

FEDERAL LOBBYING REPORT REQUIREMENTS & RESTRICTIONS  
FREQUENTLY ASKED QUESTIONS  
LD-2: DISCLOSURE OF LOBBYING *EXPENSES*  
The State University of New York  
*April 2013*

---

**Q: What is the Lobbying Disclosure Act of 1995?**

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

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

**Q: Who Must Register and When**

Organizations employing in-house lobbyists file a single registration. An organization is exempt from registration if its total expenses for lobbying activities do not exceed and are not expected to exceed \$12,500 during a quarterly period.

The registration requirement of a potential registrant is triggered either (1) on the date their employee/lobbyist is employed or retained to make more than one lobbying contact on behalf of a client (and meets the 20% of time threshold), or (2) on the date their employee/lobbyist (who meets the 20% of time threshold) in fact makes a second lobbying contact, whichever is earlier. In either case, registration is required within 45 days.

If the organization meets the threshold in one quarter, it appears it must report for the other quarters of that year (but may indicate no lobbying activities).

**Q: Who is a lobbyist?**

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

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

In filing federal lobbying reports, the SUNY system administration and each campus can be both a *client* and a *registrant*.

**Q: What are “lobbying activities”?**

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

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

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

(A) DEFINITION.-The term "lobbying contact" means any oral or written communication (including an electronic communication) to a *covered executive branch official* or a *covered legislative branch official* that is made on behalf of a client with regard to-

- (i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);
- (ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
- (iii) the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license)\*; or
- (iv) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

**Q: Who are “covered officials”?**

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

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

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

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

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

**Q: Does SUNY System Administration file a lobbying report?**

Yes. The official name of the form is called the "LD-2." SUNY System Administration files a separate report as do campuses that meet the threshold for reporting.

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

Yes. Beginning with all 2012 Lobbying Reports, each SUNY campus will report independently if it meets the lobbying reporting threshold.

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

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

**Q: When and Why a Report is Needed?**

Each registrant must file a quarterly report on Form LD-2 no later than 20 days (or on the first business day after such 20th day if the 20th day is not a business day) after the end of the quarterly period beginning on the first day of January, April, July and October **of each year** in which a registrant is registered. Lobbying firms file separate reports for each client for each

quarterly reporting period, while organizations employing in-house lobbyists file one report covering their in-house lobbying activities for each quarterly reporting period. All reports must be filed electronically (with exceptions as noted previously). **The Secretary and Clerk do not have the authority under the LDA to grant extensions to registrants.**

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

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

The obligation to report under the LDA arises from active status as a registrant (i.e., a registration on file that has not been validly terminated). Section 5(a) of the LDA requires a registrant to file a report for the quarterly period **in which it incurred its registration requirement**, and for each quarterly period thereafter, through and including the reporting period encompassing the date of registration termination. A timely report using Form LD-2 is required even though the registration was in effect for only part of the reporting period. So long as a registration is on file and has not been terminated, a registrant must report its lobbying activities even if those activities during a particular quarterly period would not trigger a registration requirement in the first instance (e.g., a lobbying firm's income from a client amounted to less than \$3,000 during a particular quarterly period). A registrant with no lobbying activity during a quarterly period completes and files the first page (only) of Form LD-2.

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

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

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

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

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

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

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

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

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