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Federal & Rhode Island Reporting and Registration Requirements Related to Lobbying Activity

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When not-for-profit organizations think about getting involved in the political process, one of the first concerns is avoiding any activity that may jeopardize their tax-exempt status. Those questions are addressed in the KLR whitepaper on [Political Campaign Activity and Lobbying for a 501\(c\)\(3\) Organization](#) which describes the lobbying limitations imposed on tax-exempt organizations by the Internal Revenue Code. If, after reading that whitepaper you begin to engage in permitted lobbying activities, you should also be aware of the Federal and Rhode Island reporting and registration requirements that accompany this activity.

Compliance with laws and regulations is a legal matter and KLR is not engaged in providing legal services. This whitepaper is meant only to inform the reader and you are encouraged to seek legal assistance for answers to specific questions.

The first distinction to draw is the difference between lobbying activities conducted by your employees and those conducted by professional lobbyists that you pay to lobby on your behalf. Registration and reporting requirements will be applicable to activities (beyond a certain threshold) conducted by your employees. However, activities engaged in by your paid professional lobbyist will be reported by that lobbying firm. The combined cost of each, however, enters into the calculation of the amount of lobbying activity conducted by your organization.

Federal Registration and Reporting Under the Federal Lobbying Disclosure Act

The Federal Lobbying Disclosure Act (the Act) applies only to direct lobbying and not to grass roots lobbying. If you only engage in grass roots lobbying, you are not required to register or report under the Act and you may skip this portion of the whitepaper.

Tax-exempt entities are required to register their employee-lobbyists if they have one or more compensated employees who satisfy the following two conditions:

1. Make more than one “lobbying contact” on behalf of your organization, and
2. Spend at least 20% of their total time on “lobbying activities” over a given quarterly reporting period.

A “lobbying contact” is a written, oral or electronic communication to a “covered” federal official with respect to the formulation, modification or adoption of a federal law, regulation, rule, program, or policy – or the administration or execution of a federal program or policy. A “covered” federal official is a member of congress, a congressional staff member, and certain other senior officials of the executive branch of government.

“Lobbying activities” of course include lobbying contacts described above as well as the background activities, research and other efforts that support a lobbying contact. Of course, background activities that do not lead to or support a lobbying contact are not lobbying activities. This may require you to keep track of research and other activities and subsequently classify them as lobbying activities depending on the organizations actions stemming from the research and other activity.

As with the lobbying cost rules, lobbying activities do not include testifying or submitting written testimony relative to legislation, regulations, etc. Also, the federal lobbying activities do not include lobbying activities aimed at legislators or governmental bodies at the state or local levels. Therefore, engaging the Federal EPA and the State Department of Environmental Management on the same regulation are actually two distinct activities for cost accumulation, reporting and registration purposes.

There are some differences between the definition of “lobbying activities” as contained in the Federal Lobbying Disclosure Act discussed above and the Internal Revenue Code’s definition of “influencing legislation” contained in Section 501(h) of the Code. If your organization has made the safe harbor election under Section 501(h), then you have the option of using either definition to determine your organization’s reporting obligation. As stated in our previous white paper, KLR encourages all organizations who engage in lobbying to make a Section 501(h) election.

Even if you satisfy the two conditions above, you will not have a federal reporting requirement unless you have spent \$11,500 or more on lobbying activities in a quarterly reporting period. This \$11,500 includes salaries, overhead, and other expenses including payments to outside lobbyists.

Example1: If your organization paid an outside lobbyist \$12,000 but did not have an employee or group of employees who satisfy the two conditions noted above, then you do not have a federal reporting requirement. Your lobbyist may have a reporting requirement but you are not responsible for that obligation.

If your employees who satisfy the two conditions above have total costs of only \$2,000 but you have also paid an outside lobbyist \$10,000 (totaling \$12,000 in lobbying expenditures during the quarter) then you do have a reporting requirement because you have met the two conditions **and** have expenditures for lobbying activities that exceed \$11,500 for the quarterly reporting period.

Although we have initially talked about the reporting requirements above, there is also a registration requirement for a lobbyist. Only lobbyists who have a reporting requirement have the registration requirement.

An organization’s employee-lobbyist(s) have to register within 45 days of:

1. Being hired if it is anticipated they will make more than one lobbying contact and meet the 20% threshold; or
2. Making a second lobbying contact (assuming the intent to make a more than one lobbying contact **did not** exist when they were first hired) and meeting (or intending to meet) the 20% threshold.

Since the reporting and registration requirements discussed above may hinge on intent, we recommend that organizations memorialize their intentions in a memo or employment letter when they first engage an employee-lobbyist.

The registration form is known as the LD-1. It includes the name(s) of the lobbyist, the name of the employer, identification of any foreign entity and its contributions if they are over \$5,000 or if the

foreign entity controls your organization or plans or supervises its activities, and a list of the general issue areas on which you expect to lobby.

The quarterly reports are known as LD-2 reports and must be filed within 20 days of the end of each calendar quarter. These reports include the issues lobbied upon, the bill numbers, earmarks lobbied upon, names of the lobbyists and the Houses of Congress and federal agencies contacted. The reports also will include the amount of lobbying expenditures for that reporting period. Reports are filed electronically via this site: <http://lobbyingdisclosure.house.gov/index.html>

You have to file the LD-1 registration as soon as you realize that you will have reporting requirements and will be filing the LD-2 reports.

There are unusually significant penalties for failure to comply with the Lobbying Disclosure Act. In 2007 the Act was amended to increase the civil penalties for violations of the Act and for failing to remedy a defective filing to \$200,000. In addition, there are criminal penalties for “knowingly and corruptly” failing to comply with the Act, with a maximum of five years’ imprisonment.

Rhode Island Registration and Reporting

Rhode Island General Laws 22-10 regulate lobbying activities in the state.

In Rhode Island, “Lobbying” means acting directly or soliciting others to act for the purpose of promoting, opposing, amending, or influencing in any manner the passage by the General Assembly of any legislation or the action on the legislation by the Governor.

A “Lobbyist” is any person who engages in lobbying as the appointed representative of another person. A “person” is an individual, firm, business, corporation, association, partnership or other group. This includes employees of not-for-profit organizations who engage in lobbying as well as the entity itself.

Note: The federal Act talks about “lobbying activities” which include the background activities that support the lobbying effort. The Rhode Island law only addresses lobbying as the direct act of promoting, opposing, amending, etc. Therefore, your employees who are performing research would not appear to be included in the Rhode Island regulated lobbying activities, but the employees who are stuffing envelopes for a mailing which promotes or opposes a piece of legislation are probably included.

This law does not apply to individuals whose sole lobbying activity is testifying at a public hearing of a legislative committee or commission on behalf of a nonprofit organization, as long as that individual receives no compensation from the nonprofit organization and for whom the nonprofit organization expends no funds related to the appearance.

Note: This exclusion does not apply to any nonprofit employee since any effort expended during normal work time would be a compensated activity. However, this exclusion does allow the nonprofit organization to provide a volunteer board member or other volunteer to testify at a public hearing without need to comply with this law.

Financial reports must be filed with the Secretary of State. These include a complete and itemized report of all expenditures made for the purpose of lobbying. The initial report is to be filed by the organization and the individual lobbyist at the time of their initial registration and updated on the 15th of each month thereafter.

Lobbyist registration and reporting can be performed electronically via the Rhode Island Secretary of State's web site. You must register the name of your organization and your lobbyist after commencement of the legislative session and within 7 days of the employment of the lobbyist(s). The Secretary of State's website contains specific information relative to the registration and reporting process.

If there is a special session of the General Assembly and you may engage in lobbying activity for that session, you must register within 24 hours. Reports are due every 14 days.

By January 15th of each year, every lobbyist and organization which employed a lobbyist and was required to register with the Secretary of State, must file a complete and detailed report of all money or anything of value (which in the aggregate exceeds \$250) that was provided or promised to any major state decision maker during the preceding calendar year. A copy of this report also must be provided to the Rhode Island ethics commission and any major state decision maker mentioned in the report. The law contains a definition of a "major state decision maker".

The penalties for violation of this law are not to exceed \$2,000. Willful violations are subject to a criminal penalty and a fine of not less than \$500 but not more than \$10,000.

Ballot Question Advocacy

In addition to the lobbying laws, Chapter 17-25.2 of the Rhode Island General Laws addresses **Ballot Question Advocacy and Reporting**. This law may appear to be duplicative of the above lobbying law. However, this law is aimed specifically at ballot questions and not activities of the General Assembly and the other law did not address ballot questions.

This law indicates that every ballot-question advocate must file periodic reports with the State Board of Elections. Reports are due by 4:00 PM on the due dates discussed below. The Board of Elections has the ability to grant a 7-day extension for filing a report as long as the request for extension is received by the original due date and time. This 7-day extension does not apply to the last monthly report that is due before Election Day. There is a \$25 fine for failure to file or late filing. The Board of Election will send a notice of noncompliance via certified mail and an additional fine of \$2 per day will begin to be applied 7 days after receipt of the noncompliance notice until the noncompliance is resolved.

A **ballot-question** is any question, charter change, constitutional amendment, referendum or voter initiated petition places on any ballot for a general or special election. **Advocacy** means advocating for the passage or defeat of a ballot question. A **ballot question advocate** is any person making expenditures with a cumulative total of \$1,000 or more in a calendar year per ballot question. The law specifically indicates that a ballot question advocate includes any 501(c)(3) organization.

"Contributions" means donations to a ballot-question advocate in the form of money, gifts, loans, paid personal services, or in-kind contributions defined below.

"In-Kind Contributions" is defined as the monetary value of other things of value or paid personal services donated to any person required to file reports with the board of elections, except for newsletters and other communications paid for and transmitted by an organization to its own members and not to the general public.

When reporting, the organization must provide the name and address of at least one board officer that is responsible for the organization's compliance with this law.

In addition to reporting the name, address and expenditures of your organization, the law also requires information regarding any contributions you may have received to finance the ballot question advocacy. This means that if your not-for-profit organization solicited or received funds specifically for ballot question advocacy, you must also report the name, address, place of employment (if applicable) of each person making a contribution or series of contributions that in the aggregate exceed \$1,800 per election cycle. Contributions include those defined above as well as in-kind contributions also defined above.

We assume that the requirement to provide the place of employment of a donor is if the donor is supporting your advocacy effort for a business reason rather than a personal reason. The law does not provide any guidance in this area and if this is applicable to you, we again suggest you discuss this issue with your attorney.

Reporting also includes the name and address of each person or entity receiving expenditures for ballot question advocacy which in the aggregate exceeds \$100; the amount of each expenditure and the total amount of expenditures as of the last report date.

You also must report whether you are advocating in support or in opposition to the ballot question. If you are supported or endorsed by other organizations, corporations or associations that authorize you to represent to the public that they also support your position, this must also be disclosed in your report.

Your first report is due 7 days after the end of the month for the period beginning when you exceed the \$1,000 cumulative total of expenditures and ending the first full month following such date. For example; if your cumulative total expenditures exceed \$1,000 in July, your first reporting date ends at the end of August and your report is due by September 7th. After that, you have monthly reports due by the 7th of the following month.

The last monthly report is due 7 days before the election. For example; if the election were held on November 6th, the October report is due on October 31st rather than November 7th.

A final report is due 30 days after the election.

Read our related whitepaper titled: [Federal & Massachusetts Reporting and Registration Requirements Related to Lobbying Activity.](#)

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*Please note that this whitepaper is a general summary of the law and omits many important details, footnotes and caveats. It is no substitute for informed advice from a tax professional based on your particular circumstances.

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