, May 18, 2001, at http://www.wilsoncenter.org/sites/default/files/lobbyintro.pdf.

petition and lobbying, and the regulation of contact between citizens and government in the United States. The report then examines contemporary issues that might affect lobbying and citizens' right to petition government. Finally, the report concludes with an analysis of potential options for congressional action should Congress consider amending provisions of the LDA.

Regulating Lobbying

The tension between the right to petition the government and the regulation of access to policymakers has played an essential role in how lobbying has been managed. In an effort to balance these needs, Congress has historically created boundaries to the right to petition that have required the registration of individuals who represent interest groups before Congress and the executive branch. This registration requires the public disclosure of certain lobbying activities. Additionally, Congress has focused on ensuring that no single group has an undue advantage over other groups by creating rules that prohibit the acceptance of gifts by government officials from certain individuals (e.g., lobbyists) and placing limits and restrictions on the post-congressional activities of Members of Congress and senior staff.[5]

Historic Rights to Petition

The right of citizens to petition government has long been considered a protected and fundamental aspect of the citizen-government dynamic. Long before the establishment of the United States, English common law afforded citizens the right to petition the Crown for grievances.[6] Following its English heritage, the United States has employed a similar structure. The right to petition government came with the colonists to the New World and became ingrained in colonial life.[7]

The right to petition government was so deeply rooted in American life, that while it was not explicitly addressed in the Constitution,[8] it was immediately included in the Bill of Rights.[9] In the

[5] For more information on revolving door provisions, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, by Jack Maskell. For more information on the House gift rules, see CRS Report RS22566, *Acceptance of Gifts by Members and Employees of the House of Representatives Under New Ethics Rules of the 110th Congress*, by Jack Maskell. For more information on the Senate gift rules, see U.S. Congress, Senate Select Committee on Ethics, "Gifts," at http://www.ethics.senate.gov/public/index.cfm/gifts.

[6] In 1628, the English Parliament "forced the King [Charles I] to assent to the Petition of Right. This asked for settlement of Parliament's complaints against the King's non-parliamentary taxation and imprisonments without trial, plus the unlawfulness of martial law and forced billets." For more information see, United Kingdom Parliament, "The Civil War: Charles I and the Petition of Right," *Living Heritage*, at http://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/civilwar/overview/petition-of-right/.

[7] Stephen A. Higginson, "A Short History of the Right to Petition Government for the Redress of Grievances," *The Yale Law Journal*, vol. 96, no. 1 (November 1986), pp. 142-166; and Norman B. Smith, "'Shall Make No Law Abridging ... ': An Analysis of the Neglected, But Nearly Absolute, Right of Petition," *University of Cincinnati Law Review*, vol. 54, no. 4 (1986), pp. 1153-1197.

[8] In "Federalist 84," Alexander Hamilton expressed his belief that the right to petition was ingrained in the American tradition, and that while likely to be included in a "Bill of Rights" was not included in the Constitution because the Constitution's preamble ('WE, THE PEOPLE of the United States, ...to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of American') "is a better recognition of popular rights, than volumes of those aphorisms which make the principle figure in several of our State bills of rights, and which sound much better in a treatise of ethics than in a constitution of government." Alexander Hamilton, "Federalist 84: Certain General and Miscellaneous Objections to the Constitution Considered and Answered," *The Federalist Papers*, at https://www.congress.gov/resources/display/content/The+Federalist+Papers.

[9] For more information on the Constitution and the Bill of Rights, see U.S. National Archives and Records Administration, *The Charters of Freedom: "A New World is at Hand*," at http://www.archives.gov/exhibits/charters/

early years of the Constitution, the right to petition government featured prominently in several debates. For example, in January 1790, Benjamin Franklin sent a petition to Congress "calling for the federal government to put an immediate end to the African slave trade."[10] His petition prompted an intense debate over slavery in the House.[11] The right to petition was also noted by French scholar Alexis de Tocqueville during his travel around the United States in the 1830s, where he observed that political associations could provide individuals a voice in society and government that they would otherwise not enjoy.[12]

Modern Definition of Lobbying and Lobbyists

In a modern context, the right to petition government is often viewed through the lens of an organized group's desire to present positions to governmental decisionmakers. Most often, this involves hiring lobbyists to represent and advocate for the groups' policy preferences. The Lobbying Disclosure Act of 1995 defines lobbying as

> 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 the 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.[13]

Lobbyists—individuals who engage in lobbying—are further defined as individuals who are "employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20% of the time engaged in the services provided by such individual to that client over a 3-month period."[14]

An individual must meet all three of these criteria to be a lobbyist. If an individual does not make more than one lobbying contact in a quarterly period, spend at least 20% of his or her time

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charters.html; and "Bill of Rights (1791)," at http://www.ourdocuments.gov/doc.php?flash=true&doc=13.

[10] U.S. Archives and Record Administration, "Benjamin Franklin Petitions Congress," at http://www.archives.gov/legislative/features/franklin. Debate over Benjamin Franklin's petition was intense. The Constitution (Article 1, Section 9, clause 1), however, prohibited Congress from banning slavery until 1808. It stated: "The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight ... " U.S. Archives and Record Administration, "Article 1, Section 9, clause 1," *Constitution of the United States*, at http://www.archives.gov/exhibits/charters/constitution_transcript.html.

[11] Joseph J. Ellis, *Founding Brothers: The Revolutionary Generation* (New York: Vintage Book, 2002), p. 81.

[12] Alexis de Tocqueville, "Relationships Between Civil and Political Associations," *Democracy in America*, ed. J.P. Mayer, vol. 2 (Garden City, NY: Anchor Books, 1969 [1831]), pp. 520-524.

[13] 2 U.S.C. §1602 (8)(A).

[14] 2 U.S.C. §1602 (10). The Honest Leadership and Open Government Act of 2007 amended the original LDA definition of a lobbyist to require contact over a three-month instead of a six-month period. For the original language, see P.L. 104-65, 109 Stat. 695, December 19, 1995.

lobbying, and receive compensation, he or she is not considered a lobbyist. Further, if an individual is not contacting specific executive or legislative branch officials,[15] then he or she is not considered a lobbyist under the law.

Lobbying Goals

Lobbyists perform a variety of tasks for their clients. Whether they represent corporations, individual citizens, or interest groups, lobbyists attempt to influence the policy process and secure desired outcomes for clients. In general, groups may decide to lobby for several reasons, including to provide information, to persuade, and to signal positions or policy preferences.

Choosing whether to contact the legislative or executive branch depends on the type of action sought.[16] The legislative branch formulates the law, and lobbyists can use contact with covered legislative branch officials—Members of Congress, elected officers of the House and Senate, and congressional staff—to push for new laws or amendments to existing laws.[17] The executive branch implements the law, and lobbyists can use contact with covered executive branch officials—the President, Vice-President, employees of the Executive Office of the President, Cabinet secretaries, and senior executive branch and military officials—to advocate for or against regulations and implementation practices for existing laws.[18]

Since the Constitution was ratified in 1789, individuals have looked to provide information to government decisionmakers. Political scientist Anthony Nownes has found that lobbyists generally provide three types of information to decisionmakers:

> (1) *political information* about the status and prospect of a proposed or potential government decision; (2) *career-related information* about the implications of a particular course of action for a government official's prospects of keeping and/or advancing in his or her job; and (3) *policy-analytic information* about the potential economic, social, or environmental consequences of a particular course of action.[19]

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[15] For a list of covered legislative branch and executive branch officials, see 2 U.S.C. §1602 (3) and (4); and footnotes 17 and 18.

[16] Anthony J. Nownes, *Total Lobbying: What Lobbyists Want (and How They Try to Get It)* (New York: Cambridge University Press, 2006), pp. 16-22.

[17] 2 U.S.C. §1602 (4). Covered legislative branch officials include

> (A) a Member of Congress; (B) an elected officer of either House of Congress; (C) any employee of, or any other individual functioning in the capacity of an employee of (i) a Member of Congress; (ii) a committee of either House of Congress; (iii) the leadership staff of the House of Representatives or the leadership staff of the Senate; (iv) a joint committee of Congress; and (v) a working group or caucus organized to provide legislative services or other assistance to Members of Congress; and (D) any other legislative branch employee serving in a position described under section 109(13) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

[18] 2 U.S.C. §1602 (3). Covered executive branch officials include

> (A) the President; (B) the Vice President; (C) any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President; (D) any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order; (E) any member of the uniformed services whose pay grade is at or above O–7 under section 201 of title 37; and (F) any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2)(B) of title 5.

[19] Nownes, *Total Lobbying*, p. 28.

Information is arguably a lobbyist's key commodity.[20] Senator Robert Byrd, during a lecture on lobbying delivered to the Senate, stated that "[d]espite the criticism of lobbyists, nineteenth century [S]enators came to appreciate the help they could offer."[21] Even then, and absent the type of professional staff that Members of Congress currently enjoy, Senators looked to lobbyists for assistance in parsing information and policy options.[22]

Lobbyists may also work to persuade.[23] Senator Byrd further recounted that as early as 1795, "a Philadelphia newspaper described the way lobbyists waited outside Congress Hall to 'give a hint to a Member ... or advise as may best suit.'"[24] Lobbyists, because of their positions outside the government, have the ability to view the policy sphere holistically and provide factual information on policy preferences, as well as consider non-policy factors, including reelection and the use of "information about constituency views ... to persuade legislators that electoral self-interest lies in taking group-friendly positions."[25]

Lastly, lobbyists can signal what affiliated group members might think about a particular issue. Most often, signaling occurs through advertisements or grassroots campaigns—where a group asks its members to contact Members of Congress to express an opinion.[26] Signaling is an important lobbying tool. Some academic studies have observed a positive, and sometimes strong, correlation between money spent on advertising, grassroots campaigns, and campaign contributions with policy influence.[27] Other studies have found that signaling is of "modest value" as a lobbying tool.[28]

Framing the Regulation of Lobbying

At various points in American history, there have been shifts in the way lobbying has been practiced and perceived. In turn, these changes have led to new attempts to regulate lobbying and interest group influence. Changes in practice include how lobbyists conduct business and the types and scope of contacts with the legislative and executive branch. Changes in perception include shifts in societal norms about what lobbyists should or should not be doing.

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[20] Rogan Kersh, "The Well-Informed Lobbyist: Information and Interest Group Lobbying," in *Interest Group Politics*, ed. Allan J. Cigler and Burdett A. Loomis, 7th ed. (Washington, DC: CQ Press, 2007), pp. 389-411.

[21] Robert C. Byrd, "Lobbyists," *The Senate, 1789-1989: Addresses on the History of the United States Senate*, edited by Wendy Wolff, 100th Cong., 1st sess., S.Doc. 100-20 (Washington: GPO, 1991), p. 501.

[22] Harmon Zeigler, "The Effects of Lobbying: A Comparative Assessment," *Western Political Quarterly*, vol. 22, no. 1 (March 1969), pp. 126-127. Lobbyists who convey information, however, often do so to supporters, not to opponents or the undecided.

[23] Zeigler, "The Effects of Lobbying: A Comparative Assessment," p. 127.

[24] Byrd, "Lobbyists," p. 492.

[25] Richard L. Hall and Alan V. Deardorff, "Lobbying as Legislative Subsidy," *American Political Science Review*, vol. 100, no. 1 (February 2006), p. 71.

[26] John R. Wright, *Interest Groups and Congress: Lobbying, Contributions, and Influence* (Boston: Allyn and Bacon, 1996), pp. 69-71.

[27] For example, see Martha A. Derthick, *Up in Smoke: From Legislation to Litigation in Tobacco Politics*, 2nd ed. (Washington: CQ Press, 2005), pp. 138-142; and Daniel E. Bergan, "Does Grassroots Lobbying Work? A Field Experiment Measuring the Effects of an e-Mail Lobbying Campaign on Legislative Behavior," *American Politics Research*, vol. 37, no. 2 (March 2009), pp. 327-352.

[28] Linda L. Fowler and Ronald G. Shaiko, "The Grass Roots Connection: Environmental Activists and Senate Roll Calls," *American Journal of Political Science*, vol. 31, no. 3 (August 1987), pp. 484-510.

Regulation of lobbying has frequently been used as a political tool, especially in the early 20th century. Senator Robert Byrd stated,

> Progressive presidents like Theodore Roosevelt and Woodrow Wilson took advantage of ... popular images of lobbyists and business corruption as leverage for their reform legislation. In seeking public support for lower tariff rates, President Wilson trained his fire on the lobby with this sharply worded attack: "Washington has seldom seen so numerous, so industrious or so insidious a body. The newspapers are being filled with paid advertisements calculated to mislead the judgment of public men not only, but also the public opinion of the country itself."[29]

Senator Byrd's summary of the historic reasons for lobbying reform in many ways mirrors why change might take place in contemporary politics. Lobbying reform has historically focused on the registration of lobbyists and the disclosure of lobbying activities. This focus, rather than on curtailing lobbying activities, has arguably allowed Congress to avoid potential constitutional concerns over lobbying as a manifestation of citizens' First Amendment right to petition the government.[30]

Historically, the focus has not been on radical lobbying reform. Instead, lobbying laws have focused on the registration of lobbyists and the disclosure of their activities. The changes that have been enacted have arisen are often the result of what political scientist John Kingdon described as the opening of a policy window.[31] Put more plainly, change can occur when a crisis develops that allows governmental decisionmakers to seize the opportunity to make change. For example, the Foreign Agent Registration Act (FARA) was enacted in response to concerns about German interests being represented prior to World War II,[32] and the Honest Leadership and Open Government Act (HLOGA) was enacted partly in response to the Jack Abramoff scandal.[33]

Lobbying Laws

Even before the first lobbying law was enacted, Congress made numerous attempts—some adopted, some not—to bring transparency to lobbying. For example, in 1876, after a bill reported by the House Judiciary Committee was only "argued at the request of an important

[29] Byrd, "Lobbyists," p. 502.

[30] Nicholas W. Allard, "Lobbying Is an Honorable Profession: The Right to Petition and the Competition to be Right," *Stanford Law and Policy Review*, vol. 19, no 1 (January 2008), pp. 23-68.

[31] John W. Kingdon, *Agendas, Alternatives, and Public Policies, 2nd edition* (New York: Harper Collins, 1995).

[32] For more information on concerns about Nazi and other subversive groups influencing American policy, see Francis R. O'Hara, "The Foreign Agents Registration Act—The Spotlight of Pitiless Publicity," *Villianova Law Review*, vol. 10, no. 2 (Spring 1965), p. 436.

[33] Jack Abramoff was a Washington-based lobbyist who represented Native American tribes on issues related to gambling, among other issues. For more information on Mr. Abramoff, see Kathryn R. L. Rand and Steven Andrew Light, "How Congress Can and Should 'Fix' The Indian Gaming Regulatory Act: Recommendations for Law and Policy Reform," *Virginia Journal of Social Policy & the Law*, vol. 13, no. 3 (Spring 2006), pp. 396-473l; Steven Andrew Light and Kathryn R. L. Rand, "The 'Tribal Loophole' Federal Campaign Finance Law and Tribal Political Participation After Jack Abramoff," *Gaming Law Review*, vol. 10, no. 3 (June 2006), pp. 230-239; and Gregory Koger and Jennifer Nicoll Victor, "Polarized Agents: Campaign Contributions by Lobbyists," *PS: Political Science & Politics*, vol. 42, no. 3 (July 2009), pp. 485-488.

corporation,"[34] the House required lobbyists to register with the Clerk of the House. This requirement, however, was only effective for the 44th Congress (1875-1877).[35]

Since the 1930s, four key laws have been enacted to regulate, but not ban, lobbyist contact with the federal government. Through an examination of these laws, it becomes clear that each was precipitated by changes in the practice of lobbying or political perception of lobbyists and their activities. The four primary lobbying laws are

- the Foreign Agent Registration Act (FARA) of 1938;[36]
- the Regulation of Lobbying Act (RLA) of 1946;[37]
- the Lobbying Disclosure Act (LDA) of 1995;[38] and
- the Honest Leadership and Open Government Act (HLOGA) of 2007.[39]

Foreign Agent Registration Act of 1938

In 1938, the Foreign Agents Registration Act (FARA) was enacted,[40] in an effort to "control subversive activities and propaganda dissemination by Nazi and Communist agents in the United States."[41] Prior to the passage of FARA, the House Judiciary Committee issued a report to accompany the legislation (H.R. 1591) that addressed the severity of the issue.

> This bill was introduced as a result of recommendations of the special committee that was appointed by the Seventy-third Congress to investigate un-American activities in the United States. A very careful study was made of the organizations in this country[,] which organizations aimed arbitrarily to group certain American citizens and persons in the U.S., and teachings in these positions to influence the internal and external political policies of our country.

[34] Rep. George Hoar, "Counsel for Cases Before Congress," *Congressional Record*, vol. 4, part 4 (May 20, 1876), p. 3230. Shortly after the House required lobbyists to register with the Clerk of the House, the House and Senate press galleries banned the practice of lobbyists being nominally affiliated with a newspaper to gain access to the House and Senate. According to Senate Historian Donald Ritchie "[t]hese rules defined accreditable correspondents as those whose primary salary came from sending telegraphic dispatches to daily newspapers; barred lobbying by any member of the press gallery; and prohibited all clerks from executive agencies (although not congressional committees)." For more information, see Donald A. Ritchie, *Press Gallery: Congress and the Washington Correspondents* (Cambridge, MA: Harvard University Press, 1991), p. 109; and Byrd, "Lobbyists," p. 501.

[35] The 1876 resolution provided "[t]hat all persons or corporations employing counsel or agents to represent their interests in regard to any measure pending at any time before this House, or any committee thereof, shall cause the name and authority of such counsel or agent to be filed with the Clerk of the House; and no person whose name and authority are not so filed shall appear as counsel or agent before any committee of this House." "Counsel for Cases Before Congress," *Congressional Record*, vol. 4, part 4 (May 20, 1876), p. 3230.

[36] 22 U.S.C. §§611-621.

[37] P.L. 79-601, 60 Stat. 839-842, August 2, 1946. Title III of the Legislative Reorganization Act of 1946 was the "Federal Regulation of Lobbying Act." It was the first law that required persons who lobbied Congress to register with the House of Representatives and the Senate.

[38] P.L. 104-65, 109 Stat. 691, December 19, 1995, as amended by P.L. 105-166, 112 Stat. 38, April 8, 1998; 2 U.S.C. §§1601-1614. The Lobbying Disclosure Act of 1995 repealed the Regulation of Lobbying Act of 1946.

[39] P.L. 110-81, 121 Stat. 739, September 14, 2007. HLOGA amended the 1995 act to further enhance disclosure and reporting requirements for lobbyists and lobbying firms.

[40] 22 U.S.C. §§611-621.

[41] Yuk K. Law, "The Foreign Agents Registration Act: A New Standard for Determining Agency," *Fordham International Law Journal*, vol. 6, no. 2 (1982), p. 365.

> Incontrovertible evidence has been submitted to prove that there are many persons in the United States representing foreign governments or foreign political groups, who are supplied by such foreign agencies with funds and other materials to foster un-American activities, and to influence the external and internal policies of this country, thereby violating both the letter and the spirit of international law, as well as the democratic basis of our own American institution of government.[42]

FARA requires the registration of "any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal.... "[43] Additionally, FARA

- specifies how such agents are to register and report their activities;[44]
- exempts certain types of foreign agents from registration;[45]
- has specific filing and labeling requirements for political propaganda disseminated by registered agents;[46]
- requires all registered agents to preserve records and to make these records available for inspection by the Department of Justice;[47]
- provides for public examination of registration statements, reports, and political propaganda filed with the Department of Justice;[48] and
- imposes penalties for noncompliance.[49]

The passage of FARA was a direct response to the perception of foreign influence in the United States. In the climate surrounding the rise of the Nazi Party in Germany and general unrest in both Europe and Asia, Congress felt it necessary to pass a law that dealt with the perception that foreign agents had undue influence over American foreign policy and growing concern over how conflict in Europe and Asia might influence both American politics and general civil society.[50] FARA may also be viewed as a predecessor to modern lobbying laws.

The Regulation of Lobbying Act of 1946

In 1946, as part of the Legislative Reorganization Act (Title III, the "Regulation of Lobbying Act" (RLA)), Congress required that "any person who shall engage himself for pay or for any

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[42] U.S. Congress, House Committee on the Judiciary, *Foreign Propaganda*, report to accompany H.R. 1591, 75th Cong., 1st sess., July 28, 1937, H.Rept. 75-1381 (Washington: GPO, 1937), pp. 1-2.

[43] 22 U.S.C. §611(c)(1). Additionally, an agent of a foreign principal is an individual

> who directly or through any other person—(i) engages within the United States in political activities for or in the interests of such foreign principal; (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States.

[44] 22 U.S.C. §612.

[45] 22 U.S.C. §613.

[46] 22 U.S.C. §614.

[47] 22 U.S.C. §615.

[48] 22 U.S.C. §616.

[49] 22 U.S.C. §618.

[50] Ronald J. Hrebenar and Bryson B. Morgan, *Lobbying in America* (Denver, CO: ABC Clio, 2009), pp. 57-58.

consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States"[51] register with the Clerk of the House and the Secretary of the Senate and disclose activities. The RLA was effective in creating the first general registration and disclosure regime.

As the *Yale Law Journal* stated in summarizing the legislative process used to regulate lobbying, prior to 1946, with the RLA Congress was responding to how lobbyists were viewed within the larger society when crafting the RLA:

> Whereas the old-style lobby, confined almost entirely to representatives of business interests, operated secretly and depended for its success upon personal solicitation of legislators, often accompanied by corruption, such methods are largely obsolete today. Modern lobbyists, or legislative agents, act on behalf of almost every conceivable business, economic, and social group, generally operate openly and frankly, and rely upon public opinion, real or simulated through judicious use of publicity and propaganda, to compel legislative action.[52]

In its report on the underlying legislation, the Senate Special Committee on the Organization of Congress provided a rationale for requiring lobbyists to register their activities.[53]

> Congress is the center of political gravity under our form of government because it reflects and expresses the popular will in making of national policy. Too often, however, the true attitude of public opinion is distorted and obscured by the pressures of special-interest groups. Beset by swarms of lobbyists seeking to protect this or that small segment of the economy or to advance this or that narrow interest, legislators find it difficult to discover the real majority will and to legislate in the public interest.[54]

The committee believed that the registration of lobbyists and disclosure of receipts and expenditures would allow lobbying to continue and would avoid "impairing in any way the right of petition or freedom of expression" for individuals.[55] Overall, "the act was not intended to regulate lobbying or restrict the legislative activities of particular individuals or organizations, rather, through recordkeeping, registration, and reporting requirements, the act seeks public disclosure of the identity and financial interests of persons engaged in lobbying."[56] Additionally,

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[51] P.L. 79-601, §308(a), 60 Stat. 841, August 2, 1946.

[52] "Improving the Legislative Process: Federal Regulation of Lobbying." *The Yale Law Journal*, vol. 56, no. 2 (January 1947), pp. 306-307.

[53] "Federal Lobbying Act of 1946," *Columbia Law Review*, vol. 47, no 1 (January 1947).

[54] U.S. Congress, Senate Special Committee on the Organization of Congress, *Legislative Reorganization Act of 1946*, report to accompany S. 2177, 79th Cong., 2nd sess., May 31, 1946, S.Rept. 79-1400 (Washington: GPO, 1946), p. 4.

[55] Ibid., p. 5. The committee also provided a detailed list of items the RLA would not cover. These included,

> First. It does not curtail the right of free speech or freedom of the press or the right to petition. Second. It has no application to the publishers of newspapers, magazines, or other publications, acting in the regular course of business. Third. It has no application to persons who appear openly and frankly before the committees of Congress and engage in no other activities to influence legislation. Fourth. It does not require any reports of any persons or organizations now required to report under the provisions of the present Corrupt Practices Act. Fifth. It does not apply in any manner to person who appear voluntarily without compensation. Sixth. It does not apply to organizations formed for other purposes who efforts to influence legislation are merely incidental to the purposes for which formed (pp. 26-27).

[56] U.S. General Accounting Office, *The Federal Regulation of Lobbying Act—Difficulties in Enforcement and Administration*, GGD-75-79, April 2, 1975, p. 1, at http://www.gao.gov/assets/120/113142.pdf#page=7.

the RLA attempted to reduce the potential for undue influence by lobbyists on the legislative process.[57]

After enactment, some number of lobbyists who were attempting to influence legislation in Congress registered with the Clerk and the Secretary. Studies of the RLA have shown, however, that the number of registered lobbyists likely did not match the number of individuals and organizations that were actively working to influence legislation as their primary mission ("principal purpose").[58]

Part of the reason for the RLA's weakness was the Supreme Court's decision in *United States v. Harriss* (1954).[59] The Court "upheld ... lobbying registration requirements.... The Court defined the legislation narrowly, however, finding that it did not apply to groups or individuals who spent their own money to lobby Congress directly. It also exempted groups whose principal purpose was something other than lobbying."[60] Subsequently, some observed that the original intent of the law—to require the registration and disclosure "to identify financial interest of person[s] engaged in lobbying"[61]—was ineffective.

Over the next several decades, various legislative attempts were made to amend or replace the RLA. For example, in 1976, the Senate drafted and passed "more specific definitions of lobbyists and lobbying practices, but intensive efforts by lobbyists—principally arguing that the new requirements would violate the free speech rights of lobbyists—kept the measure from passing the House."[62]

The Lobbying Disclosure Act of 1995

The RLA, in the post-*Harriss* era, was considered by many to be "unsatisfactory," with limited effectiveness.[63] The RLA, coupled with competing registration and disclosure standards in at least six different statutes, prompted Congress to create a new, more comprehensive registration and disclosure scheme.[64] The result was the Lobbying Disclosure Act (LDA) of 1995. Described on the Senate floor as "the right balance," the LDA "tightens up the registration and disclosure

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[57] For example, see Kathryn Allamong Jacob, *King of the Lobby: The Life and Times of Sam Ward Man-About-Washington in the Gilded Age* (Baltimore, MD: The Johns Hopkins University Press, 2010).

[58] For example, according to a General Accounting Office (GAO) report, "as of January 28, 1975, there were 1,773 active lobbyists registered with the Secretary of the Senate. Of these, 131 lobbyists represented more than one employer while one lobbyist, a law firm, represented 25 employers." U.S. General Accounting Office, *The Federal Regulation of Lobbying Act—Difficulties in Enforcement and Administration*, GGD-75-79, April 2, 1975, p. 7. See also, Testimony of Deputy Comptroller General Robert F. Keller, in U.S. Congress, House, Committee on the Judiciary, Subcommittee on Administrative Law and Governmental Relations, *Examination of Lobbying*, 94th Cong., 1st sess., September 12, 1975, GAO-98176, p. 3, at http://www.gao.gov/assets/100/98176.pdf.

[59] 347 U.S. 612 (1954).

[60] Byrd, "Lobbyists," p. 505 (fn 35).

[61] U.S. General Accounting Office, *The Federal Regulation of Lobbying Act—Difficulties in Enforcement and Administration*, GGD-75-79, April 2, 1975, p. 1, at http://www.gao.gov/assets/120/113142.pdf#page=7.

[62] Byrd, "Lobbyists," p. 506.

[63] U.S. Congress, Senate Committee on Governmental Affairs, *Lobbying Disclosure Act of 1993*, report to accompany S. 349, 103rd Cong., 1st sess., April 1, 1993, S.Rept. 103-37 (Washington: GPO, 1993), p. 3.

[64] Ibid., p. 2. The other laws cited as containing lobbying provisions were the Federal Registration of Lobbying Act of 1946; the Foreign Agents Registration Act; 31 U.S.C. § 1352 (the "Byrd Amendment"); a provision of the Housing and Urban Development (HUD) Reform Act that required lobbyists to disclose contact with the Department of Housing and Urban Development and the Farmers Home Administration; Section 12(i) of the Public Utility Holding Company Act (Federal Energy Regulatory Commission); and 46 U.S.C. §1225 (Federal Maritime Commission).

requirements for the Washington-based lobbyists, without infringing upon the rights of ordinary citizens at the grassroots to petition their Government."[65] The LDA was passed to counter "the perception that Congress in particular is beholden to special interests and that ordinary people cannot rise above the din of lobbyists having special access to and currying favor from Members of Congress or top officials in the executive branch."[66]

In addition to attempting to alter the public perception of lobbying, the LDA also served to repeal the RLA and streamline the registration and disclosure process. In reporting the LDA, the House Judiciary Committee summarized the need for new lobbying provisions:

> The Act is designed to strengthen public confidence in government by replacing the existing patchwork of lobbying disclosure laws with a single, uniform statute which covers the activities of all professional lobbyists. The Act streamlines disclosure requirements to ensure that meaningful information is provided and requires all professional lobbyists to register and file regular, semiannual reports identifying their clients, the issues on which they lobby, and the amount of their compensation. It also creates a more effective and equitable system for administering and enforcing the disclosure requirements.[67]

After passing the Senate in July 1995 and the House in November,[68] on December 19, 1995, the LDA was signed into law by President Clinton.[69] In addition to repealing the RLA, the LDA provided specific thresholds and definitions of lobbyists, lobbying activities, and lobbying contacts; and required that lobbyists register with the Clerk of the House and Secretary of the Senate.[70] The LDA broadly defined a lobbyist as an individual who is

> (1) employed or retained by a client for financial or other compensation[;]
>
> (2) for services that include more than one *lobbying contact*,[71] and[;]
>
> (3) his or her *lobbying activities* for that client must amount to 20 percent or more of the time that the individual expends on services to that client over a six-month period.[72]

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[65] Sen. Robert Dole, "Lobbying Reform," remarks in the Senate, *Congressional Record*, vol. 141, part 14 (July 25, 1995), p. 20193.

[66] Sen. John Glenn, "Lobbying Disclosure Act of 1995," remarks in the Senate, *Congressional Record*, vol. 141, part 14 (July 24, 1995), p. 20034.

[67] U.S. Congress, House Committee on the Judiciary, *Lobbying Disclosure Act of 1995*, report to accompany H.R. 2564, 104th Cong., 1st sess., H.Rept. 104-339 (Washington: GPO, 1995), p. 2.

[68] "Lobbying Reform," Senate debate, *Congressional Record*, vol. 141, part 14 (July 25, 1995), pp. 20193-20200; and "Lobbying Disclosure Act of 1995," House debate, *Congressional Record*, vol. 141, part 24 (November 29, 1995), pp. 34808-34815.

[69] P.L. 104-65, 109 Stat. 691, December 19, 1995, as amended by P.L. 105-166, 112 Stat. 38, April 8, 1998; 2 U.S.C. §§1601-1614.

[70] For more information on the role of the Clerk of the House and Secretary of the Senate, see CRS Report RL34377, *Lobbying Registration and Disclosure: The Role of the Clerk of the House and the Secretary of the Senate*, by Jacob R. Straus.

[71] Pursuant to 2 U.S.C. §1602(8), a *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 the formulation, modification, or adoption of Federal legislation, ... federal rule, regulation, executive order, the administration or execution of a Federal program or policy ...; or the nomination or confirmation of a person for a position subject to confirmation by the Senate."

[72] William V. Luneburg and A.L. (Lorry) Spitzer, "The Lobbying Disclosure Act of 1995: Scope of Coverage," in *The Lobbying Manual: A Complete Guide to Federal Law Governing Lawyers and Lobbyists*, ed. William V. Luneburg and Thomas M. Susman, 3rd ed. (Chicago: ABA Publishing, 2005), p. 37. Pursuant to 2 U.S.C. §1602(7), "the term 'lobbying activities' means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts,

Additionally, for the first time, executive branch officers and certain other executive branch employees were considered to be "covered officials" for the purpose of lobbying registration and disclosure.[73] Recognizing that lobbyists were also contacting executive branch officials to influence the implementation of laws and the writing of regulations was an acknowledgement that "the members of the executive branch are subject to the same lobbying, and the same influences because decisions of enormous consequence are made in the executive branch."[74]

The inclusion of executive branch employees reflected a change in how lobbyists achieve their goals, but also acknowledged that policymaking includes more than just Congress.[75] The role of the executive branch and how regulations are written can be important for lobbyists as they represent the best interests of their clients.

The Honest Leadership and Open Government Act of 2007

The most recent amendment to the LDA, the Honest Leadership and Open Government Act of 2007 (HLOGA), mandated additional and more frequent information disclosures by lobbyists.[76] Introduced in the wake of the Jack Abramoff scandal, HLOGA amended the LDA to further refine registration thresholds and definitions of lobbying activities, change the frequency of reporting, add additional disclosures, create new semi-annual reports on campaign contributions, and require disclosure by coalitions and associations.[77] Additionally, registration and disclosure statements were required to be provided in a searchable and sortable format, on the Internet, for public inspection.[78]

HLOGA was not primarily intended to increase the number of persons who are required to register and report as "lobbyists" under the LDA. Thus, the definitions of who is a covered "lobbyist," and what are "lobbying contacts" and "lobbying activities"—and therefore who must register and report under the law—were not substantively amended by the 2007 act.[79] Instead,

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and coordination with the lobbying activities of others."

[73] 2 U.S.C. §1602(3) and (4). Covered executive branch officials are defined as (A) the President; (B) the Vice-President; (C) any officer or employee, or any individual functioning in the capacity of such an officer or employee, in the Executive Office of the President; (D) any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order; (E) any member of the uniformed services whose pay grade is at or above O-7 under 37 U.S.C. §201; and (F) any officer or employee serving in a position of a confidential policy-determining, policy-making, or policy-advocating character described in 5 U.S.C. §7511(b)(2). For more information on executive branch lobbying, see CRS Report R40947, *Lobbying the Executive Branch: Current Practices and Options for Change*, by Jacob R. Straus.

In 1998, technical amendments were made to the LDA (P.L. 105-166, 112 Stat. 38, April 6, 1998). These amendments clarified the definition of covered executive branch officials, more clearly defined what constitutes a lobbying contact, and provided that organizations, whose lobbying activities are limited by their Internal Revenue Code (IRC) non-profit status, could use their tax estimates to report lobbying activities.

[74] Sen. John McCain, "Lobbying Disclosure Act of 1995," *Congressional Record*, vol. 141, part 14 (July 24, 1995), p. 20016.

[75] John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (New York: Harper Collins, 1995).

[76] P.L. 110-81, 121 Stat. 739, September 14, 2007.

[77] P.L. 110-81, 121 Stat. 735, September 14, 2007. For more information on the Abramoff scandal, see footnote 33.

[78] P.L. 110-81, 121 Stat. 748, September 14, 2007.

[79] The threshold amounts of time and money spent or received to qualify one as a "lobbyist" are adjusted (halved) in P.L. 110-81 to conform to the new quarterly (rather than semi-annual) filing, but the thresholds are not otherwise lowered with the intention of covering more persons as "lobbyists." (Assuming a pro rata expenditure of time and money, more persons will not necessarily qualify as "lobbyists" under the amended law, but the new provisions do have the effect of lowering by half the thresholds for minimum or sporadic lobbying efforts).

HLOGA amended the frequency of required information disclosure and the monetary thresholds for reporting lobbying expenses or income. HLOGA created quarterly, instead of semi-annual, reporting periods and shortened the deadline for submission from 45 days to 20 days after the filing period ends.[80] The threshold for filing quarterly reports was also lowered, requiring lobbyists and lobbying firms to file reports of work when total income from lobbying exceeded $2,500 (formerly $5,000) and where total expenses used in connection with lobbying exceeded $10,000 (formerly $20,000) for any given quarterly reporting period.[81] Additionally, the LDA was amended to create a new semi-annual reporting requirement for campaign and presidential library contributions by lobbyists and lobbying firms.[82]

HLOGA was primarily a response to changes in both practice and perception. In practice, social media had also changed the way that lobbyists communicated with covered officials. Modern politics is a fast-paced environment, and lobbyists have developed myriad opportunities to directly contact Members of Congress and motivate grassroots campaigns.

Additionally, HLOGA sought to address the appearance of scandal. HLOGA, for example, banned gifts from lobbyists to Members of Congress and congressional staff. HLOGA further required greater disclosure of lobbyists' activities by the lobbyists. For government employees, including Members of Congress, financial disclosure rules were tightened and restrictions were placed on seeking employment outside of government.[83]

Common Themes in Lobbying Laws

A common theme underlies the four major lobbying laws: more information on lobbying contacts and activities increases transparency. Additionally, by requiring registration and disclosure but not restricting activities, individuals' first amendment rights to petition are maintained. **Table 1** summarizes the four lobbying laws—FARA, the RLA, the LDA, and HLOGA—and who is required to register, what they are required to disclose, how often filings are to occur, and how information is to be provided to the public.

[80] 2 U.S.C. §1604(a).

[81] 2 U.S.C. §1603(a).

[82] The semi-annual reporting period runs from January 1 to June 30 and July 1 to December 31 each year. The report is due to the Clerk of the House and Secretary of the Senate 30 days later (January 30 and July 30) or on the first business day after the 30th if the 30th falls on a non-business day. (2 U.S.C. § 1604 (d)(1)).

[83] For more information on gift laws and rules, see CRS Report RS22566, *Acceptance of Gifts by Members and Employees of the House of Representatives Under New Ethics Rules of the 110th Congress*, by Jack Maskell; and CRS Report R43660, *The Receipt of Gifts by Federal Employees in the Executive Branch*, by Jack Maskell.

Table 1. Registration and Disclosure Requirements Under Lobbying Statutes

	Registration of Whom	Disclosure of What	How Often	How Public
Federal Agent Registration Act (FARA) P.L. 75-583, 52 Stat. 631, June 8, 1938 22 U.S.C. §§611-621	Agents of foreign governments; political parties; and partnerships, associations, corporations, organizations, or "other combination[s] of person organized under the laws of or having its principle place of business as a foreign country" [§611].	Name, principle business address; statement of nature of business; copies of written representational agreements and terms of oral agreements; detailed statement of activity performed; nature and amount of contributions, income, money, or things of value received; and summary of money spent [§612(a)].	Every 6 months, within 30 days of the end of each filing period [§612(b)].	Statement filed under oath [§612(c)]. Required to keep books of accounts and other records [§615]. Attorney General is required to make statements public over the internet in a searchable, sortable, and downloadable manner without charge [§616(d)(1)].[d]
Regulation of Lobbying Act (RLA) P.L. 79-601, title III, 60 Stat. 839, August 2, 1946	"[A]ny persons" who are paid to accomplish "the passage or defeat of any legislation" or to "influence, directly or indirectly, the passage or defeat of any legislation" by Congress [§307].[a]	Name and address of contributors; name and address of expense recipients; and "total sum of expenditure made ...during the calendar year" [§305(a)].	Between the 1st and 10th day of each calendar quarter [§305(a)].	Information published in the *Congressional Record* by the Clerk of the House and Secretary of the Senate [§308(b)]. Reports made under oath [§309]. Records preserved for two years from date of filing [§306(b)].
Lobbying Disclosure Act (LDA) P.L. 104-65, 109 Stat. 691, December 19, 1995 2 U.S.C. §§1601-1614	Lobbyists; "any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in services provided by such individual client over a six-month period" [§1602(10)].	*Registration* Information on registrant and information on client [§1603(b)]. *Disclosure* Name of registrant; changes or updates to registration information; specific issues for which contact was made; statement of agencies or House of Congress lobbied; estimate of lobbying income or expenses [§1604(b)].	*Registration* Within 45 days of making a lobbying contact or being first employed [§1603(a)]. *Disclosure* Every six months [§1604(a)].	Clerk of the House and Secretary of the Senate make registration and disclosure statements available for public inspection [§1605(4)].

	Registration of Whom	Disclosure of What	How Often	How Public
Honest Leadership and Open Government Act (HLOGA) P.L. 110-81, title II, 121 Stat. 741, September 14, 2007 2 U.S.C. §§1601-1614	Added certain coalitions and associations to required filers [§1603(b)(3)].[b]	Created semiannual report on certain campaign contributions [§1604(d)]. Created disclosure of bundled contributions under the Federal Election Campaign Act of 1974 [§204; 2 U.S.C. §434].	*Disclosure*[c] Every 3 months [§1604(a)].	Registration and disclosure reports are required to be available over the internet, "without a fee or other access charge, in a searchable, sortable, and downloadable manner" [§1605].

Source: CRS Summary and Analysis of Foreign Agents Registration Act, Regulation of Lobbying Act, Lobbying Disclosure Act, and Honest Leadership and Open Government Act.

Notes:

a. A person is defined to include an "individual, partnership, committee, association, corporation, and any other organization or group of persons" [P.L. 79-601, §302(c), 60 Stat. 840, August 2, 1946].

b. Coalitions and associations are required to register if they (1) "contribute more than $5,000 to the registrant or the client in the quarterly period to fund lobbying ... " and (2) "actively participates in the planning, supervision, or control of such lobbying activities" [§207(a)(1)].

c. Registration timeline requirements under the Lobbying Disclosure Act were not amended by the Honest Leadership and Open Government Act.

d. The provision requiring the Attorney General to publish statements on the internet was added by P.L. 110-81, §212(b), 121 Stat. 749, September 14, 2007.

Examining the enactment of FARA, RLA, LDA, and HLOGA provides insight into why the laws were passed and which factors—practice or perception—might have caused the need for new legislation. The RLA, FARA, the LDA, and HLOGA were all partly responses to an altered *perception* about what lobbyists should or should not be doing. For FARA, the law was a response to anti-German sentiment and fears of European and Asian influence on American foreign policy. The RLA responded to the belief that lobbyists had undue influence over governmental decision making, and the LDA provided a shift toward further requirements that lobbyists' activities be disclosed on a recurring basis. For HLOGA, the amendments to the LDA were partly in response to the Abramoff scandal.

Data on Lobbying Trends

When the LDA was enacted, it required the Clerk of the House and the Secretary of the Senate to make registration and disclosure statements available to the public. Since at least 1999, that data has been available online.[84] Using this data, a picture of the lobbying landscape emerges. The LDA data provides a window into the number of newly registered lobbyists and the number of disclosure statements filed. While the data can provide information on these indicators of lobbying behavior, it does not provide a complete picture of the number of lobbyists or lobbying activity.

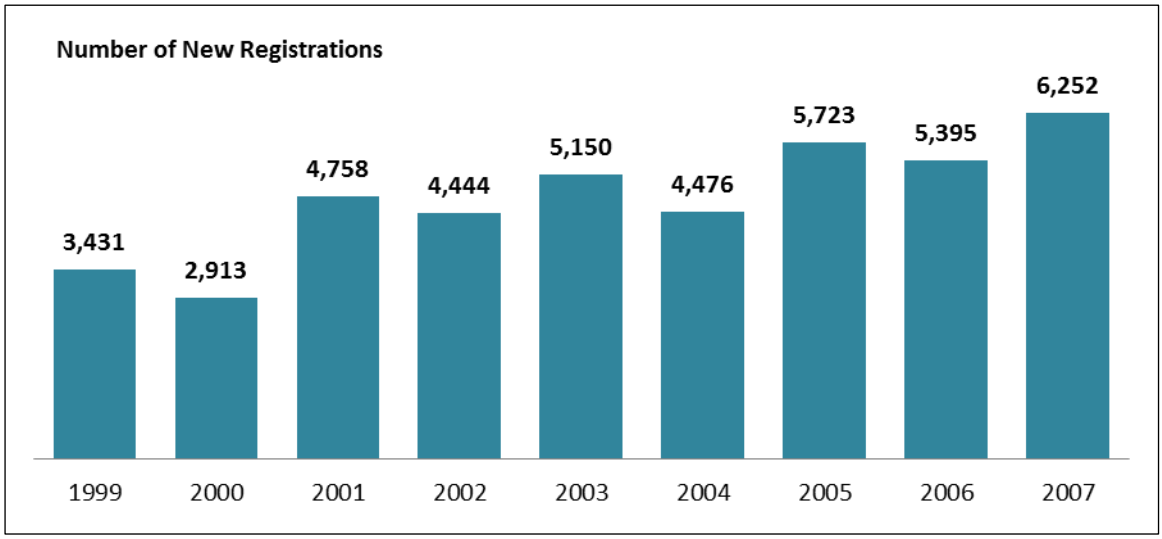
[84] For more information on the role of the Clerk of the House and the Secretary of the Senate in the administration of the Lobbying Disclosure Act, see CRS Report RL34377, *Lobbying Registration and Disclosure: The Role of the Clerk of the House and the Secretary of the Senate*, by Jacob R. Straus.

This section provides insight into the historic and current landscape of lobbying through the analysis of data on registration and disclosure under the LDA (pre-2007) and under the HLOGA amendments (2008-present). LDA data are used to evaluate the number of registration and disclosures between 1999 (the first year that data is available) and 2007. HLOGA data are then used to consider the impact of the 2007 amendments to LDA and how registration and disclosure has changed over time.

Lobbyists Registration and Disclosure, Pre-2007

The number of registered lobbyists has changed over time. For example, in 1967, under the RLA, the media reported that "[f]rom a peak of 312 organizations reporting $10.3 million in lobbying expenses in 1950, the figures dropped to 225 groups spending $4.3 million in 1954, the year of the *Harriss* decision.... In 1966, 296 organizations reported spending a total of $4.7 million" in nominal dollars.[85] While comprehensive data on the number of lobbyists who registered under the RLA are not available, data are available for more recent filings. **Figure 1** shows the number of new registrations by lobbyists under the LDA between 1999 and 2007.

Figure 1. New Lobbyist Registration Under LDA, 1999-2007



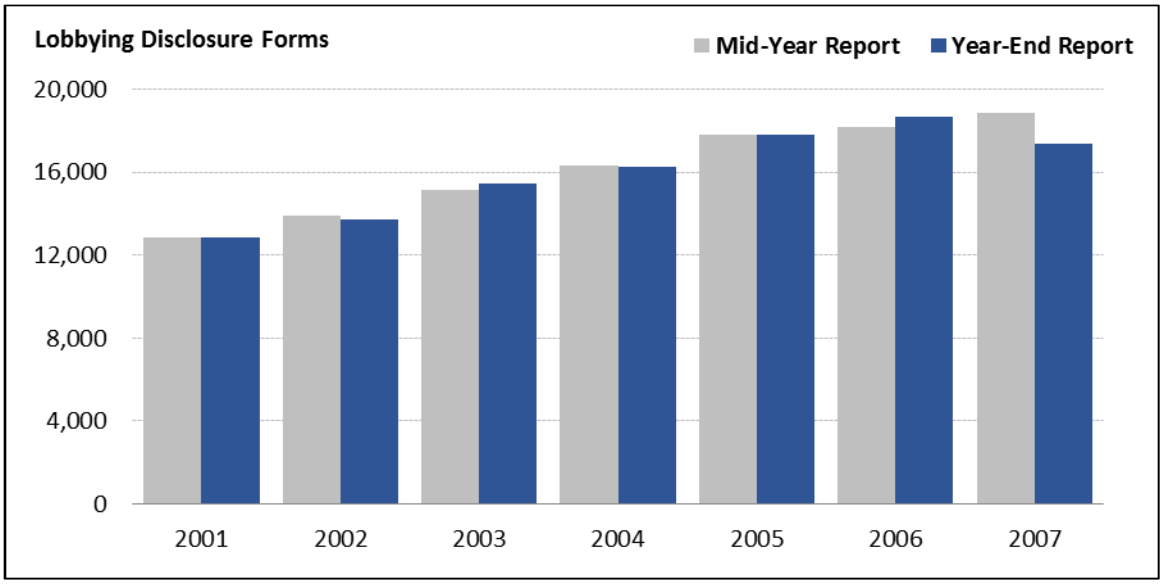
Source: CRS analysis of data from the Secretary of the Senate.

As shown in **Figure 1**, the number of new lobbyist registrations shows a generally upward trend between 1999 and 2007. While some years show declines in new registrations (e.g., even-numbered years), these declines generally coincide with election years and the potential need for lobbying firms and corporations that employ lobbyists to hire (or fire) individuals according to shifts in party control of Congress or the executive branch or shifts in the issue agenda as a result of elections.

Similar to an examination of registration and termination, **Figure 2** shows the number of disclosure reports (i.e., quarterly filings that provide basic information on the lobbyist or lobbying firm, a list of specific issues covered, branch of government contacted, name of client, and estimates of lobbying expenditures or income) filed between 2001 and 2007.

[85] "First Attempt at Lobbying Reform Since 1946 Fails," *CQ Almanac* (1967), at http://library.cqpress.com/cqalmanac/document.php?id=cqal67-1314712.

Figure 2. Number of Lobbyists Disclosure Forms Filed, 2001-2007



Source: CRS analysis of data from U.S. Congress, Clerk of the House of Representatives, *Lobbying Disclosure*, at https://lobbyingdisclosure.house.gov.

As shown in **Figure 2**, the number of disclosure reports rose steadily between 2001 and 2007, peaking at almost 20,000 disclosures filed in the mid-year reporting period of 2007. Taken together, the trends in **Figure 1** and **Figure 2** show a general increase in the number of individuals who were required to register and their disclosures under the LDA.

Data from the LDA era can be compared to limited data available under the RLA. In January 1975, for example, 1,772 active lobbyists were registered with the Secretary of the Senate.[86] The higher numbers of lobbyist registration under LDA could be evidence of either more effective disclosure requirements or additional lobbying activity.

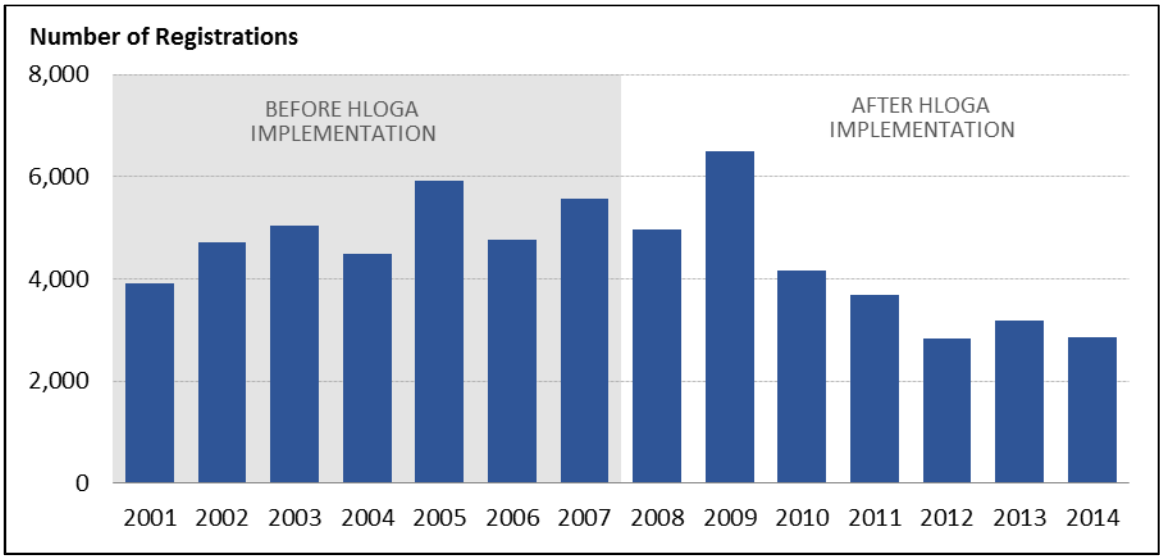
Lobbyist Registration and Disclosure, 2007-Present

With the enactment of HLOGA in 2007, registration continued to be required within 45 days "after a lobbyist makes a lobbying contact or is employed or retained to make a lobbying contact."[87] As **Figure 3** shows, the number of new lobbyists registered initially increased under HLOGA.

[86] U.S. General Accounting Office, *The Federal Regulation of Lobbying Act—Difficulties in Enforcement and Administration*, GGD-75-79, April 2, 1975, p. 7.

[87] 2 U.S.C. §1603 (a)(1).

Figure 3. New Lobbyist Registration, 2001-2014



Source: CRS analysis of Clerk of the House data.

The number of new registration increased in 2009, before declining between 2010 and 2014. In 2009, a record 6,509 new lobbyists were registered. This number may reflect a number of trends that stem from change in party control of the White House and Congress. For example, in 2006 the majority party in the House changed from a Republican majority to a Democratic majority, in 2009, the president changed from a Republican to a Democrat, which unified control of the White House and Congress under a single political party. Additionally, changes in registration numbers could reflect the continued implementation of HLOGA.

Further, several media reports suggested a link between declines in the number of lobbyists and the earmark ban that was adopted at the beginning of the 112th Congress (2011-2012).[88] Support for the link between the earmark ban and the decline in the number of registered lobbyists,

[88] Speaker of the House of Representatives, "House Republicans Adopt Earmark Ban for the 112th Congress," press release, November 17, 2010, http://www.speaker.gov/press-release/house-republicans-adopt-earmark-ban-112th-congress. For example, see Kate Ackley, "Earmark Ban Changes Spring Season for Lobbying Firms," *Roll Call*, March 26, 2011, at http://www.rollcall.com/news/Earmark-Ban-Changes-Spring-Season-for-Lobbying-Firms-204346-1.html; and Holly Yeager, "Lack of Earmarks, Appropriations Bills Forces Lobbying Firm Van Scoyoc to Change Approach," *The Washington Post.com*, May 9, 2014, at http://www.washingtonpost.com/business/lack-of-earmarks-appropriations-bills-forces-lobbying-firm-van-scoyoc-to-change-approach/2014/05/09/9bebc310-be74-11e3-b195-dd0c1174052c_story.html.

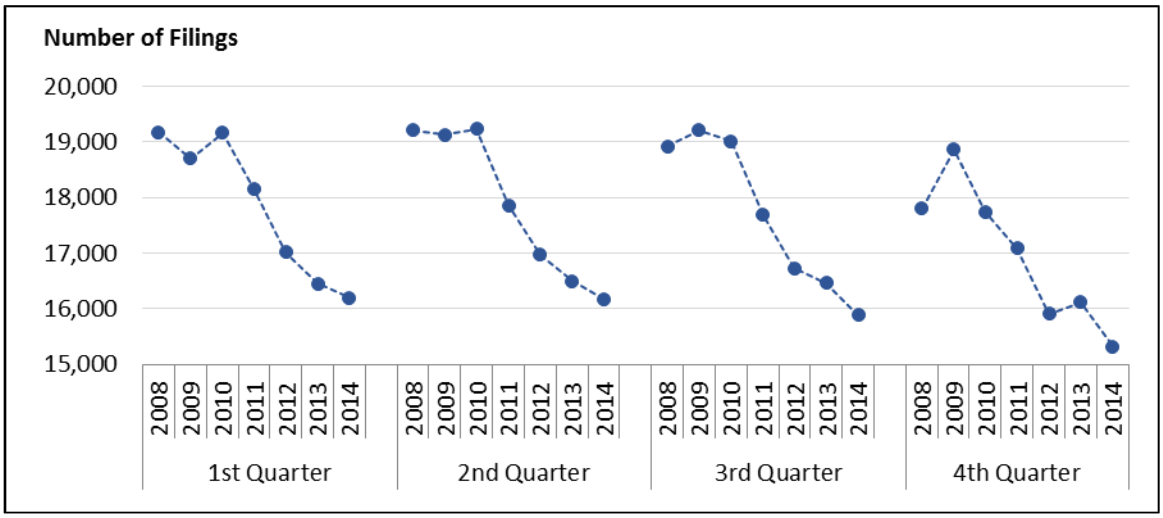
According to House Rule XXI, clause 9, an earmark is "a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or congressional district, other than through a statutory or administrative formula driven or competitive award process." Similarly, Senate Rule XLIV, paragraph 5 defines congressionally directed spending (e.g., an earmark) as "a provision or report language included primarily at the request of a Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or congressional district, other than through a statutory or administrative formula driven or competitive award process."

For more information on earmarks in the House, see CRS Report RS22866, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, by Megan S. Lynch. For more information on earmarks in the Senate, see CRS Report RS22867, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, by Megan S. Lynch.

however, has not been found through academic studies. That the decline in lobbyists began in 2009, before the 2011 earmark ban, points to other possible reasons as the most likely cause of the decline in registered lobbyists.[89]

HLOGA provides an opportunity to evaluate disclosure trends on a quarterly, instead of semi-annual, basis. **Figure 4** shows the number of disclosure filings per quarter has declined since the enactment of HLOGA for 2008. The number of disclosure filings provides a different way to examine lobbying data. Instead of examining the number of new registrants per year, disclosure statements allow an analysis of lobbying activity through an evaluation of the number of disclosure forms filed.

Figure 4. Quarterly Disclosure Filing Under HLOGA, 2008-2014



Source: CRS analysis of Clerk of the House data.

A lobbyist or lobby firm files a report regardless of whether any lobbying activity occurred during the quarterly period. If no lobbying activities occurred in a particular quarter, the firm can indicate that on the form.[90] The decline in disclosure reports, therefore, does not necessarily reflect a decrease in filing by active lobbyists. Instead, it could reflect a general decline in the number of new lobbyists registering under the LDA in combination with the number of lobbyists who might have terminated their registration in any given quarterly period.

Contemporary Lobbying Observations

An examination of contemporary lobbying reveals that scholars, think tanks, and legislators are still thinking about registration and disclosure, often within the context of three current trends. These are shadow lobbying, grassroots lobbying, and the revolving door.

[89] Timothy M. LaPira, "Lobbying in the Shadows: How Private Interests Hide from Public Scrutiny and Why That Matters," in *Interest Group Politics*, ed. Allan J. Cigler, Burdett A Loomis, and Anthony J. Nownes, 9th ed. (Washington, DC: CQ Press, 2015), p. 241.

[90] U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, "Section 6: Quarterly Reporting of Lobbying Activities," *Lobbying Disclosure Act Guidance*, December 15, 2014, at http://lobbyingdisclosure.house.gov/amended_lda_guide.html#section6.

Shadow Lobbying

In June 2014, the Office of Congressional Ethics (OCE)[91]—an independent, non-partisan entity constituted by the House of Representatives and charged with review of allegations of misconduct by Members of the House, House officers, and House staff—reported that it had referred an "entity to the U.S. Attorney's Office for the District of Columbia for failure to register under the Lobbying Disclosure Act."[92] According to news reports of the referral, this was the first time a referral for violation of the LDA's registration provisions has occurred.[93] Further, the referral highlighted that the U.S. Attorney's Office for the District of Columbia has prosecuted only a handful of LDA cases,[94] although that number has increased over the past several years.[95]

What made OCE's referral for non-compliance with the LDA so remarkable is that it raised the issue of individuals who engage in lobbying activities, but do not register under the LDA to the forefront. Labeled as "shadow lobbyists," by the scholarly community, the OCE has provided the first government entity acknowledgement that certain individuals might be lobbying, but not registering or disclosing their activities to the Clerk of the House and the Secretary of the Senate.

An individual might be considered a "shadow lobbyist" if they engages in some lobbying activities, but do not believe they strictly meet all of the requirements for registration as a lobbyist—makes more than one lobbying contact per quarter, is compensated for making contacts with covered officials, and spends more than 20% of his or her time on lobbying activities. As described by political scientist Timothy LaPira, a shadow lobbyist is

> ...any professional who is paid to challenge or defend the policy status quo, to subsidize [sic] policymakers with information, or to closely monitor intricate policy and political developments that are not readily available to the public—or those who offer expertise, knowledge, and access in support of these activities—yet who do not register as lobbyists.[96]

Individuals might choose not to register under the LDA for several reasons. First, the definition of lobbying requires that a lobbyist must register when they meet all three parts of the statutory definition—one contact per quarter, receive compensation, and 20% of time spent on lobbying activities. Individuals self-report whether or not they meet these criteria.

Second, as discussed below under "Revolving Door," former high-ranking government officials (including Members of Congress) and senior staff are prohibited from engaging in certain representational activities, such as lobbying or advocacy directed to influence current federal

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[91] For more information on the Office of Congressional Ethics, see CRS Report R40760, *House Office of Congressional Ethics: History, Authority, and Procedures*, by Jacob R. Straus.

[92] U.S. Congress, House, Office of Congressional Ethics, *Secord Quarter 2014 Report, April 2014-June 2014*," at http://oce.house.gov/disclosures/OCE_Second_Quarter_2014_Report.pdf.

[93] For example, see Megan R. Wilson, "Bombshell: Ethics Office Alleges Illegal Lobbying," *The Hill*, July 25, 2014, at http://thehill.com/business-a-lobbying/business-a-lobbying/213394-bombshell-ethics-office-alleges-illegal-lobbying.

[94] For example, see U.S. Government Accountability Office, *2012 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, GAO-13-437, April 2013, at http://www.gao.gov/assets/660/653471.pdf; and U.S. Government Accountability Office, *2013 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, GAO-14-485, May 2014, at http://www.gao.gov/assets/670/663647.pdf.

[95] For more information on enforcement of the Lobbying Disclosure Act, see CRS Legal Sidebar WSLG1056, OCE Reports First Enforcement Action Against Non-Registered Lobbyists, by Cynthia Brown; and CRS Report RL31126, *Lobbying Congress: An Overview of Legal Provisions and Congressional Ethics Rules*, by Jack Maskell.

[96] LaPira, "Lobbying in the Shadows: How Private Interests Hide from Public Scrutiny and Why That Matters," in *Interest Group Politics*, 9th ed., p. 225.

officials for a certain period of time.[97] These restrictions last for either one or two years, depending on whether the former official worked in the executive, the House, or the Senate. Subsequently, former government officials often do not qualify as statutory lobbyists since they are prohibited from making advocacy contacts during their "cooling off" period, even if they support the lobbying of others.

Identifying the number of individuals who might be considered shadow lobbyists has been inexact for two reasons. First, some numbers of registered lobbyists do not report activity in any given quarterly period, but they may continue to lobby without making the appropriate disclosures.[98] These individuals could be spending less than 20% of their time lobbying, make no contacts, or receive no compensation in a quarterly period. Some, however, suggest that non-reporting of activities by registered lobbyists is a purposeful attempt to skirt the LDA.[99]

Second, some individuals who work as "strategic policy advisors" or consultants seemingly engage in lobbying activities but never register under the LDA. Some studies have examined former Members of Congress who fit this description and concluded that much of the work done by these individuals should be considered lobbying, thus requiring registration under the LDA.[100] Others take issue with this position and believe that government relations are fundamentally different than lobbying.[101]

Whether these individuals meet the statutory definition of a lobbyist is an open question. Since the LDA definition of lobbying requires self-reporting of time spent engaged in lobbying activities and the number of lobbying contacts made, it is conceivable that individuals could not need to register. Conversely, because of the civil and criminal penalties potentially associated with non-compliance, some individuals may preemptively register to avoid even the possible perception of impropriety.

Estimating the number of shadow lobbyists is difficult. One approach to determining the number of shadow lobbyists examined the employment of formerly registered lobbyists.[102] Another study took a sample of former lobbyists and used public and proprietary directories, websites, and social networks to identify current employment. For this study, when current employment matched the definition of lobbying, the individual was categorized as a lobbyist regardless of whether he or she was actually registered under the LDA.[103]

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[97] 18 U.S.C. §207. For more information on the revolving door, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, by Jack Maskell.

[98] Dan Auble, "Lobbyists 2012: Out of the Game or Under the Radar?" *Center for Responsive Politics*, March 20, 2013, at http://www.opensecrets.org/news/2013/03/lobbyists-2012-out-of-the-game-or-u/.

[99] Ibid. See also, Lee Fang, "Where Have All the Lobbyists Gone?" *The Nation*, February 19, 2014, at http://www.thenation.com/article/178460/shadow-lobbying-complex; Tim LaPira, "How Much Lobbying is There in Washington? It's DOUBLE What You Think," *Sunlight Foundation*, November 25, 2013, at http://sunlightfoundation.com/blog/2013/11/25/how-much-lobbying-is-there-in-washington-its-double-what-you-think; and Dave Wenhold, "New Administration Rules Could Trigger Lobbying Deregistration Rush," *The Hill*, September 30, 2009, at http://thehill.com/business-a-lobbying/k-street-insiders/k-street-insiders/60823-new-administration-rules-could-trigger-lobbying-deregistration-rush.

[100] LaPira, "Lobbying in the Shadows: How Private Interests Hide from Public Scrutiny and Why That Matters," in *Interest Group Politics*, 9th ed.

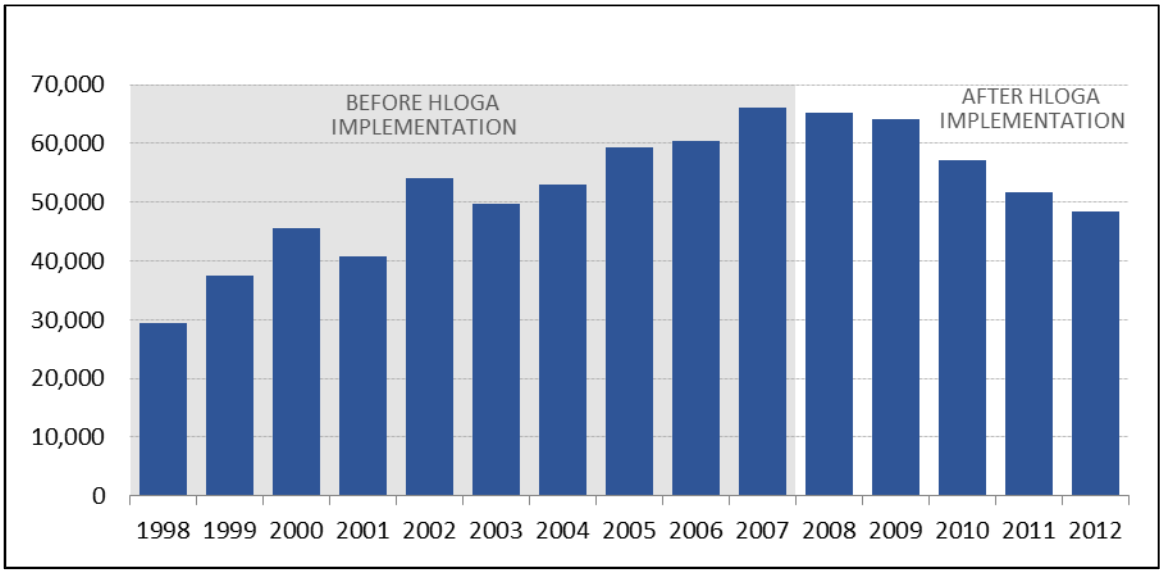
[101] See Association of Government Relations Professionals, "Our Mission and Strategic Plan," *About Us*, at http://grprofessionals.org/home/agrp-mission-and-strategic-plan. This organization was previously known as the American League of Lobbyists.

[102] Auble, "Lobbyists 2012: Out of the Game or Under the Radar?"

[103] LaPira, Lobbying in the Shadows: How Private Interests Hide from Public Scrutiny and Why That Matters," in *Interest Group Politics*, 9th ed., pp. 240-244.

If individuals are choosing not to register under the LDA and they continue to engage in lobbying activities, the decline in the number of registered lobbyists and the number of disclosure forms filed provides possible but not conclusive evidence that the number of shadow lobbyists is increasing. **Figure 5** shows an estimate of the total number of lobbyists between 1998 and 2012.

Figure 5. Estimated Total Number of Lobbyists, 1998-2012



Source: George H.W. Bush School of Government and Public Service at Texas A&M and CRS analysis of data provided by Dr. Tim LaPira, James Madison University.

As **Figure 5** shows, the estimated number of lobbyists has declined since the enactment of HLOGA in December 2007 and the provision went into effect in January 2008.[104] The decline could be explained in several ways. First, the decrease in registered lobbyists could reflect a possible increase in the number of shadow lobbyists. In this scenario, HLOGA's increased disclosure requirements, including provisions requiring lobbyists to disclose campaign contributions, may have created an incentive for lobbyists to deregister to possibly avoid the filings.[105] Second, deregistration combined with a decrease in new registrations (see **Figure 3**) could reflect a policy shift by President Barack Obama to prohibit lobbyists from serving on federal advisory committees.[106] Third, the decline in registration could reflect a change in presidential administration from President George W. Bush to President Obama. Lobbying firms may have shifted resources as a result of the policy differences and attitude toward lobbyists between the Presidents. Fourth, the economic realities of the 2008-2009 recession could have resulted in less demand for lobbyists and, therefore, a reduction in registrations.

[104] 2 U.S.C. §1603, note.

[105] Richard L. Hasen, "Lobbying, Rent-Seeking, and the Constitution," *Stanford Law Review*, vol. 64, no. 1 (January 2012), pp. 191-253.

[106] Jacob R. Straus, Wendy R. Ginsberg, Amanda K. Mullan, and Jaclyn D. Petruzzelli, "Restricting Membership: Assessing Agency Compliance and the Effects of Banning Federal Lobbyists from Executive Branch Advisory Committee Service," *Presidential Studies Quarterly*, vol. 42, no. 1 (June 2015), pp. 310-334. Beginning in September 2009 and finalized in October 2011, the Obama Administration issued guidance to discourage the appointment of registered lobbyists to federal advisory committees. A study has found that this "ban" was generally effective in removing lobbyists from the United States Trade Representatives advisory committees and that this likely reflects an overall trend to reduce the number of lobbyists across all advisory committees. For more information on the Federal Advisory Committee Act, see CRS Report R40520, *Federal Advisory Committees: An Overview*, by Wendy Ginsberg.

As the number of registered lobbyists has declined, a change in practice and perception could be taking place. Because individuals who might have previously registered under the LDA are perhaps choosing not to, a change in the practice of who registers might be occurring. Additionally, as the number of registered lobbyists has declined, the perception of who ought to be classified as a lobbyist could be changing to include individuals or activities that previously might not have been considered advocacy or lobbying, like those who primarily work with grassroots organizations. Additionally, what might have been considered lobbying previously might not be considered lobbying today (or vice versa).

Grassroots Lobbying

Grassroots lobbying is the attempt to persuade policymakers by influencing public opinion and motivating citizens to take action, often by asking them to contact their Representatives and Senators.[107] Grassroots lobbying traditionally includes a variety of actors, including individual citizens, corporations, and advocacy groups. According to one observer, grassroots lobbying is used for a wide range of issues, but most often for matters that "involve a great departure from the status quo, and draw the most attention."[108]

Grassroots lobbying is differentiated from other forms of lobbying by the methods deployed. Instead of using professionals to contact decisionmakers directly, grassroots lobbying uses various strategies to get constituents to make contact. These strategies include having constituents call, write letters, make personal visits, protest, or send emails that advocacy groups help craft.[109] Grassroots lobbying can show Representatives and Senators that constituents "are willing to take ... action to inform their legislators about their preferences on an issue."[110] While some grassroots strategies have little or no cost (e.g., email), others may have significant cost of time and money (e.g., traveling to participate in a Capitol Hill day with a professional association).

With few exceptions, grassroots lobbying remains unregulated.[111] Past attempts have been made to regulate grassroots lobbying. For example, as introduced, the Senate version of HLOGA (S. 1, 110th Congress), contained a provision that would have required grassroots lobbying activities to be registered with and disclosed under the LDA. Introduced as Section 220 of HLOGA, grassroots lobbying would have been defined as "the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same."[112] Subsequently, firms that promoted grassroots lobbying would have had to register pursuant to LDA provisions within 45 days of being "retained by a client to engage in paid efforts to stimulate grassroots lobbying.... "[113] Following

[107] Jonathan C. Zellner, "Artificial Grassroots Advocacy and the Constitutionality of Legislative Identification and Control Measures," *Connecticut Law Review*, vol. 43, no 1 (November 2010), pp. 357-400; and Phil Harris and Conor McGrath, "Political Marketing and Lobbying: A Neglected Perspective and Research Agenda," *Journal of Political Marketing*, vol. 11, no. 1-2 (March 2012), pp. 75-94.

[108] Frank R. Baumgartner and Beth L. Leech, "Interest Niches and Policy Bandwagons: Patterns of Interest Group Involvement in National Politics," *The Journal of Politics*, vol. 63, no 4 (November 2001), p. 1205.

[109] Beth Lynn Leech, "Lobbying Strategies of American Interest Groups," (Ph.D. diss., Texas A&M University, 1998).

[110] Daniel E. Bergan, "Does Grassroots Lobbying Work?: A Field Experiment Measuring the Effects of an e-Mail Lobbying Campaign on Legislative Behavior," *American Politics Research* vol. 37, no. 2 (March 2009), p. 329.

[111] For more information on legal issues surrounding the possible regulation of grassroots lobbying, see CRS Report RL33794, *Grassroots Lobbying: Constitutionality of Disclosure Requirements*, by Jack Maskell.

[112] S. 1 (110th Congress), introduced January 4, 2007. Enacted as P.L. 110-81, the final version of HLOGA did not include provisions regulating grassroots lobbying.

[113] S. 1, §220 (b)(2).

registration, firms would have had to disclose estimates of income or expenses related to their grassroots efforts.[114]

According to one Senator, Section 220 was initially drafted to deal with what some called "astroturf" lobbying:

> An astroturf lobbyist is someone who gets paid, presumably by a large organization—a labor union, a corporation, a trade association, whatever it might be—to pretend there is a groundswell of grassroots support or opposition for or to a particular piece of legislation. So this hired gun, if you will, sends out letters, e-mails, faxes—whatever it is—to stir up phony grassroots support for or against the particular piece of legislation.[115]

Concern over the possible consequences of requiring grassroots lobbyists to register and disclose under the LDA resulted in the introduction of an amendment to delete Section 220 from the bill. In summarizing why the amendment was necessary, a Senator compared requiring the registration of grassroots lobbying efforts with banning constituent contact with Congress.

> Let me stress that again. This legislation says that grassroots lobbying is defined as members of the general public communicating with their Congressman or encouraging others to do the same.
>
> I thought that is what we were all supposed to do. I was taught in civics class in high school that everyone had the right to do that, without being forced to register and report all of their connections if somebody pays for it. Again, the Supreme Court says, constitutional protection of lobbying is not in the least diminished by the fact that it may be performed for others for a fee. But if you mess up your forms, if you don't file them on time, if somehow they are confusing to you and you have contacted your neighbors or have purchased a mailing list ... you are on the hook for $200,000, as the bill currently stands.[116]

In defense of Section 220, another Senator laid out the case for disclosure as a way to understand how money was being spent to fund grassroots campaigns, not to discourage citizens from contacting Congress:

> This legislation simply requires disclosure of the amount of money spent on grassroots lobbying when it is conducted by professional organizations. The opponents of this measure would have us believe we are trying to amend the first amendment. That is not true. Our Senate phones are often jammed with callers expressing their points of view and all giving the exact same message. That comes from somewhere, is paid for by somebody and is part of an organized effort, and the public and the Members have a right to know who is paying and how much.[117]

After debate, the Senate agreed to the amendment and removed Section 220 from HLOGA.[118]

The debate over the possible regulation of grassroots lobbying highlights the complexity in balancing the disclosure of lobbying activities and First Amendment protections of the right to petition. Recent studies on lobbying have highlighted the potential difficulty in understanding the scope of grassroots lobbying because groups that prompt such lobbying are not required to

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[114] S. 1, §220 (c).

[115] Sen. Robert Bennett, "Legislative Transparency and Accountability Act of 2007—Continued," remarks in the Senate, *Congressional Record*, vol. 153, part 1 (January 17, 2007), 1381.

[116] Ibid., p. 1382.

[117] Sen. Joseph Lieberman, "Legislative Transparency and Accountability Act of 2007—Continued," remarks in the Senate, *Congressional Record*, vol. 153, part 1 (January 17, 2007), 1395.

[118] "Legislative Transparency and Accountability Act of 2007—Resumed," *Congressional Record*, vol. 153, part 2 (January 18, 2007), pp. 1690-1691.

register or disclosure under the LDA.[119] For example, past studies have indicated "that 56% of interest groups regularly mobilize group members and an additional 38% of groups occasionally mobilize members,"[120] and the use of grassroots tactics, such as email, can have a large influence on legislative behavior.[121]

Differentiating the mobilization of members by an interest group from corporate use of grassroots tactics (i.e., "astroturf" lobbying) is also increasingly difficult. Sociologist Edward Walker argues that corporations are using grassroots tools to influence policy precisely because politicians listen to constituents in a different way than they listen to corporate lobbyists.[122] In fact, he recognizes that while "organized interests have always sought to facilitate popular participation through offering publics various types of incentives to get involved ... new communications technologies, professional practices for popular mobilization, and a changed field of advocacy organizations have combined to make it much easier for elites to recruit citizen activists."[123]

Groups have encouraged constituents to contact Members of Congress since before the ratification of the Constitution.[124] Modern technology, however, has enabled groups and corporations to engage individual citizens more effectively and more efficiently. Additionally, the number of opportunities for groups to ask individuals to write, email, call, or contact their Member of Congress through social media platforms has increased. Subsequently, these increased contact opportunities could result in a shift in both practice and perception.

As new platforms and technologies make communications with Members easier and less expensive, constituents may choose to engage Members of Congress more frequently—thus changing the practice of how Members interact with constituents. This could increase the number of incoming letters, emails, and social media interactions exponentially, thus potentially taxing the limited resources of Representatives and Senators. Further, the potential for increased constituent communication could change Member-constituent interaction. If Members perceive that grassroots organizations are influencing constituent communications, it is possible that certain mass communications could be treated differently by Members than individualized letters, email, or social media postings. This change in treatment could serve to marginalize certain constituent voices that have traditionally been activated by interest groups employing grassroots strategies.

Requiring grassroots lobbying firms to register and disclose activities, however, could have an effect on the volume of grassroots lobbying. If groups were required to register and disclose grassroots activities and they did not want to do so, they might face three choices: they could not comply with the law, they could stop using grassroots strategies to engage the general public, or they could alter their activities short of ceasing grassroots lobbying.

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[119] Burdett A. Loomis and Anthony J. Nownes, "Advocacy in an Era of Inequality," in *Interest Group Politics*, ed. Allan J. Cigler, Burdett A. Loomis, and Anthony J. Nownes, 9th ed. (Washington: CQ Press, 2016), pp. 365-366.

[120] Ken Kollman, *Outside Lobbying: Public Opinion and Interest Group Strategies* (Princeton, NJ: Princeton University Press, 1998).

[121] Daniel E. Bergan, "Does Grassroots Lobbying Work?: A Field Experiment Measuring the Effects of an e-Mail Lobbying Campaign on Legislative Behavior," *American Politics Research*, vol. 37, no. 2 (March 2009), pp. 345-346.

[122] Edward T. Walker, *Grassroots for Hire: Public Affairs Consultants in American Democracy* (New York: Cambridge University Press, 2014).

[123] Walker, *Grassroots for Hire: Public Affairs Consultants in American Democracy*, p. 10.

[124] For example, see James Madison, Alexander Hamilton, and John Jay's use of the *Federalist Papers* to persuade the citizens of New York to ratify the Constitution. A copy of the *Federalist Papers* can be found at https://www.congress.gov/resources/display/content/The+Federalist+Papers.

Should Congress desire that grassroots firms disclose activities, current LDA definitions of lobbying activities and the type of activities that trigger registration and disclosure would likely need to be amended. Amendments might focus on requiring grassroots organization to disclose income and expenses or the issue a grassroots campaign addresses. Additionally, an amendment could require that the grassroots firm disclose their client. Requiring the disclosure of the client might mirror current FARA requirements that foreign agents disclose the foreign government or entity with which they have a contract. Making any amendments to the current LDA to address grassroots, however, could make grassroots efforts more difficult.

Revolving Door

On a regular basis, federal employees leave the government for private sector employment, while the government also hires former private sector employees for government jobs. Often called the "revolving door," this practice can include individuals in all professions, ranging from career bureaucrats and congressional staff, to Members of Congress, and individuals appointed to executive branch positions by the President with the advice and consent of the Senate. Because personal networks and connections are often considered the highest form of currency in Washington, former Members of Congress, executive branch officials, and high-ranking staff connections and knowledge of the system are valuable to many outside of government.[125]

Revolving door provisions were initially enacted for several purposes, including the following:

- protecting against the use of proprietary information by former employees who might trade insider knowledge to the potential detriment of public interest;[126]
- limiting the potential influence that the allure of future employment might have on a federal employee when dealing with prospective private clients or future employers while still with the government;[127] and
- avoiding "the appearance of making unfair use of Government employment and affiliations," for private gain.[128]

Several laws govern the movement of federal employees from the government to the private sector and vice versa. Most prominently, 18 U.S.C. §207 provides a series of post-employment restrictions on "representational" activities for executive branch personnel when they leave government service, including

- a lifetime ban on "switching sides" on a matter involving specific parties on which any executive branch employee had worked personally and substantially while with the government;
- a two-year ban on "switching sides" on a somewhat broader range of matters which were under the employee's official responsibility;
- a one-year restriction on assisting others on certain trade or treaty negotiations;

[125] Vidal Blanes, Miko Draca, and Christian Fons-Ronen, "Revolving Door Lobbyists," *American Economic Review*, vol. 102, no. 7 (December 2012), pp. 3731-3748.

[126] United States v. Nasser, 476 F.2d 1111, 1116 (7th Cir. 1973). For more information on revolving door restrictions, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, by Jack Maskell.

[127] *Brown v. District of Columbia Board of Zoning*, 423 A.2d 1276, 1282 (D.C. App. 1980). For a discussion of appearances of improprieties, see *General Motors Corporation v. City of New York*, 501 F.2d 639, 648-652 (2d Cir. 1974).

[128] 5 C.F.R. §2637.101(c).

- a one-year "cooling off" period for certain "senior" officials barring representational communications before their former departments or agencies;
- a two-year "cooling off" period for "very senior" officials barring representational communications to and attempts to influence certain other high ranking officials in the entire executive branch of government; and
- a one-year ban on certain officials in performing some representational or advisory activities for foreign governments or foreign political parties.[129]

In Congress, post-employment restrictions are applied by the House and Senate respectively. In the House, Members and senior staff are subject to a one-year "cooling off" period, during which they cannot make lobbying contact with Representatives, Senators, or congressional staff.[130] In the Senate, a two-year ban on lobbying is in place. During this time, Senators cannot make lobbying contacts with anyone in Congress, as well as legislative branch employees. For senior Senate staff, a one-year "cooling off" period is in place.[131]

In addition to statutory revolving door restrictions, President Obama has instituted an ethics pledge (see **Appendix** for full text) that restricts registered lobbyists from serving in his Administration without receiving a waiver from the Office of Management and Budget (OMB).[132] Additionally, the pledge puts further restrictions on executive branch employees preventing them from using the revolving door for immediate employment outside government that requires advocacy on issues covered during federal employment.[133]

Discussion of whether the revolving door is positive or negative center around whether former government employees, when they switch jobs, have an inherent or perceived conflict of interest. Though lobbying legislation often treats the revolving door as a negative trend, the movement of individuals between the government and private sector may also present multiple potential benefits. Proponents of the revolving door, for example, observe that the promise of future private-sector employment could potentially improve the quality of candidates applying for government jobs.[134] Further, direct connections to government officials are important, but a close relationship is not necessarily what drives lobbying. While some believe that government employees contemplating a move to the private sector will be friendly to industry interests at the expense of the public interest, studies have shown that regulators instead may engage in more aggressive actions against industry and do not favor industry, regardless of their job prospects.[135] Additionally, the flow of personnel between the public and private sectors may increase the knowledge base of both sectors.

Critics of the revolving door and the movement of employees between the government and private sectors advocate for longer "cooling off" periods and stronger restrictions related to

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[129] This paragraph was written by Jack Maskell, legislative attorney in the Congressional Research Service's American Law Division. For additional information, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, by Jack Maskell.

[130] 18 U.S.C. §207(e)(1)(B) and 18 U.S.C. §207(e)(2)-(6).

[131] 18 U.S.C. §207(e)(1)(A).

[132] Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," 74 *Federal Register* 4673-4678, January 21, 2009.

[133] Ibid.

[134] David Zaring, "Against Being Against the Revolving Door," *University of Illinois Law Review*, vol. 2013, no 2 (2013), pp. 507-550.

[135] Zaring, "Against Being Against the Revolving Door," and Wentong Zheng, "The Revolving Door," *Notre Dame Law Review*, vol. 90, no. 3 (2015), pp. 1265-1308.

conflict of interest. Additionally, critics often assert that the revolving door has negative effects for the transparency and efficiency of government. These critics see existing bias between those in government and their connections with lobbying firms and the potential for those connections to be exploited when the individual is employed by the private sector.[136]

Additional criticism of the revolving door often focuses on the worth of a former government employee over time. With the possible exception of former Members of Congress or Cabinet officials, research has shown that a majority of revenue generated by private lobbying firms was directly attributable to employees with previous government experience.[137] Another study found that "'who you know' rather than 'what you know' drives a good proportion of lobbying revenues."[138] The "who you know" observation is further bolstered by a study that showed that lobbyists with experience in the office of a U.S. Senator suffer a 24% drop in generated revenue when that Senator leaves office. The effect for the former staffer is immediate, discontinuous around the exit period, and long-lasting.[139]

Making any adjustments to revolving door restrictions might be motivated by a change in perception. When a Member of Congress resigns or a senior staffer leaves the government to take a job as a lobbyist or elsewhere in the private sector, questions often arise as to whether these individuals have a conflict of interest if they go to work on issues they "covered" for the federal government. This arguably results in a change of perception about the role that Members of Congress and senior staff should play both inside and outside of government and raises concern about the potential for impropriety by former officials once they have left the government. As individuals depart the government for the private sector, they take with them knowledge of the legislative or regulatory process that can be valuable for non-governmental interests seeking to influence government action.

Additionally, adjustments to the revolving door might lead others to favor fewer restrictions on the flow of personal between the public and private sectors. The might lead to the acknowledgement that the federal government and private sector can both benefit when employees move between sectors.

Options for Congressional Action

The practice and perception of lobbying continues to evolve. New technologies, including social media,[140] have provided lobbyists with new ways to contact decisionmakers and were not contemplated when the HLOGA was enacted in 2007. Should a desire for change occur, Congress may wish to consider the appropriate balance between desired restrictions and the protection of the first amendment's right to petition.

Current laws focus on the registration of lobbyists, the disclosure of lobbying activities, and regulating how federal officials and employees use the revolving door. Additionally, lobbying law provides specific penalties for violation of the LDA and gives administrative authority to the Clerk of the House and the Secretary of the Senate and enforcement authority to the Department

[136] Laurence Tai and Daniel Carpenter, "SEC Capture by Revolving Door: Strengths and Weaknesses in the Evidence Base," *Law & Financial Markets Review*, vol. 8, no. 3 (September 2014), pp. 227-240.

[137] Blanes, Draca, and Fons-Ronen, "Revolving Door Lobbyists."

[138] John M. de Figueiredo and Brian Khelleher Richter, "Advancing the Empirical Research on Lobbying," *Annual Review of Political Science*, vol. 17 (2014), p. 167.

[139] Blanes, Draca, and Fons-Ronen, "Revolving Door Lobbyists."

[140] For example, see Seungahn Nah and Gergory D. Saxton, "Modeling the Adoption and Use of Social Media by Nonprofit Organizations," *New Media & Society*, vol. 15, no 2 (March 2013), pp. 294-313.

of Justice (DOJ). Should Congress want to consider amending the current lobbying laws to address the revolving door, shadow lobbying, or grassroots lobbying, several options could exist. These might include amending the definition of lobbying, changing disclosure thresholds for registered lobbyists, adjusting resources, and maintaining current lobbying standards. Additionally, Congress could address the revolving door and shadow lobbying through the administration of the LDA.

Change Definition of Lobbying

As discussed earlier under "The Lobbying Disclosure Act of 1995," to be considered a lobbyist, and individual must make at least one lobbying contact in a quarterly period, be compensated, and spend at least 20% of their time on lobbying activities. Should an individual not meet all three of these criteria, by definition he or she is not a lobbyist. Additionally, individuals self-report whether they are lobbyists. As a result, it is possible that someone could not make a lobbying contact, not be compensated, or spend less than 20% of his or her time on lobbying activities and avoid registering and reporting activities. As noted previously, individuals who otherwise appear to be lobbyists but do not fit all three parts of the definition are often labeled as "shadow lobbyists."

Should Congress want to ensure that individuals who are engaged in lobbying activities register with the Clerk of the House and the Secretary of the Senate, adjustments to the statutory definition of lobbying might be considered. Because the definition of a lobbyist has three parts, it might be possible to adjust one, two, or all three of these pieces.

Time Threshold

Amendments could propose raising, lowering, or eliminating the 20% time threshold. Should the threshold be lowered, it is possible that individuals who would not have qualified as lobbyists prior to such an amendment would now be required to register. In some cases, it is possible that individuals who spend comparatively little time on making lobbying contacts (e.g., a senior corporate executive) could have to register under a lower threshold.[141] Should the threshold be raised, it is possible that fewer individuals would report meeting the time needed to be a lobbyist. Finally, if the threshold were eliminated as a criterion, the definition of a lobbyist would depend solely on making contact with a covered official and being paid for one's actions. This change might result in more individuals being required to register. More registrations could provide a clearer picture of who is actually involved in lobbying government. Additional registration requirements, however, could be burdensome for individuals that contact covered officials, are paid for their actions, but spend little time lobbying on issues.

Compensation Requirements

Under current definitions, if an individual is not compensated for any lobbying activities, he or she does not have to register as a lobbyist.[142] Should Congress want to include individuals who

[141] Sharon B. Heaton and Allison R. Hayward, "Registration and Reporting Under the Lobbying Disclosure Act, as Amended," in *Political Activity, Lobbying Laws and Gift Rules Guide*, ed. Trevor Potter, 2nd ed., vol. 1 (Little Falls, NJ: Glasser Legalworks, 1999), pp. 5-3.

[142] U.S. Congress, Clerk of the House of Representatives, "Section 4 – Lobbying Registration," *Lobbying Disclosure Act Guidance*, at http://lobbyingdisclosure.house.gov/amended_lda_guide.html#section4. The guidance document states: "Note that a registration would not be required for pro bono clients since the monetary thresholds of Section 4(a)(3)(A)(i) in the case of a lobbying firm, or of Section 4(a)(3)(A)(ii) in the case of an organization employing in-house lobbyists, would not be met."

lobby on a pro bono basis, the LDA's monetary requirements could be eliminated as criteria. This change might increase the number of people who are required to register under the law, thus potentially increasing transparency. Requiring pro bono registration, however, could result in a decrease in individuals willing to lobby on a pro bono basis, thus limiting options for groups or individuals looking for representation in Washington, but who cannot otherwise afford to pay a lobbyist.

Contact Threshold

The LDA currently requires individuals to register if they make more than one lobbying contact in a quarterly period. Since registration is currently required after the first lobbying contact, it might be difficult to draft a provision that would require fewer contacts before registration is required. If Congress required that registration occur on the second (or subsequent) contact, however, the number of registrations may decrease as individuals who only have one contact per quarter would no longer be required to report.

Change Financial Disclosure Thresholds or Reporting Requirements

In addition to requiring registration of lobbying activities, the LDA stipulates that any person (or firm) meeting the definition of a lobbyist must disclose lobbying income (or expenditures). There are currently three ways that a lobbyist or firm can choose to disclose this information. First, the lobbyist or firm can file disclosure reports under the LDA's expense definitions. Under this method, lobbyists or firms must submit, to the best of their ability, an estimate of lobbying income or expenditures (not including grassroots expenses).

The other two reporting methods use the Internal Revenue Code's (IRC's) definition of expenses. These definitions are for groups that are required to report lobbying expenditures under section 6033(b)(8) of the IRC. This includes 501(c) nonprofit entities and 162(e) "for profit organizations (other than lobbying firms) and tax exempt organizations such as trade associations."[143] Under the IRC, organizations must provide information on their lobbying expenses, the amount of lobbying expenses that are nontaxable, the amount spent on grassroots lobbying, and the nontaxable amount spent on grassroots lobbying. Arguably, the variation in lobbying disclosure process allows organizations that are not required to report under the LDA to report under the IRC and avoid the disclosure of grassroots lobbying activities. When lobbyists do not have to disclose certain activities, they may be able to choose how to define their activities to alter the type of information they choose to disclose.

To capture the activities of a larger number of lobbyists and increase transparency, Congress could combine the LDA and IRC criteria and create a uniform reporting system for lobbying income and expenditures. Keeping the LDA's reporting requirements for contact with covered executive and legislative branch officials and maintaining the IRC expenditure reporting standards could create a broader picture of lobbying activities and potentially streamline reporting requirements. Combining LDA and IRC income and expense reporting, however, could require individuals, groups, and firms to report additional financial details to the IRC. Such a requirement

[143] U.S. Congress, Clerk of the House of Representatives, "Section 6 – Quarterly Reporting of Lobbying Activities: Organizations Reporting Expenses Under Section 15 (Options IRC Reporting Methods)," *Lobbying Disclosure Act Guidance*, December 14, 2014, at http://lobbyingdisclosure.house.gov/amended_lda_guide.html#section6. See also, Austin C. Clemens, "All Politics is Local, but Lobbying is Federal and Local: the Validity of LDA Data," *Business and Politics*, vol. 16, no. 2 (August 2014), pp. 267-289. For more information on 501(c) tax exempt organizations, see CRS Report 96-264, *Frequently Asked Questions About Tax-Exempt Organizations*, by Erika K. Lunder.

could have the effect of forcing individuals, groups, or firms to evaluate how lobbying-related income and expenditures are disclosed. Additionally, it could reduce the disclosure burden on lobbyists and lobbying firms by having fewer reports to file.

The disclosure of additional financial information could also provide additional transparency into how lobbyists and lobbying firms are spending money. Currently, the LDA requires that income and expenditures be rounded to the nearest $10,000 for expenses or income greater than $5,000 for quarterly disclosure reports.[144] This threshold could be adjusted to require more detailed disclosure of income and expenses by eliminating the rounding provision. Lobbyists and lobbying firms, however, might resist more specified reporting as a tacit restriction on their activities. More data could also mean that more oversight and review of the information would be needed.

Alter Lobbying Administration

Historically, enforcement of the LDA has been limited. According to the Government Accountability Office (GAO), "as of February 26, 2015, the USAO [United States Attorney's Office for the District of Columbia] has received 2,308 referrals from both the Secretary of the Senate and the Clerk of the House for failure to comply with LD-2 [quarterly disclosure] reporting requirements cumulatively for filing years 2009 through 2014."[145] Of these 2,308 referrals,

> about 52 percent (1,196 of 2,308) of the total referrals received are now compliant because lobbying firms either filed their reports or terminated their registrations.... About 48 percent (1,101of 2,308) of referrals are pending further action because USAO was unable to locate the lobbying firm, did not receive a response from the firm, or plans to conduct additional research to determine if it can locate the lobbying firm.[146]

Additionally, according to Lobbyists.info, the publisher of the book *Washington Representatives*, "between 1995 and 2010, only three lawsuits filed by the U.S. Attorney's Office against lobbyists were settled, and since 2010, at least five suits have been filed related to Honest Leadership and Open Government Act (HLOGA) and Foreign Agent Registration Act (FARA) violations."[147]

Should Congress wish to provide additional resources for the enforcement of the LDA, several options exist. These include providing additional monetary or staffing resources to the Clerk of the House and the Secretary of the Senate and the U.S. Attorney's Office for the District of Columbia, combining the administration of FARA and the LDA, and requiring a filing fee for LDA registration and disclosure.

Provide Additional Resources

Additional resources might include more money to hire additional staff for the Clerk of the House and Secretary of the Senate to proactively check registration and disclosure forms for compliance and for the DOJ to hire additional staff to investigate and potentially prosecute noncompliance referrals.

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[144] 2 U.S.C. §1604(c).

[145] U.S. Government Accountability Office, *2014 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, GAO-15-310, March 2015, p. 26, at http://www.gao.gov/assets/670/669270.pdf.

[146] Ibid.

[147] Matthew Barnes, "I Was a Teenage Unlobbyist: An Interview with Norman Ball," Lobbyist.info, July 7, 2015, at http://lobbyblog.com/i-was-a-teenage-unlobbyist-an-interview-with-norman-ball.

Additional funding to the USAO could allow for additional investigation and prosecution of lobbyists that have not complied with LDA registration or disclosure requirements. As GAO found in its 2014 study, approximately 48% of referrals for noncompliance with the LDA are pending further action. Additional resources could allow the USAO to investigate and potentially prosecute cases more quickly. At this time, however, the USAO does not believe it needs additional resources. It reported to GAO that "it has sufficient resources and authority to enforce LD-2 and LD-203 [campaign contribution disclosure] compliance with LDA. It has one contract paralegal working full time and six attorneys working part time on LDA enforcement issues."[148]

Combine FARA and LDA Administration

Lobbying laws differ for foreign lobbyists (FARA) and domestic lobbyists (LDA). These two laws are administered by two different entities—LDA by the Clerk of the House and the Secretary of the Senate, and FARA by DOJ. To streamline the administration of lobbying registration and disclosure, Congress might consider transferring FARA enforcement to the Clerk of the House and Secretary of the Senate or LDA enforcement to the Department of Justice.

Historically, registration of domestic lobbyists, regardless of whether contact is made with the executive or legislative branch, has been handled by the Clerk of the House and the Secretary of the Senate. Congress could choose to maintain LDA administration with these officers, could add FARA enforcement to their portfolio, or could transfer LDA administration to the Department of Justice. Such a change, however, would likely require additional resources to hire personnel and to realign current LDA or FARA registration and disclosure.

Alternatively, Congress could create a new entity to administer both the LDA and FARA. Creating a new agency could allow a singular focus on lobbying and potentially provide for a holistic view of lobbying registration and disclosure across both domestic and foreign clients and issues, regardless of whether contact is made with the executive or legislative branch. Combining lobbying administration into a new agency, however, could involve significant costs to transfer LDA and FARA data and to hire personnel.

Should Congress merge LDA and FARA enforcement, DOJ would likely retain the right to investigate and potentially prosecute noncompliance. If a combined lobbying administration unit was placed either in Congress or a new (or existing agency), referrals of noncompliance to the USOC would likely still be required for DOJ to potentially take any action.

Institute User or Filing Fees

Should Congress want to provide additional resources for LDA implementation and enforcement, one option could be to implement a user fee to be paid by the lobbyist or lobbying firm. These user fees might be paid at the time of registration, disclosure, or both. User fees are defined by GAO as "a price charged by a governmental agency for a service or product whose distribution it controls," or "any charge collected from recipients of Government goods, services, or other benefits not shared by the public."[149]

User fees can be a generator of revenue that could be used to further finance enforcement activities. In a 1980 report on user fees, GAO summarized user fees as a source of revenue and

[148] U.S. Government Accountability Office, *2014 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, GAO-15-310, March 2015, at http://www.gao.gov/assets/670/669270.pdf.

[149] U.S. General Accountability Office, "Chapter 12: Acquisition of Good and Services," *Principles of Federal Appropriations Law*, 3rd ed., vol. III, GAO-08-978SP, September 2008, p. 12-143.

program support: "User charges can reduce Federal taxes, as well as the costs of certain types of regulation. They are a source of revenue that can partially replace general taxation of individuals and businesses."[150]

Implementing user fees for the LDA could raise additional resources for the Clerk of the House and the Secretary of the Senate, and DOJ for LDA enforcement without having to increase appropriations to these offices. Implementing an LDA user fee would also more closely align the administration of the LDA with the administration of FARA. Currently, FARA requires a fee for document filing, copies of records, database searches, opinion letters, and copies of annual or semi-annual reports.[151]

If LDA enforcement was supported in whole or in part by user fees, it is possible that user fees might not cover full expenses. If user fees did not cover full expenses, Congress would likely have two choices: authorize additional appropriations or require that the enforcement entity raise money through other associated user fees. For example, while not an exact analogy, a study of the United States Patent and Trademark Office (PTO)—an agency that is a "fully use-fee-funded body"—found that application fees covered one-third of the cost to review applications. Subsequently, the PTO "must subsidize patent examination by assessing fees on other activities."[152]

Some constitutional scholars question when a user fee should be used in lieu of appropriations. For some, when a fundamental, constitutional right is in question—including when nonparticipants might receive benefits from an activity—then they believe that taxes should cover the expenses of implementation of a law.[153] For others, user fees constitute the most direct way for individuals or groups covered by a specific law to pay for its enforcement in a collective way.[154]

Amend Revolving Door Restrictions

Should action to alter revolving door restrictions be desired, several options might exist. These could include extending the "cooling off" period to two years or more, reducing the "cooling off" period, placing a blanket ban on taking certain positions for compensation, and placing a ban on taking certain types of non-governmental positions.

Currently, "cooling off" periods for the House and Senate differ, with a one-year period for Representatives, senior House staff, and senior Senate staff; and two years for Senators.[155] One

[150] U.S. General Accounting Office, *The Congress Should Consider Exploring Opportunities to Expand and Improve the Application of User Charges by Federal Agencies*, PAD-80-25, March 28, 1980, p. 1, at http://www.gao.gov/assets/130/129150.pdf.

[151] U.S. Department of Justice, "FARA Fee Schedule," at http://www.fara.gov/farafee.html. For additional information, see 28 C.F.R. §5.5(d).

[152] Michael D. Frakes and Melissa F. Wasserman, "The Failed Promise of User Fees: Empirical Evidence from the U.S. Patent and Trademark Office," *Journal of Empirical Legal Studies*, vol. 11, no. 4 (December 2014), p. 603. Other activities for which fees are charged include the issuance of patents (issuance fee) and the renewal of patents (maintenance fee).

[153] Clayton P. Gillette and Thomas D. Hopkins, "Federal User Fees: A Legal and Economic Analysis," *Boston University Law Review*, vol. 67, no. 5 (November 1987), p. 825.

[154] C.C. Harris, B.L. Driver, C.S. Brinkley, and R.O. Mendelsohn, "Recreation User Fees. I. Pros and Cons; II. An Economic Analysis," *Journal of Forestry*, vol. 85, no. 5 (1987), pp. 25-40.

[155] 18 U.S.C. §207(e)(1)(B); and 18 U.S.C. §207(e)(1)(A). For more information on legislative branch revolving door restrictions, see CRS Report R42728, *Post-Employment, "Revolving Door," Laws for Federal Personnel*, by Jack Maskell.

option might be to make the House and Senate periods equal (at either one or two years) or extend the period further for both chambers. While making the House and Senate "cooling off" period the same length, extending the "cooling off" period to two years could possibly be seen as an unreasonable restriction on post-employment for Members of the House—individuals who serve shorter terms than their Senate counterparts and as a result could return to the private sector faster. Alternatively, Congress could reduce the "cooling off" period. Having a shorter "cooling off period" might increase the talent pool available both inside and outside the government.

Instead of, or in addition to, "cooling off" periods, Congress could enact a blanket restriction on the acceptance of outside employment for the length of the Member's elected term. For example, since a Member of the House is elected to a two-year term,[156] he or she could not resign to take private employment until the end of the term to which they were elected—the beginning of the next Congress.[157] Such a policy might encourage Members to finish their terms before seeking outside employment. Placing post-employment restrictions on Members for the length of the term to which they were elected could have the effect of encouraging Members to remain in office rather than resigning to take a private position. Additionally, placing a restriction on the acceptance of compensation, fees, or other remuneration from any private employment activities would not prohibit Members from resigning to accept presidential appointments or other government jobs.[158]

Several disadvantages to creating such post-employment restrictions on Members potentially exist. First, if the measure prohibited only the acceptance of private compensation, fees, or other remuneration, it is possible that a Member could resign from Congress to take an uncompensated position with any private entity. These positions might be advisory in nature and could carry the promise of future compensation after the end of the former-Member's elected term.

Second, prohibiting private compensation, fees, and other remuneration, does not necessarily account for the potential need of a Member to resign to tend to a family business or other family interests. In these cases, for example, as the result of a death in the family, a Member could feel it necessary to step away from his or her congressional responsibilities to focus on personal matters. Banning the Member from taking compensation from a family business may be seen as overly burdensome.

Finally, prohibiting a Senator from accepting private compensation for the duration of his or her elected term could put an undue burden on the Senator, since he or she is elected to a six-year term and would need to wait until the end of that six-year period to potentially accept a new job. One potential way to equalize the burden across the House and Senate would be to require an intervening election before compensated employment could be accepted. This would require the Senator to wait up to two years before restrictions were lifted.

As a potential alternative to a blanket ban on receiving private compensation, fees, or other remuneration for any private employment activities during that time for which he or she was

[156] The Resident Commissioner from Puerto Rico is elected to a four-year term. For more information on the Resident Commissioner, see CRS In Focus IF10241, *Puerto Rico: Political Status and Background*, by R. Sam Garrett; CRS Report R40170, *Parliamentary Rights of the Delegates and Resident Commissioner from Puerto Rico*, by Christopher M. Davis; and CRS Report R42765, *Puerto Rico's Political Status and the 2012 Plebiscite: Background and Key Questions*, by R. Sam Garrett.

[157] Senate Rule XXXVII, paragraph 12(a), provides a similar requirement. Rule XXXVII prohibits Senators from negotiating for future employment until the election of a successor.

[158] Although some courts have suggested that it is not "unlawful discrimination" to place restrictions on a Member's ability to earn outside income while serving in Congress, (*Laxalt v Kimmitt*, 78-1437 and 78-1438 (D.C.Cir.)) it is not clear whether this reasoning would extend to a prohibition on a former Member's ability to earn a salary after he or she has resigned from Congress.

elected, Congress could ban Members from taking certain positions for the duration of their elected terms. Based on current post-employment restrictions, these positions might be related to advocacy with the potential to interact and influence former colleagues or employees.

Prohibiting Members from resigning their positions to take employment with entities that are required to register under the LDA and FARA could have the effect of making such positions less attractive for a Member until *after* his or her term in office. Current "cooling off" periods, however, already restrict Members from engaging in some of these activities, even if they are not prohibited from accepting the positions for compensation. Prohibiting Members from resigning to take lobbying or foreign agent positions would not necessarily stop them from leaving Congress to accept other non-lobbying positions.

Maintain Current Lobbying Standards

Congress might determine that current lobbying laws are effective or that the potential costs of changes outweigh potential benefits. Instead of amending the LDA or FARA, Congress could continue to use existing law to require lobbyist registration and disclosure. Changes to the LDA or FARA could be made on an as-needed basis through changes to LDA guidance documents issued by the Clerk of the House and Secretary of the Senate,[159] or through the prosecution of lobbying enforcement cases by the Department of Justice.

Conclusion

On December 19, 2015, the Lobbying Disclosure Act celebrates its 20th anniversary. Initially enacted to require lobbyists to register and disclose their activities and expenses to Congress, the LDA has been modified over its 20 years to include more frequent disclosure of lobbying activities and the reporting of lobbyists' campaign contributions. Coupled with FARA, the lobbying registration and disclosure regime is designed to protect citizens' right to petition the government, while requiring that those activities be conducted in a transparent manner.

An analysis of the four key lobbying laws enacted since 1946 and scholarly work on lobbying raised three issues that have the potential to cause shifts in lobbying practices and perception: shadow lobbying, grassroots lobbying, and the revolving door. Should Congress wish to address these issues, several options exist.

Specific options include changing the definition of lobbying by amending time thresholds, compensation requirements, or contact thresholds; altering the administration of the LDA by providing additional monetary or staff resources, combining the administration of FARA and LDA either under the Department of Justice, the Clerk of the House and Secretary of the Senate, or a new entity; or instituting user fees or maintaining the current lobbying standards.

Should Congress decide to make changes to the LDA, it will likely be the result of new changes in the practice or perception of lobbying. Whether future amendments to LDA might occur is not known. If history is a guide, however, a shift in the practice or perception of lobbying is likely to occur at some point in the future. At that time, Congress might reevaluate how lobbying registration and disclosure is managed and implemented.

[159] For more information on the role of the Clerk of the House and the Secretary of the Senate to administer the lobbying registration and disclosure system see CRS Report RL34377, *Lobbying Registration and Disclosure: The Role of the Clerk of the House and the Secretary of the Senate*, by Jacob R. Straus.

Appendix. Executive Order 13490

Signed by President Obama on January 21, 2009, the order stated:

> Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2009, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:
>
> "as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:
>
> 1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
>
> 2. *Revolving Door Ban—All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
>
> 3. *Revolving Door Ban—Lobbyists Entering Government*. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment: (a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment; (b) participate in the specific issue area in which that particular matter falls; or (c)seek or accept employment with any executive agency that I lobbied within the 2 years before the date of my appointment.
>
> 4. *Revolving Door Ban—Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.
>
> 5. *Revolving Door Ban—Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.
>
> 6. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience."[160]

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[160] Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," 74 *Federal Register* 4673-4678, January 21, 2009.

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