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Differences in Lobbying Definitions and Their Impact

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The Honorable Fred Thompson, Chairman
The Honorable Joseph I. Lieberman, Ranking Minority Member
Committee on Governmental Affairs
United States Senate

The Honorable Henry J. Hyde, Chairman
The Honorable John Conyers, Jr., Ranking Minority Member
Committee on the Judiciary
House of Representatives

The Honorable Charles T. Canady, Chairman
The Honorable Melvin L. Watt, Ranking Minority Member
Subcommittee on the Constitution
Committee on the Judiciary
House of Representatives

To increase public disclosure of the identity and extent of the efforts of lobbyists who are paid to influence decisionmaking by federal legislative and executive branch officials, Congress enacted the Lobbying Disclosure Act of 1995 (LDA).[1] LDA, as amended,[2] requires paid lobbyists to register with Congress and semiannually report on their lobbying activities. LDA also requires us to review the reporting of lobbying activities by organizations that have employees who lobby on the organizations' behalf and have the option to report their lobbying expenses under LDA using the definitions of lobbying in either (1) LDA or (2) the applicable Internal Revenue Code (IRC) provision—IRC sections 4911 or 162(e)—that they use for tax purposes.[3] Section 4911 imposes taxes on lobbying expenditures over certain limits incurred by certain IRC section 501(c)(3) tax-exempt nonprofit organizations, commonly known as public charities.[4] IRC section 162(e) generally concerns the denial of income tax deductions by businesses for lobbying.

[1] Pub. L 104-65.

[2] Lobbying Disclosure Technical Amendments Act of 1998, Pub. L 105-166.

[3] We are not required to review the reporting of lobbying activities by lobbying firms that are hired to represent clients.

[4] Public charities include entities organized and operated exclusively for religious, charitable, scientific, public-safety testing, literary, or educational purposes; for the prevention of cruelty to children or animals; or to foster amateur sports. Churches and their integrated auxiliaries cannot use IRC section 4911.

As agreed with your offices, our objectives for this report were to

- describe the differences between the LDA and IRC section 4911 and 162(e) definitions of lobbying;
- determine the impact that differences in the definitions may have on registration and reporting under LDA, including information on the number of organizations using each definition and the expenses they have reported; and
- identify and analyze options, including harmonizing the three definitions, that may better ensure that the public disclosure purposes of LDA are realized.

Results in Brief

The LDA definition of lobbying differs significantly from the definitions of lobbying under IRC sections 4911 and 162(e). Most significantly, the LDA definition covers only contacts with federal officials. The IRC definitions cover contacts with federal, state, and local officials as well as attempts to influence the public through grassroots lobbying, such as television commercials on a bill under debate in Congress or a state legislature. Also, the definitions differ in their coverage of contacts with federal officials, depending on whether the contact concerns a legislative or nonlegislative matter. For example, for contacts with federal executive branch officials about nonlegislative matters, LDA covers about 4,600 officials, or 10 times the number of such officials that IRC section 162(e) covers; IRC section 4911 does not cover contacts with officials in such circumstances.

The differences in the lobbying definitions can affect whether organizations register under LDA. An organization that engages or expects to engage in certain lobbying activities during a 6-month period, including incurring at least $20,500 in lobbying expenses, is required to register under LDA. The definition an organization uses in calculating its lobbying expenses determines the expenses it counts toward the $20,500 threshold. When using the LDA definition would result in expenses of more than $20,500, an organization may be able to use the applicable IRC definition to keep its lobbying expenses below $20,500 or vice versa. However, no data exist to determine (1) the number of organizations that met the threshold under LDA's definition but are not registered as a result of using an IRC definition or (2) whether any registered organizations that may have met the threshold under an IRC definition did not do so under the LDA definition.

In addition to affecting whether an organization is required to register under LDA, the lobbying definition an organization uses affects the information it must disclose on its semiannual lobbying report. An

organization can switch between the LDA definition and the applicable IRC definition from one year to another, and it can choose the definition that enables it to disclose the least information.

When using an IRC definition, an organization must report its total lobbying expenses for all activities covered by that definition, including grassroots lobbying and federal, state, and local government lobbying. However, all of these expenses are reported in one total amount, so the lobbying reports do not indicate the amount related to different levels of government and types of lobbying activities. Also, when organizations report information other than expenses, such as the issues on which they lobbied, they are required to report only information related to federal government lobbying, regardless of whether they use the LDA definition or one of the IRC definitions to calculate expenses. Thus, when using an IRC definition, organizations can report expenses that do not relate to other information disclosed on their lobbying reports.

Because of the differences in definitions, information disclosed on lobbying reports filed by organizations using the IRC definitions is not comparable to information on reports filed by organizations using the LDA definition. Further, the information that is reported under the IRC definitions, particularly expense data, can be unrelated to LDA's purpose of disclosing efforts to influence federal decisionmaking—e.g., when the information includes expenditures for state and local lobbying. Under the IRC definitions, organizations can also disclose less information than under the LDA definition, such as for contacts with officials in the executive branch about nonlegislative matters. On the other hand, if organizations contact lower level executive branch officials about legislation, then using an IRC definition could result in more information being disclosed than under the LDA definition

Of the organizations that lobbied on their own behalf and had the option of using an IRC definition for reporting expenses under LDA, most used the LDA definition. Less than a third elected to use the IRC definitions. Specifically, for the July through December 1997 reporting period, 1,306 used the LDA definition; 157 and 361 used the IRC section 4911 and 162(e) definitions, respectively. The organizations that reported using the IRC section 162(e) definition had the highest mean and median expenses.[5]

[5] The mean is the sum of all the expenses of organizations using a particular lobbying definition divided by the total number of organizations using the definition. The median is the midpoint of all expenses reported by organizations using a particular lobbying definition, when those expenses are arranged in order from lowest to highest.

Because the differences among the three lobbying definitions can significantly affect who registers and what they report under LDA, the use of the IRC definitions can conflict with LDA's public disclosure purpose. Options exist for reducing or eliminating these potential conflicts with LDA's purpose. These options include (1) harmonizing the definitions, (2) eliminating the authorization to use the IRC definitions for LDA purposes, or (3) requiring those organizations that choose an IRC definition to include only expenses related to federal lobbying under that IRC definition when they register and report under LDA. The options, in varying degrees, could improve the comparability of reports filed by lobbyists and the alignment of registrations and reporting with LDA's purpose of increasing public disclosure of efforts to lobby federal officials in order to influence their decisionmaking. However, each option includes trade-offs between better ensuring LDA's purpose and other public policy objectives and could result in additional reporting burden in some cases.

Background

Congress passed LDA and IRC sections 4911 and 162(e) at different times and for different purposes. LDA, which was enacted in 1995 and became effective on January 1, 1996, requires organizations that lobby certain federal officials in the legislative and executive branches to register with the Secretary of the Senate and the Clerk of the House of Representatives. It also requires lobbying organizations that register to semiannually report expenditures and certain other information related to their lobbying efforts. Congress intended LDA's registration and reporting requirements to provide greater public disclosure of attempts by paid lobbyists to influence decisions made by various federal legislative and executive branch officials.

Unlike LDA, neither IRC section 162(e) nor section 4911 was intended to facilitate the public disclosure of lobbying.[6] IRC section 4911, which was enacted in 1976, provides for a limit on the amount of lobbying by 501(c)(3) organizations[7] and thereby helps clarify the extent to which these public charities can lobby without jeopardizing their tax-exempt status. Section 162(e), as amended in 1993, denies the federal income tax

[6]When tax-exempt organizations use IRC section 4911 to calculate their lobbying expenses for tax purposes, they report those expenses on their Form 990 federal tax returns. Because these tax returns are available to the public on request, IRC section 4911 also facilitates some public disclosure of lobbying, albeit not in the same manner or to the same extent that Congress requires under LDA.

[7]IRC section 4911 applies to 501(c)(3) organizations that elect to report their lobbying expenses under the provisions of IRC section 501(h), which provides for specific dollar limits on lobbying expenses. IRC section 501(h) is a safe harbor for 501(c)(3) organizations that lobby. Those 501(c)(3) organizations that do not elect to report under 501(h) must limit their lobbying activities to an insubstantial portion of their total activities, but the test for determining if amounts are insubstantial is less precise than the test used under IRC section 501(h).

deductibility of certain lobbying expenses for businesses. It does not otherwise place restrictions on lobbying activities.

Registration

LDA requires lobbying organizations, such as lobbying firms, to register with the Secretary of the Senate and the Clerk of the House of Representatives no later than 45 days after they first make a lobbying contact on behalf of a client. Also, organizations that have employees who lobby on behalf of the organizations—the organizations on which this report focuses—must register under LDA.[8] The lobbying registration includes such information as the registering organization's name and address; the client's name and address; the names of all individuals acting as lobbyists for the client; the general and specific issues to be addressed by lobbying; and organizations substantially affiliated with the client, including foreign organizations. An organization that has employees who lobby on the organization's behalf must identify itself as both the registering organization and the client, because the organization's own employees represent the organization.

LDA includes minimum dollar thresholds in its registration requirements. Specifically, an organization with employees who lobby on the organization's behalf does not have to register under LDA unless its total lobbying expenses exceed or are expected to exceed $20,500[9] during the 6 month reporting period (i. e., January through June and July through December of each year).[10] LDA also includes minimum thresholds for determining which employees must be listed as lobbyists in the lobbying registration. Under LDA, to be listed as a lobbyist, an individual must make more than one lobbying contact and must spend at least 20 percent of his or her time engaged in lobbying activities on behalf of the client or employing organization during the 6 month reporting period. An organization must have both $20,500 in lobbying expenses and an employee who makes more than one lobbying contact and spends at least 20 percent of his or her time lobbying before it is required to register under LDA.

[8]Individual lobbyists register only if they are self-employed, in which case, the self-employed lobbyist is considered to be a lobbying firm.

[9]LDA provides that the minimum dollar thresholds for registration will be adjusted every 4 years based on the Consumer Price Index, which measures the changes in the prices of goods and services.

[10]A lobbying firm receives and reports income and must use the LDA definition. Such a firm also does not have to register on behalf of a client unless the firm's total income for lobbying on behalf of the client exceeds or is expected to exceed $5,000 during the 6 month reporting period.

Reporting

All organizations that register under LDA must file lobbying reports with the Secretary of the Senate and Clerk of the House of Representatives for every 6 month reporting period. The lobbying reports filed under LDA by organizations that lobby on their own behalf must include the following disclosures:

- total estimated expenses relating to lobbying activities (total expenses are reported either by checking a box to indicate that expenses were less than $10,000 or by including an amount, rounded to the nearest $20,000, for expenses of $10,000 or more);[11]
- a three-digit code for each general issue area (such as AGR for Agriculture and TOB for Tobacco) addressed during lobbyists' contacts with federal government officials;
- specific issues, such as bill numbers and references to specific executive branch actions that are addressed during lobbyists' contacts with federal government officials;
- the House of Congress and federal agencies contacted;
- the name of each individual who acted as a lobbyist; and
- the interest of the reporting organization's foreign owners or affiliates in each specific lobbying issue.

Unless it terminates its registration, once a lobbying organization registers, it must file reports semiannually, regardless of whether it has lobbied during the period.

Option of Using IRC Lobbying Definitions

Under LDA, lobbying firms that are hired to represent clients are required to use the LDA lobbying definition. However, LDA gives organizations that lobby on their own behalf and that already use an IRC lobbying definition for tax purposes the option of using the applicable IRC lobbying definition (IRC sections 4911 or 162(e)), instead of the LDA lobbying definition, for

- determining whether the LDA registration threshold of $20,500 in semiannual lobbying expenses is met and
- calculating the lobbying expenses to meet the LDA reporting requirement.

[11]Organizations are to include those expenses associated with their efforts to lobby as well as payments to third parties, such as lobbying firms. When discussing lobbying expenses, this report focuses on expenses directly incurred by organizations lobbying on their own behalf. Organizations lobbying on their own behalf are to include payments made to lobbying firms in their report to Congress, and lobbying firms are to report their income from such payments in their separate reports to Congress. As a result, some overlap exists between the reporting of organizations lobbying on their own behalf and lobbying firms they may have hired.

For all other purposes of the act, including reporting issues addressed during contacts with federal government officials and the House of Congress and federal agencies contacted, LDA provides that organizations using an IRC definition must (1) use the IRC definition for executive branch lobbying and (2) use the LDA definition for legislative branch lobbying.

By allowing certain organizations to use an IRC definition to calculate lobbying expenses, LDA helps those organizations avoid having to calculate their lobbying expenses under two different lobbying definitions—the LDA definition for reporting under LDA and the applicable IRC definition for calculating those expenses for tax purposes. An organization that chooses to use the applicable IRC definition, instead of the LDA definition to calculate its lobbying expenses, must use the IRC definition for both lobbying reports filed during a calendar year. However, from one year to the next, the organization can switch between using the LDA definition and using the applicable IRC definition.

Objectives, Scope and Methodology

Under LDA, we are required to report to Congress on (1) the differences among the definitions of certain lobbying-related terms found in LDA and the IRC, (2) the impact that any differences among these definitions may have on filing and reporting under the act, and (3) any changes to LDA or to the appropriate sections of the IRC that the Comptroller General may recommend to harmonize the definitions.

As agreed with your offices, our objectives for this report were to

- describe the differences between the LDA and IRC section 4911 and 162(e) definitions of lobbying;
- determine the impact that differences in the definitions may have on registration and reporting under LDA, including information on the number of organizations using each definition and the expenses they have reported; and
- identify and analyze options, including harmonizing the three definitions, that may better ensure that the public disclosure purposes of LDA are realized.

To identify the differences among the LDA and IRC lobbying definitions, we reviewed the relevant statutory provisions. We also reviewed related regulations and guidance, including guidance issued by the Secretary of the Senate and the Clerk of the House of Representatives. We also reviewed journal articles and an analysis of the definitions of lobbying and met with registered lobbyists, representatives of nonprofit and business

organizations, and other parties who were knowledgeable about the different statutory definitions and their effect on lobbying registrations.

To determine the differences among the LDA and IRC lobbying definitions regarding the number of federal executive branch officials covered for contacts dealing with nonlegislative matters, we reviewed the LDA and IRC statutory definitions of covered executive branch officials that apply for lobbying contacts on nonlegislative matters. To determine the number of officials covered by these definitions, we counted the number of Executive Schedule Levels I through V positions listed in sections 5312 through 5316 of Title 5 of the United States Code. In several cases, these sections of Title 5 list federal boards and commissions as having Executive Schedule positions but do not specify the number of such positions. In these cases, we did not attempt to determine the number of positions and counted only one position for each such listed board or commission. Thus, our estimate of the number of Executive Schedule Levels I through V positions is understated. Further, to determine the number of officials covered, we obtained data from

- The United States Government Manual 1998/1999 on cabinet-level officials and the number of offices in the Executive Office of the President;
- the Department of Defense (DOD) on military personnel ranked 0-7 and above as of September 30, 1997;
- the U.S. Coast Guard, the Public Health Service, and the National Oceanic and Atmospheric Administration (NOAA) on the number of commissioned corps ranked 0-7 and above as of February 1999;
- the Office of Personnel Management's (OPM) Central Personnel Data File on the number of Schedule C officials as of September 30, 1997; and
- Budget of the United States Government, Appendix, Fiscal Year 1999 on the actual full-time-equivalent employment for fiscal year 1997 in each office of the Executive Office of the President.

To determine the impact that differences in the definitions may have on registration and reporting under LDA, we first had to define how we would measure impact. We defined impact as (1) the way differences among the definitions can affect who must register with the Secretary of the Senate and the Clerk of the House of Representatives and what lobbying expenses and related information must be included in those reports; (2) the number of organizations that reported using the LDA and IRC section 4911 and 162(e) definitions when reporting lobbying expenses and related information for July through December 1997; and (3) the lobbying expenses reported under each of the three definitions for this period.

To determine the way differences among the definitions can affect who must register and what they must report, we reviewed, analyzed, and categorized the general effects of the differences that we found among the definitions under our first objective. We also looked for possible effects during our reviews of statutes, regulations, guidance, and journal articles. Finally, we discussed the possible effects of the differences among the definitions with registered lobbyists, representatives of nonprofit and business organizations, and other knowledgeable parties.

To identify the number of organizations that reported using the definitions of lobbying in LDA or IRC to calculate their lobbying expenses for July through December 1997 and to determine the lobbying expenses reported under LDA that were calculated using one of the three definitions, we obtained data on all lobbying reports filed with the Secretary of the Senate during this period from the new lobbying database of the Senate Office of Public Records. Only the lobbying reports for one semiannual period—July through December 1997—were available from the new database when we began our analysis in October 1998. Using the database, we identified the number of organizations that lobbied on their own behalf and filed reports for the period July through December 1997. We also analyzed the reported expenses of these organizations and determined the mean and median expenses reported under each of the three definitions. Because lobbyists did not round their lobbying expenses to the nearest $20,000 in some cases, as required by LDA, we rounded all reported expenses to the nearest $20,000 before conducting our analysis.

Officials from the Senate Office of Public Records said that they had not verified the data in the database, and we did not perform a reliability assessment of the data contained in this database. However, we reviewed the lobbying reports of all organizations whose lobbying expenses were recorded in the database as being less than $10,000, which is the minimum amount required to be recorded on the lobbying form, but had erroneous Senate Office of Public Records codes. We corrected any errors we found before conducting our analysis.

To identify and analyze options that may better ensure that the public disclosure purposes of LDA are realized, we relied on (1) information we collected from our review of the relevant literature on lobbying, including statutory provisions, regulations, and guidance; and (2) our findings for our first two objectives.

We did our work during two periods. From November 1996 through April 1997, we reviewed the differences in the LDA and IRC definitions of

lobbying-related terms. As agreed by the Senate Committee on Governmental Affairs and the House Subcommittee on the Constitution, Committee on the Judiciary, we postponed completing our review until data on lobbying expenses became available. The second period of our review was from October 1998 through January 1999, after we obtained data on lobbying expenses from the new lobbying database of the Senate Office of Public Records. We did our work in Washington, D.C., and in accordance with generally accepted government auditing standards. We obtained technical comments on a draft of this report from the Internal Revenue Service and incorporated changes in the report as appropriate. The Clerk of the House of Representatives, the Secretary of the Senate, and the Department of the Treasury had no comments on the report.

Significant Differences Exist Among LDA and IRC Definitions

The contacts, activities, and expenses that are considered to be lobbying under the LDA lobbying definition differ in many ways from those covered by the IRC definitions. Most significantly, LDA covers contacts only with federal officials; the IRC definitions cover contacts with officials in other levels of government as well as attempts to influence the public through grassroots lobbying. Also, the definitions differ in their coverage of contacts with federal officials depending on whether the contact was on a legislative or nonlegislative matter.

Table 1 and the following sections present some of the key differences in coverage under the different definitions. Appendix I discusses these differences in more detail; and appendix II provides a detailed table of the differences among the definitions concerning coverage of the federal, state, and local levels of government.

Table 1: Key Differences in Coverage of Contacts, Activities, and Expenses Under the Three Definitions of Lobbying

Contacts, activities, and expenses	Covered under		
	LDA	IRC section 4911	IRC section 162(e)
Contacts with state government officials	No	Yes	Yes
Contacts with local government officials	No	Yes	Yes[a]
Grassroots lobbying—attempts to influence the public on legislative subjects	No	Yes	Yes
Contacts with federal government officials			
In the legislative branch			
Regarding legislative subjects	Yes	Yes	Yes
Regarding nonlegislative subjects	Yes	No	No
In the executive branch			
Regarding legislative subjects	Yes	Yes	Yes
Regarding nonlegislative subjects	Yes	No	Yes[a]

Note: Yes and no indicate whether an activity or expense is counted in any manner under each definition. However, if an activity or expense is covered by two or more definitions, substantial differences may exist in the specifics of what is covered in each definition. See appendices I and II for more detailed explanations of these differences.

[a]Although IRC section 162(e) covers these types of contacts in some circumstances, the coverage is limited, as discussed in the following sections.

Source: GAO analysis of LDA and IRC sections 4911 and 162(e).

Lobbying State and Local Officials

LDA covers only the lobbying of federal government officials, so organizations using the LDA definition would not include any information in their lobbying reports about lobbying state and local officials. But both IRC lobbying definitions cover contacts with state government officials to influence state legislation. In addition, both IRC definitions cover contacts with local government officials to influence local government legislation, but IRC section 162(e) provides an exception for contacts with local legislative officials regarding legislation of direct interest to the organization.

Grassroots Lobbying

The LDA lobbying definition covers only lobbying of federal government officials, so organizations using the LDA definition would not include in their lobbying reports any information related to attempts to influence legislation by affecting the opinions of the public—that is, grassroots lobbying. Both IRC lobbying definitions cover grassroots lobbying, such as television commercials; newspaper advertisements; and direct mail

campaigns to influence federal, state, and local legislation, including referenda and ballot initiatives.

Lobbying Federal Government Officials

To determine if a lobbyist's contact with a federal government official is covered by one of the three lobbying definitions, one must (1) have certain information about the government official, such as whether the official is in the legislative or executive branch; and (2) know whether a legislative or nonlegislative subject was addressed during the contact. The three definitions differ in many ways regarding the officials and subjects they cover.

The LDA definition does not distinguish between covered legislative and executive branch officials on the basis of whether the subject of the lobbyist's contact is legislative or nonlegislative in nature. The IRC definitions define covered officials differently, depending on whether the subject of the lobbying contact was legislative or nonlegislative in nature. When the subject of a lobbyist's contact concerns a nonlegislative matter, such as a regulation, grant, or contract, LDA covers more officials than the IRC definitions cover. When the subject of a lobbyist's contact is a legislative matter, both IRC definitions potentially cover more levels of executive branch officials than the LDA definition does.

Under LDA, lobbying organizations' contacts with all Members of Congress and employees of Congress and approximately 4,600 executive branch officials are covered for either legislative or nonlegislative subjects. In contrast, under IRC section 4911, contacts with legislative or executive branch officials, including Members of Congress and the President, about any nonlegislative subject do not count as lobbying. Also, under IRC section 162(e), contacts with Members of Congress and other legislative branch officials do not count as lobbying if they deal with a nonlegislative subject; and very few executive branch officials are covered if contacts are about nonlegislative matters. As table 2 shows, LDA covers 10 times the number of executive branch officials that IRC section 162(e) covers for nonlegislative matters; it also contrasts with IRC section 4911, which does not cover federal officials for nonlegislative contacts.

Table 2: Approximate Number of Executive Branch Officials With Whom Contacts About Nonlegislative Matters Could Be Counted as Lobbying Under the Three Lobbying Definitions

	Approximate number covered under		
Levels of officials and/or offices	**LDA**	**IRC section 4911**	**IRC section 162(e)**
President, Vice President; Executive Schedule level I, cabinet-level officials, and their immediate deputies	50	0	50
Executive Schedule levels II through V (excluding cabinet-level officials and their immediate deputies)	610	0	0
Uniformed Services at or above O-7	960	0	0
Officials serving in a confidential, policymaking, or advocating position (Schedule C appointees)[a]	1,420	0	0
Entire office of the Executive Office of the President (excluding the White House Office)	1,180	0	20
White House Office of the Executive Office of the President	380	0	380
Total	**4,600**	**0**	**450**

Note: Numbers in the table are a mixture of (1) authorized positions, which may or may not be filled at any given time; (2) filled positions; and (3) full-time-equivalent employment, which represents one full-time employee or one or more part-time employees who collectively complete 2,080 work hours in a given year. All numbers are rounded and approximate. The estimate of the number of authorized positions at Executive Schedule levels II through V is understated because it does not include estimates of the number of members of federal boards and commissions when 5 U. S. C. 5313-5316 does not specify the number of such members.

[a]Schedule C appointees are political appointees (graded GS/GM-15 and below) in positions that involve determining policy or require a close confidential relationship with the agency head or other key officials of the agency.

Source: 5 U. S. C. 5312-5316; U.S. Government Manual; OPM; DOD; U. S. Coast Guard; Public Health Service; NOAA; Budget of the United States Government, Fiscal Year 1999—Appendix.

For contacts on legislation, LDA covers contacts with Members of Congress, employees of Congress and the approximately 4,600 executive branch officials shown in table 2. In contrast, for contacts on legislation, the IRC definitions cover Members of Congress, employees of Congress, and any executive branch officials who may participate in the formulation of the legislation. Therefore, for contacts addressing legislation, the IRC definitions potentially cover more levels of executive branch officials than the LDA definition does.

Exceptions to the Lobbying Definitions

LDA contains 19 exceptions to the definition of lobbying; however, for the most part, these exceptions make technical clarifications in the law and do not provide special exceptions for particular groups. The IRC section 162(e) definition has one exception in the statute, which is for contacts with local government legislative branch officials on legislation of direct interest to the organization. In addition, IRC section 162(e) has seven

exceptions, which are provided for by Treasury Regulations and which are technical clarifications of the statutory provisions.

IRC section 4911 has five exceptions, and two of these could allow a significant amount of lobbying expenses to be excluded from IRC section 4911 coverage. The first is an exception for making available the results of nonpartisan analysis, study, or research. Due to this exception, IRC section 4911 does not cover 501(c)(3) organizations' advocacy on legislation as long as the organization provides a full and fair exposition of the pertinent facts that would enable the public or an individual to form an independent opinion or conclusion. The second significant exception under IRC section 4911 is referred to as the self-defense exception. This exception excludes from coverage lobbying expenses related to appearances before, or communications to, any legislative body with respect to a possible decision of such body that might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization.

According to IRS officials, this exception provides that a 501(c)(3) nonprofit tax-exempt organization can lobby legislative branch officials on matters that might affect its tax-exempt status or the activities it can engage in without losing its tax-exempt status, and such lobbying will not be counted under the IRC section 4911 definition. According to IRS officials, this exception does not cover lobbying on state or federal funding.

Differences in Definitions Can Significantly Affect Registration and Reporting Under LDA

For those organizations that lobby on their own behalf, the choice of using either the LDA definition or the applicable IRC definition can significantly affect whether they must register with the Secretary of the Senate and the Clerk of the House of Representatives. In addition, the lobbying definition an organization uses can materially affect the information, such as federal-level lobbying, it must disclose on its semiannual lobbying report. Allowing organizations to use an IRC definition for LDA reporting can result in organizations disclosing information that may not be comparable, is unrelated to LDA's purpose, or that falls short of what LDA envisions. However, of the 1,824 organizations that lobbied on their own behalf and filed reports under LDA from July through December 1997, most reported using the LDA definition. Those organizations that used the IRC section 162(e) definition had the highest mean and median expenses reported.

Differences in Definitions Can Affect Who Must Register

The lobbying definition an organization uses, which governs how it calculates lobbying expenses, can affect whether the organization is required to register under LDA. If (1) the actual or expected expenses of an organization lobbying on its own behalf exceed or are expected to exceed the $20,500 LDA threshold for a 6-month period, and (2) the organization has an employee that makes more than one lobbying contact and spends at least 20 percent of his or her time lobbying during the same 6-month period, then the organization must register. Lobbying activities and contacts that count toward the $20,500 and 20 percent thresholds depend on which lobbying definition—LDA, IRC section 4911, or IRC section 162(e)—an organization uses. If an activity is not covered under a particular definition, then the expenses related to that activity do not count toward the lobbying expenses of an organization using that definition.

In some cases, allowing organizations to use an IRC definition instead of the LDA definition could result in the organization having covered lobbying expenses below the $20,500 threshold and no employees who spend 20 percent of their time lobbying; however, if the organization used the LDA definition, its lobbying expenses and activities could be above the LDA registration thresholds. For example, for an organization that primarily focuses its lobbying efforts on lobbying federal officials about nonlegislative matters, using an IRC definition is likely to result in lower covered lobbying expenses than using the LDA definition and, therefore, could result in an organization not meeting the $20,500 registration threshold. This could occur because any contacts with legislative branch officials about nonlegislative matters are not covered under either IRC sections 4911 or 162(e). Also, for contacts on nonlegislative matters, IRC section 4911 does not cover executive branch officials, and IRC section 162(e) covers only about one-tenth of the executive branch officials that LDA covers. Thus, an organization could spend over $20,500 lobbying federal officials who are covered by LDA for nonlegislative matters, with the possibility that none of these expenses would count toward the registration requirement if the organization used an IRC definition.

It is also possible that an organization could have over $20,500 in lobbying expenses and one or more employees spending 20 percent of their time lobbying by using an IRC definition, when using an LDA definition would put its covered expenses below $20,500 and put its lobbying employees under the 20-percent threshold. For example, the IRC definitions potentially cover contacts with more executive branch officials than LDA covers when those contacts are about legislation. So, if an organization lobbies executive branch officials not covered under LDA in order to

influence legislation, those contacts would count as lobbying under the IRC definitions but not under the LDA definition. This could result in the organization's covered lobbying expenses being above the $20,500 threshold and in an employee's time spent on lobbying being above the 20 percent threshold.

However, no data exist to determine the number of organizations (1) that are not registered under LDA as a result of using an IRC definition or (2) that met the thresholds under an IRC definition but not under the LDA definition.

Similarly, the individuals who must be listed as lobbyists on an organization's lobbying registration can be affected by the choice of definition. Individuals must be listed as lobbyists on the registration if they make more than one lobbying contact and spend at least 20 percent of their time engaged in lobbying activities for their employers during the 6 month reporting period. Using an IRC definition instead of the LDA definition could result in an individual not being listed as a lobbyist on his or her organization's registration or subsequent semiannual report. For example, this could occur if a lobbyist spends most of his or her time lobbying high-level officials at independent federal agencies about regulations, contracts, or other nonlegislative matters, because the IRC definitions do not consider such contacts as lobbying.

Differences in Definitions Can Affect What Must Be Reported

Just as the choice of definition affects whether an organization must register under LDA with the Secretary of the Senate and the Clerk of the House of Representatives, the choice of definition also can materially affect the information that is reported semiannually. Because an organization can switch from using the LDA definition one year to using the applicable IRC definition another year and vice versa, organizations can use the definitions that enable them to minimize what they must disclose on their lobbying reports.

The three definitions were written at different times for different purposes, so what they cover differs in many ways, both subtle and substantial. These differences result in organizations that use one definition reporting expenses and related information that organizations using another definition would not report. The reported expenses and other information may provide less disclosure and may be unrelated to what is needed to fulfill LDA's purpose of publicly disclosing the efforts of lobbyists to influence federal officials' decisionmaking.

Whether an organization uses the LDA definition or the applicable IRC definition, it is required to disclose on its lobbying report its total estimated expenses for all activities covered by the definition. Thus, organizations using the LDA definition must report all expenses for lobbying covered federal government officials about subject matters covered by LDA. Similarly, organizations using an IRC definition must disclose on their lobbying reports all expenses for activities that are covered by the applicable IRC definition, including federal, state, and local government lobbying and grassroots lobbying.

However, organizations report only their total expenses, so the lobbying reports do not reveal how much of the reported expenses were for individual activities and for what level of government. Thus, even if an organization using the LDA definition reported the same total lobbying expenses as an organization using an IRC definition, it would be impossible to tell from the lobbying reports how similar the two organizations' federal lobbying efforts may have been. In addition, an organization reporting under an IRC definition would be, in all likelihood, including expenses that are not related to LDA's focus on federal lobbying because the IRC definitions go beyond lobbying at the federal level. An organization reporting under an IRC definition could also be reporting less information on federal level lobbying than would be provided under the LDA definition, which Congress wrote to carry out the public disclosure purpose of LDA. For example, the IRC definitions include far fewer federal officials in their definitions for lobbying on nonlegislative matters.

Also, an organization using the IRC section 4911 definition could exclude considerable lobbying expenses from its lobbying report, if its lobbying fell under the IRC section 4911 exception for nonpartisan analysis or the self-defense exception. For example, in 1995, a 501(c)(3) tax-exempt nonprofit organization lobbied against legislation that would have sharply curtailed certain activities of charities. On its 1995 tax return, the organization, which used the IRC section 4911 definition to calculate its lobbying expenses for tax purposes, reported about $106,000 in lobbying expenses. However, in a letter to a congressional committee, the organization stated that its 1995 lobbying expenses totaled over $700,000; it cited the self-defense exception as a reason for excluding about $594,000 in lobbying expenses from its tax return.[12]

[12] This example occurred before LDA took effect on January 1, 1996, but it illustrates how using the IRC section 4911 definition can result in an organization not reporting lobbying expenses. In this case, an unknown part of the $700,000 was for grassroots lobbying, which would not be reportable under the LDA definition.

In contrast to reporting expenses, when reporting information other than expenses on the LDA lobbying reports, organizations are required to report only information related to federal lobbying. This information includes issues addressed during lobbying contacts with federal government officials and the House of Congress and federal agencies contacted. Therefore, if an organization uses an IRC definition and includes expenses for state lobbying and grassroots lobbying in its total lobbying expenses, it is not required to report any issues or other information related to those nonfederal expenses.

Further, LDA provides that for reporting information other than expenses for contacts with federal executive branch officials, organizations using an IRC definition to calculate their expenses must use the IRC definition for reporting other information. But for contacts with federal legislative branch officials, organizations using an IRC definition to calculate their lobbying expenses must use the LDA definition in determining what other information, such as the issues addressed during lobbyists' contacts and the House of Congress contacted, must be disclosed on their reports. Because of this latter provision, organizations that use an IRC definition and lobby legislative branch officials about nonlegislative matters are required to disclose the issues addressed and the House of Congress contacted, even though they are not required to report the expenses related to this lobbying.

Most Organizations Reported Using the LDA Definition

For the July through December 1997 reporting period, lobbying firms that had to use the LDA definition to calculate lobbying income filed reports for 9,008 clients. In addition, for this reporting period, 1,824 organizations that lobbied on their own behalf and were able to elect which definition to use in calculating their lobbying expenses filed lobbying reports. Of the 1,824 organizations, 1,306 (71 percent) used the LDA definition to calculate their lobbying expenses. Another 157 organizations (9 percent) elected to use the IRC 4911 definition. Finally, 361 organizations (20 percent) used the IRC 162(e) definition to calculate their lobbying expenses. (See table 3.)

Table 3: Number of Organizations That Used One of the Three Lobbying Definitions to Calculate the Lobbying Expenses Reported Under LDA From July to December 1997

	Number of organizations that used definition		
Lobbying expenses reported	**LDA**	**IRC section 4911**	**IRC section 162(e)**
Less than $10,000[13]	433	15	20
$10,000 or more	873	142	341
Total	**1,306**	**157**	**361**

Source: GAO analysis of the Secretary of the Senate lobbying database.

Data do not exist that would enable us to estimate the number of organizations that may not be registered because they used an IRC definition but would have had to register had they used the LDA definition. Because computerized registration data were available only for one 6-month period when we did our analysis, we did not analyze changes in registrations over time. Thus, we do not know whether, or to what extent, organizations switch between definitions from year to year as allowed by LDA.

Reported Expenses Were Highest Under IRC Section 162(e) Definition

Organizations that lobbied on their own behalf and reported using the IRC section 162(e) definition had the highest mean and median expenses reported. These organizations had 87 percent higher mean lobbying expenses than organizations that reported using the LDA definition and 58 percent higher mean lobbying expenses than those using the IRC section 4911 definition. Organizations that reported using the IRC section 162(e) definition had $180,000 in median expenses; organizations that reported using the LDA definition and those that reported using the IRC section 4911 definition each had median expenses of $80,000.

It is possible that some of the differences among the mean and median expenses of organizations using the different definitions could reflect more extensive and expensive lobbying efforts by those organizations that used the IRC section 162(e) definition. However, it is not possible to determine how much of the differences are due to what is covered by each definition or the extent of the lobbying efforts by the organizations using the different definitions. The main reason for this, as discussed earlier, is that although the lobbying reports filed under LDA show total lobbying expenses, they do not show the amount spent on different lobbying

[13] Organizations that lobby on their own behalf do not have to register if their lobbying expenses for the 6 month reporting period are below $20,500. However, until a registered organization terminates its registration, it must file lobbying reports, even if its lobbying expenses are below the $20,500 registration threshold.

activities. Therefore, data do not exist that would help explain the reasons for the differences.

Table 4 shows the total, mean, and median expenses for organizations using each of the three lobbying definitions that reported having $10,000 or more in lobbying expenses from July to December 1997.

Table 4: Total, Mean, and Median Lobbying Expenses for Organizations That Reported Having $10,000 or More in Lobbying Expenses From July to December 1997

	Calculated under		
Lobbying expenses	LDA	IRC section 4911	IRC section 162(e)
Total	$258,060,000	$49,700,000	$188,520,000
Mean	$295,601	$350,000	$552,845
Median	$80,000	$80,000	$180,000

Source: GAO analysis of the Secretary of the Senate data.

Table 4 includes only data on organizations reporting lobbying expenses of $10,000 or more, because organizations with less than $10,000 in expenses check a box on the LDA reporting form and do not include an amount for their expenses. Because, as shown in table 3, many more of these organizations used the LDA definition than used either of the IRC definitions, it follows that the largest total amount of all expenses reported was under the LDA definition.

Options That May Better Ensure That the Public Disclosure Purposes of LDA Are Realized

Because the differences among the three lobbying definitions can significantly affect who registers and what they report under LDA, the current statutory provisions do not always complement LDA's purpose. As discussed earlier, allowing organizations to use an IRC definition for LDA purposes can result in organizations (1) not registering under LDA, (2) disclosing information that may not be comparable, and (3) disclosing information that is unrelated to LDA's purpose or that falls short of what LDA envisions. Options for revising the statutory framework exist; LDA requires us to consider one option, harmonizing the definitions; and we identified two other options on the basis of our analysis. Those options are

- eliminating the current authorization for businesses and tax-exempt organizations to use the IRC lobbying definitions for LDA reporting and
- requiring organizations that use an IRC lobbying definition to include only expenses related to federal lobbying covered by that IRC definition when the organizations register and report under LDA.

The options address, in varying degrees, the effects of the differences on registration and reporting, but all have countervailing effects that must be balanced in determining what, if any, change should be made.

Harmonizing the Definitions

In addition to charging us with analyzing the differences among the three lobbying definitions and the impact of those differences on organizations' registration and reporting of their lobbying efforts, LDA charges us with reporting any changes that we may recommend to harmonize those definitions. Harmonization implies the adoption of a common definition that would be used for LDA's registration and reporting purposes and for the tax reporting purposes currently served by the IRC definitions. Harmonizing the three lobbying definitions would ensure that organizations would not have the burden of keeping track of their lobbying expenses and activities under two different definitions–one for tax purposes and another for LDA registration and reporting purposes. Requiring the use of a common definition would also mean that no alternative definitions could be used to possibly avoid LDA's registration requirement and that all data reported under the common definition would be comparable.

However, developing a lobbying definition that could be used for the purposes of LDA, IRC section 4911, and IRC section 162(e) would require Congress to revisit fundamental decisions it made when it enacted each definition. For example, if a common definition included state lobbying expenses that are included under the current IRC definitions, then the current objective of LDA to shed light on efforts to influence federal decisionmaking would essentially be rewritten and expanded. On the other hand, if a common definition did not include state lobbying expenses, fundamental decisions that were made when the statutes containing the IRC definitions were written would be similarly modified. Adopting a harmonized definition of lobbying could result in organizations disclosing less information on lobbying reports, if the new definition covered less than what is covered by the current LDA definition. In addition, a new definition would not be used only by organizations lobbying on their own behalf, which currently have the option of using an IRC definition for LDA reporting, but also by lobbying firms, which currently must use the LDA definition for their clients' lobbying reports.

Eliminating the Current Authorization for Using an IRC Lobbying Definition for LDA Purposes

Eliminating the current authorization for using the IRC lobbying definitions for LDA purposes would mean that consistent registration and reporting requirements would exist for all lobbyists, and the requirements would be those developed by Congress specifically for LDA. This would result in all organizations following the LDA definition for LDA purposes; thus, only the data that Congress determined were related to LDA's purposes would be reported. However, this option could increase the reporting burden of the relatively small number of organizations currently using the IRC definitions under LDA, because it would require them to

track their lobbying activities as defined by LDA while also tracking the activities covered under the applicable IRC lobbying definition.

Requiring Organizations Using IRC Definitions to Use Only Expenses for Federal Lobbying for LDA Registration and Expense Reporting

The last option we identified would require organizations that elected to use an IRC definition for LDA to use only expenses related to federal lobbying efforts as defined under the IRC definitions when they determine whether they should register and what they should report under LDA. This would improve the alignment of registrations and the comparability of lobbying information that organizations reported, because organizations that elected to use the IRC definitions would no longer be reporting to Congress on their state, local, or grassroots lobbying. The reporting of expenses under this option would be similar to the reporting of all other information required under LDA, such as issues addressed and agencies contacted, which are based on contacts with federal officials.

However, this option would only partially improve the comparability of data being reported by organizations using different definitions. Differences in the reported data would remain because the LDA and IRC definitions do not define lobbying of federal officials identically. LDA requires tracking contacts with a much broader set of federal officials than do the IRC definitions when lobbying contacts are made about nonlegislative matters.

In addition, because differences would remain between the LDA and IRC definitions of lobbying at the federal level under this option, organizations might still avoid registering under LDA and might still report information that would differ from that reported by organizations using the LDA definition. For example, because the IRC lobbying definitions include fewer federal executive branch officials when a contact is about a nonlegislative matter, organizations using an IRC definition might still have expenses under the $20,500 threshold for lobbying; whereas, under the LDA definition they might exceed the threshold. Finally, this option could impose some additional reporting burden for the relatively small number of organizations currently using IRC definitions for LDA purposes. Reporting only federal lobbying when they use an IRC definition could result in some increased recordkeeping burden if these organizations do not currently segregate such data in their recordkeeping systems.

Conclusions

The three lobbying definitions we reviewed were adopted at different times to achieve different purposes. What they cover differs in many subtle and substantial ways. LDA was enacted to help shed light on the identity of, and extent of effort by, lobbyists who are paid to influence decisionmaking in the federal government. IRC section 4911 was enacted

to help clarify the extent to which 501(c)(3) organizations could lobby without jeopardizing their tax-exempt status, and IRC section 162(e) was enacted to prevent businesses from deducting lobbying expenses from their federal income tax. Because the IRC definitions were not enacted to enhance public disclosure concerning federal lobbying, as was the LDA definition, allowing organizations to use the IRC definitions for reporting under LDA may not be consistent with achieving the level and type of public disclosure that LDA was enacted to provide.

Allowing organizations to use an IRC definition instead of the LDA definition for calculating lobbying expenses under LDA can result in some organizations not filing lobbying registrations, because the use of the IRC definition could keep their federal lobbying below the LDA registration thresholds. On the other hand, under certain circumstances, organizations could meet the thresholds when using the IRC definition but would not do so if they used the LDA definition. We do not know how many, if any, organizations are not registered under LDA that would have met the registration thresholds under LDA but not under the applicable IRC definition.

Giving organizations a choice of definitions to use each year can undermine LDA's purpose of disclosing the extent of lobbying activity that is intended to influence federal decisionmaking, because organizations may disclose very different information on lobbying reports, depending on which definition they use. When an organization can choose which definition to use each year, it can choose the definition that discloses the least lobbying activity. Further, if an organization uses an IRC definition for its lobbying report, the report can include expenses for state, local, and grassroots lobbying that are unrelated to the other information on the report that only relates to federal lobbying. Also, if an organization uses an IRC definition, its lobbying report can exclude expenses and/or other information about lobbying that is not covered under the selected IRC definition (e.g., contacts about nonlegislative matters) but that nevertheless constitutes an effort to influence federal decisionmaking. In this situation, less information would be disclosed than LDA intended.

Because the differences among the LDA and IRC lobbying definitions can significantly affect who registers and what they report under LDA, the use of the IRC definitions can conflict with LDA's purpose of disclosing paid lobbyists' efforts to influence federal decisionmaking. Options for reducing or eliminating these conflicts exist. These options include (1) harmonizing the definitions, (2) eliminating organizations' authorization to use an IRC definition for LDA purposes, or (3) requiring those that use an IRC

definition to include only expenses related to federal lobbying under the IRC definition when they register and report under LDA. The options, to varying degrees, could improve the alignment of registrations and the comparability of reporting with Congress' purpose of increasing public disclosure of federal lobbying efforts. However, each option includes trade-offs between better ensuring LDA's purposes and other public policy objectives and could result in additional reporting burden in some cases.

In our opinion, the trade-offs involved in the option of harmonizing the definitions are disproportionate to the problem of LDA registrations and reporting not being aligned with LDA's purpose. Harmonizing the definitions would best align registrations and reporting with LDA's purposes if LDA's definition is imposed for tax purposes as well, which would significantly alter previous congressional decisions about how best to define lobbying for tax purposes. Adopting a common lobbying definition that includes activities, such as state lobbying, that are covered under the current IRC definitions would require a rewrite and expansion of LDA's objective of shedding light on efforts to influence federal decisionmaking. Such major changes in established federal policies that would be required to harmonize the definitions appear to be unwarranted when only a small portion of those reporting under LDA use the IRC definitions.

The trade-offs for the other two options are less severe. Eliminating organizations' authorization to use a tax definition for LDA purposes would ensure that all lobbyists register and report under the definition that Congress wrote to carry out LDA's purpose. However, eliminating the authorization likely would impose some additional burden on the relatively small number of organizations currently using IRC definitions for LDA. Requiring that only expenses related to federal-level lobbying under the IRC definitions be used for LDA purposes would not align reporting with LDA's purposes as thoroughly as eliminating the authorization to use an IRC definition for LDA would. Under this option organizations could still avoid registering under LDA when the use of an IRC definition results in total expenses falling below the LDA registration threshold. The option also could impose some additional recordkeeping burden for the relatively small number of organizations currently using the IRC definitions.

Matters for Congressional Consideration

If Congress believes that the inclusion of nonfederal lobbying expenses and the underreporting of lobbying efforts at the federal level due to the optional use of the IRC lobbying definitions seriously detract from LDA's purpose of public disclosure, then it should consider adopting one of two options. Congress could remove the authorization for organizations to use an IRC definition for reporting purposes. In this case, data reported to the Senate and House would adhere to the LDA definition, which Congress enacted specifically to achieve LDA's public reporting purpose. Alternatively, Congress could allow organizations to continue using the IRC definitions but require that they use only the expenses related to federal-level lobbying that those definitions yield when they register and report under LDA. The data reported would be more closely aligned with LDA's purpose of disclosing federal level lobbying efforts, but some differences would remain between the data so reported and the data that would result from applying only the LDA definition. If either of these options were considered, Congress would need to weigh the benefit of reporting that would be more closely aligned with LDA's public disclosure purpose against the additional reporting burden that some organizations would likely bear.

Agency Comments and Our Evaluation

On February 11, 1999, we sent a draft of this report for review and comment to the Clerk of the House of Representatives, the Secretary of the Senate, the Secretary of the Treasury, and the Commissioner of the Internal Revenue Service. Representatives of the Clerk of the House of Representatives, the Secretary of the Senate, and the Secretary of the Treasury told us that no comments would be forthcoming. On February 17, 1999, we met with officials from the Internal Revenue Service, and they provided technical comments on a draft of this report. On the basis of their comments, we made changes to the report as appropriate. In a letter dated March 5, 1999, the Chief Operations Officer of the Internal Revenue Service stated that IRS had reached general consensus with us on the technical matters in the report.

We are sending copies of this report to Senator Carl Levin; Senator Ted Stevens; Senator William V. Roth, Jr., Chairman, and Senator Daniel P. Moynihan, Ranking Minority Member, Senate Committee on Finance; Representative Bill Archer, Chairman, and Representative Charles B. Rangel, Ranking Minority member, House Committee on Ways and Means; the Honorable Gary Sisco, Secretary of the Senate; the Honorable Jeff Trandahl, Clerk of the House of Representatives; the Honorable Robert E. Rubin, Secretary of the Treasury; and the Honorable Charles O. Rossotti, Commissioner of Internal Revenue. Copies will also be made available to others upon request.

The major contributors to this report are listed in appendix IV. Please call me on (202) 512-8676 if you have any questions.

Michael Brostek
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Abbreviations

DOD	Department of Defense
IRC	Internal Revenue Code
LDA	Lobbying Disclosure Act of 1995
NOAA	National Oceanic and Atmospheric Administration
OPM	Office of Personnel Management
U.S.C.	United States Code

Comparisons of LDA and IRC Definitions

Comparison of LDA and IRC Definitions

The types of activities and contacts that are covered by the Lobbying Disclosure Act of 1995 (LDA) lobbying definition are significantly different from those covered under the Internal Revenue Code (IRC) definitions. First, LDA does not cover grassroots lobbying. The IRC lobbying definitions cover grassroots lobbying, such as television advertisements and direct mail campaigns, that are intended to influence legislation at the federal, state, or local levels. Second, LDA covers lobbying only at the federal level. However, both IRC definitions cover lobbying of federal officials, as well as state and local government officials.

The IRC definitions potentially cover contacts with more levels of executive branch officials than LDA covers when those contacts are about legislation. However, when contacts are about nonlegislative subject matters, such as regulations or policies, LDA covers contacts with a broader range of federal officials than the IRC definitions. Further, LDA's definition of lobbying includes legislative matters and an extensive list of nonlegislative matters. IRC section 4911 only covers lobbying contacts that address specific legislative proposals. IRC section 162(e) covers lobbying contacts on legislative and nonlegislative subjects, but its coverage of legislative subjects is somewhat more limited than LDA's coverage, and its coverage of nonlegislative subjects is not clearly defined.

Grassroots Lobbying

Grassroots lobbying—efforts to influence legislation by influencing the public's view of that legislation—is covered under the IRC definitions but not under the LDA definition. Grassroots lobbying campaigns can use such means as direct mailings and television, radio, and newspaper advertisements and can be very expensive. Both IRC section 4911 and IRC section 162(e) cover grassroots lobbying at the federal, state, and local levels. However, IRC section 4911 has a narrower definition of grassroots lobbying than IRC section 162(e) does.

Under IRC section 4911, grassroots lobbying is defined as any attempt to influence legislation through an attempt to affect the opinions of the general public or any segment thereof. To be considered grassroots lobbying under IRC section 4911, a communication with the public must

- refer to a specific legislative proposal,
- reflect a view on such legislative proposal, and
- encourage the recipient of the communication to take action with respect to such legislative proposal.

IRC section 162(e) does not have the same stringent tests that IRC section 4911 has for determining if a communication with the public is grassroots

lobbying. Under IRC section 162(e), communications with the public that attempt to develop a grassroots point of view by influencing the general public to propose, support, or oppose legislation are considered to be grassroots lobbying. To be considered as grassroots lobbying under IRC section 162(e), a communication with the public does not have to encourage the public to take action with respect to a specific legislative proposal. Therefore, the IRC section 162(e) grassroots lobbying provision is likely to encompass more lobbying campaigns than IRC section 4911 does.

Lobbying State and Local Officials

The LDA lobbying definition covers only contacts with federal government officials and does not require lobbyists to report any expenses for contacts with state and local government officials. This is consistent with LDA's overall purpose of increasing public disclosure of the efforts of lobbyists paid to influence federal decisionmaking. The IRC lobbying definitions also cover contacts with federal government officials. However, in contrast to LDA, the IRC lobbying definitions require that expenses for contacts with state officials to influence state legislation be included in lobbying expenses. Further, both IRC lobbying definitions cover contacts with local government officials to influence local government legislation; but coverage of local government contacts is limited under IRC section 162(e), because that section has an exception for contacts with local councils on legislation of direct interest to the organization. (Contacts with state and local government officials to influence something other than legislation, such as a state or local policy or regulation, are not covered by either of the IRC definitions.)

The amounts spent lobbying state governments can be significant. For example, in 1997, under state lobbying disclosure laws, reported spending on lobbying state government officials was $144 million in California, $23 million in Washington, and $23 million in Wisconsin.

Differences Based on the Federal Officials Contacted

Whether a lobbyist's contact with a federal government official counts as lobbying under any of the three lobbying definitions depends, in part, on whether the contact is with a covered official. Covered officials are defined by several factors, such as their branch of government, the office they work in, and their rank. All three definitions include as lobbying lobbyists' contacts with legislative branch officials—Members and employees of Congress—to influence legislation. However, for contacts with executive branch officials to influence legislation and contacts with either legislative branch or executive branch officials on legislative matters, such as regulations and contracts, the definitions of what is counted as lobbying differ significantly.

Under LDA, contacts with any covered government officials about any legislative or nonlegislative matters covered by LDA are considered lobbying contacts, and their associated expenses must be reported. However, under the IRC definitions, whether the contact is on legislative or nonlegislative matters determines which officials are covered. For contacts to influence legislation, any executive branch officials who may participate in the formulation of legislation are covered under both IRC definitions. But, for nonlegislative matters, IRC section 4911 covers no executive branch officials, and IRC section 162(e) covers very few executive branch officials.

Covered Executive Branch Officials for Contacts on Nonlegislative Matters

Many of the executive branch officials covered by LDA for contacts on any lobbying subject are not covered by IRC section 162(e) when contacts are intended to influence nonlegislative matters. Also, none of the executive branch officials covered by LDA are covered by IRC section 4911 for contacts on nonlegislative matters, because IRC section 4911 covers only contacts to influence legislation.

For contacts to influence the official actions or positions of an executive branch official on nonlegislative matters, IRC section 162(e) provides a list of covered executive branch officials. LDA's list of covered executive branch officials includes all the officials on the IRC section 162(e) list, plus several more categories of officials. LDA's list applies to contacts on any matter covered by LDA—legislative or nonlegislative. Table I.1 shows that LDA covers about 10 times the number of officials that IRC section 162(e) covers for nonlegislative matters.

Table I.1: Approximate Number of Executive Branch Officials With Whom Contacts About Nonlegislative Matters Could Be Counted as Lobbying Under the Three Lobbying Definitions

	Approximate number covered under		
Levels of officials and/or offices	**LDA**	**IRC section 4911**	**IRC section 162(e)**
President, Vice President; Executive Schedule level I, cabinet-level officials, and their immediate deputies	50	0	50
Executive Schedule levels II through V (excluding cabinet level officials and their immediate deputies)	610	0	0
Uniformed Services at or above O-7	960	0	0
Officials serving in a confidential, policymaking, or advocating position (Schedule C appointees)[a]	1,420	0	0
Entire office of the Executive Office of the President (excluding the White House Office)	1,180	0	20
White House Office of the Executive Office of the President	380	0	380
Total	**4,600**	**0**	**450**

Note: Numbers in the table are a mixture of (1) authorized positions, which may or may not be filled at any given time; (2) filled positions; and (3) full-time-equivalent employment, which represents one full-time employee or one or more part-time employees who collectively complete 2,080 work hours in a given year. All numbers are rounded and approximate. The estimate of the number of authorized positions at Executive Schedule levels II through V is understated because it does not include estimates of the number of members of federal boards and commissions when 5 U. S. C. 5313-5316 does not specify the number of such members.

[a]Schedule C appointees are political appointees (graded GS/GM-15 and below) in positions that involve determining policy or require a close confidential relationship with the agency head or other key officials of the agency.

Source: 5 U. S. C. 5312-5316; U.S. Government Manual; OPM; DOD; U. S. Coast Guard; Public Health Service; NOAA; Budget of the United States Government, Fiscal Year 1999—Appendix.

As shown in table I.1, LDA and IRC section 162(e) include contacts with the President and Vice President and Cabinet Members and similar high-ranking officials and their immediate deputies. In the Executive Office of the President, LDA includes all contacts with all offices; IRC section 162(e) includes only all officials in the White House Office and the two most senior level officers in the other agencies of the Executive Office of the President. Further, LDA includes contacts with officials in levels II through V of the Executive Schedule, which includes agency heads and deputy and assistant secretaries; IRC section 162(e) does not. Also, LDA includes contacts with officials at levels O-7 and above, such as Generals and Admirals, in the uniformed services. Finally, LDA includes contacts with all Schedule C appointees, who are political appointees (graded GS/GM-15 and below) in positions that involve determining policy or require a close, confidential relationship with the agency head or other key officials of the agency.

The narrow scope of IRC section 162(e)'s list of covered executive branch officials can result in organizations not including on their lobbying reports expenses or other information, such as issues addressed, relating to contacts with very high-ranking officials. For example, if an organization made contacts to influence an official action or position with the top official at most independent agencies, including the National Aeronautics and Space Administration, the General Services Administration, the Export-Import Bank, and the Federal Communications Commission, these contacts would not be considered as contacts with covered executive branch officials and therefore would not be covered by the IRC section 162(e) definition. Similarly, contacts on nonlegislative matters with the heads of agencies within cabinet departments, such as the heads of the Internal Revenue Service, the Occupational Safety and Health Administration, the Bureau of Export Administration, and the Food and Drug Administration, would not be considered as contacts with officials at a high enough level for the list of covered executive branch officials under the IRC section 162(e) definition. However, contacts with all of these officials would be covered under the LDA definition of lobbying.

Covered Executive Branch Officials for Contacts on Legislation

The two IRC definitions generally provide the same coverage of contacts with executive branch officials for influencing legislation. The two definitions provide that a contact with "any government official or employee who may participate in the formulation of legislation" made to influence legislation must be counted as a lobbying expense.[1] Thus, these definitions potentially cover many more levels of executive branch officials than are included on LDA's list of covered executive branch officials. LDA's list of covered officials is shown in table I.1 and applies to both legislative and nonlegislative matters. Therefore, contacts with officials in the Senior Executive Service or in grades GS/GM-15 or below who are not Schedule C appointees would generally count as lobbying contacts under the IRC definitions if such contacts were for the purpose of influencing legislation and those officials participated in the formulation of legislation. But such contacts would not count as lobbying contacts under the LDA definition, because LDA does not include these officials as covered executive branch officials.

Covered Legislative Branch Officials for Contacts on Nonlegislative Matters

Neither IRC section 162(e) nor IRC section 4911 covers contacts with legislative branch officials on nonlegislative matters. The two IRC definitions cover only legislative branch officials in regard to contacts to influence legislation. However, LDA counts as lobbying any contacts with Members of Congress and congressional employees on any subject matter covered by LDA. Therefore, a lobbyist who contacts Members of Congress to influence a proposed federal regulation would be required to count these contacts in lobbying expenses calculated under the LDA definition and to disclose the issues addressed and the House of Congress contacted.

Covered Legislative Branch Officials for Contacts on Legislation

LDA and the two IRC definitions cover the same federal legislative branch officials for contacts made to influence legislation. LDA covers contacts with any Member or employee of Congress for contacts on any legislative or nonlegislative subject matter covered by the act. Both IRC definitions cover contacts with any Member or employee of Congress for contacts made to influence legislation.

[1]IRC section 4911 differs somewhat from IRC section 162(e) concerning contacts with executive branch officials for influencing legislation. Specifically, according to the Treasury Regulations for IRC section 4911, contacts with executive branch officials to influence legislation only count as lobbying if the principal purpose of the contact is to influence legislation. However, under IRC section 162(e), the principal purpose of a contact does not have to be for influencing legislation for a contact with an executive branch official to be counted under that section's provisions regarding contacts to influence legislation.

Differences Based on Subjects Addressed During Lobbying Contacts

The subject matters for which contacts with officials count as lobbying are different under the three lobbying definitions. LDA provides a comprehensive list of subjects about which contacts with a covered official are considered to be lobbying. For example, for nonlegislative matters, the list includes, in part, "the formulation, modification, or adoption of a federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government." Under IRC section 4911, the only subject covered by lobbying contacts is "influencing legislation." Under IRC section 162(e), the subjects covered are "influencing legislation" and "influencing official actions or positions" of executive branch officials. The phrase "official actions or positions" applies to contacts on nonlegislative matters.

Further, more specific information about what was covered in a lobbyist's contact is needed under IRC sections 4911 and 162(e) than is needed under LDA to determine if the contact should count as lobbying.

Coverage of Legislative Matters

For legislative matters, LDA covers "the formulation, modification, or adoption of Federal legislation (including legislative proposals)." In contrast, for legislative matters, the IRC lobbying definitions list only "influencing legislation," which, according to the Treasury Regulations, refers to contacts that address either specific legislation that has been introduced or a specific legislative proposal that the organization supports or opposes.[2]

Under both IRC definitions, a contact to influence legislation is a contact that refers to specific legislation and reflects a view on that legislation. Therefore, a lobbyist's contact with a legislative branch official in which the lobbyist provides information or a general suggestion for improving a situation but in which the lobbyist does not reflect a view on specific legislation would not be considered to be a lobbying contact under the IRC definitions. For example, the Treasury regulations for IRC section 162(e) provide an example of a lobbying contact in which a lobbyist tells a legislator to take action to improve the availability of new capital. In this example, the lobbyist is not referring to a specific legislative proposal, so the contact does not count as lobbying. However, according to the Treasury Regulations, a lobbyist's contact with a Member of Congress in which the lobbyist urges a reduction in the capital gains tax rate to increase the availability of new capital does count as lobbying, because the

[2] According to IRS officials, contacts to influence the nomination and confirmation of officials subject to Senate confirmation are considered to be contacts to influence legislation under the IRC lobbying definitions. For the purposes of this report, the LDA provision relating to nominations and confirmations is treated as a nonlegislative matter.

contact refers to a specific legislative proposal. In contrast, because LDA covers legislation from its formulation to adoption, the fact that a specific legislative proposal was not addressed during a lobbyist's contact with a government official does not prevent the contact from being counted as a lobbying contact.

Coverage of Nonlegislative Matters

LDA's list of nonlegislative matters under its definition of "lobbying contact" seems to include most activities of the federal government. The list includes

- the formulation, modification, or adoption of a federal rule, regulation, executive order, or any other program, policy, or position of the United States Government;
- the administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, or permit, or license); and
- the nomination or confirmation of a person for a position subject to confirmation by the Senate.

IRC section 4911 does not include any nonlegislative matters in its lobbying definition.

The only nonlegislative matter included under the IRC section 162(e) lobbying definition is "any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official." However, neither IRC section 162(e) nor its regulations define what is meant by "official actions or positions," thus leaving the interpretation of what activities to count up to the lobbyist. Some lobbyists might consider an official action to be almost anything a federal official does while at work, while others might consider that official actions must be more formal actions, such as those requiring the signing of official documents.

Exceptions to the Lobbying Definitions

LDA contains 19 exceptions to the definition of lobbying and IRC sections 4911 and 162(e) contain 5 and 7 exceptions, respectively. These exceptions are listed in appendix III.

Although LDA includes an extensive list of exceptions, for the most part these exceptions make technical clarifications in the law and do not provide special exceptions for particular groups. Many of the LDA exceptions are for contacts made during the participation in routine government business, and some of these are for contacts that would be part of the public record. For example, these include (1) contacts made in

response to a notice in the Federal Register soliciting communications from the public and (2) a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures. Other exceptions are for contacts dealing with confidential information, such as contacts "not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law."

LDA includes four exceptions for particular groups, including an exception for contacts made by public officials acting in an official capacity; an exception for representatives of the media making contacts for news purposes; an exception for any contacts made by certain tax-exempt religious organizations; and an exception for contacts made with an individual's elected Member of Congress or the Member's staff regarding the individual's benefits, employment, or other personal matters.

Of the five exceptions to the IRC section 4911 lobbying definition, two could allow a significant amount of lobbying expenses to be excluded from IRC section 4911 coverage. The first is an exception for making available the results of nonpartisan analysis, study, or research. Due to this exception, IRC section 4911 does not cover 501(c)(3) organizations' advocacy on legislation as long as the organization provides a full and fair exposition of the pertinent facts that would enable the public or an individual to form an independent opinion or conclusion.

The second significant exception under IRC section 4911 is referred to as the self-defense exception. This exception excludes from coverage lobbying expenses related to appearances before, or communications to, any legislative body with respect to a possible decision of such body that might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization. According to IRS officials, this exception provides that a 501(c)(3) nonprofit tax-exempt organization can lobby legislative branch officials on matters that might affect its tax-exempt status or the activities it can engage in without losing its tax exempt status, and such lobbying will not be counted under the IRC section 4911 definition. According to IRS officials, this exception does not cover lobbying on state or federal funding.

The IRC section 162(e) definition has one exception in the statute, which is for contacts with local government legislative branch officials on legislation of direct interest to the organization. In addition, IRC section 162(e) has seven exceptions, which are provided for by Treasury Regulations. These seven exceptions provide technical clarifications to the

statutory provisions and do not appear to exclude a significant amount of expenses that would be counted as lobbying expenses under the other lobbying definitions. For example, the IRC section 162(e) exceptions include (1) any communication compelled by subpoena, or otherwise compelled by federal or state law; and (2) performing an activity for purposes of complying with the requirements of any law.

Coverage of Different Contacts, Activities, and Expenses Under the Three Definitions of Lobbying

This appendix contains detailed information about which contacts, activities, and expenses are covered under the definitions of lobbying for LDA, IRC section 4911, and IRC section 162(e). Table II.1 shows the coverage of federal lobbying. Table II.2 shows the coverage of state lobbying, and table II.3 shows the coverage of local lobbying.

Table II.1: Coverage of Federal Lobbying

Contacts, activities, and expenses	Covered under		
	LDA	IRC section 4911	IRC section 162(e)
Efforts in support of lobbying contacts, including preparation and planning activities, research, and other background work	Yes 2 U.S.C. 1602 (7)	Yes Treas. Reg. § 56.4911-3(a)	Yes 26 U.S.C. 162(e)(5)(C)
Contacts to influence legislation			
Contacts with legislative branch officials			
Members of Congress	Yes 2 U.S.C. 1602(8)(A)(i) & (4)(A)	Yes 26 U.S.C. 4911(d)(1)(B)	Yes 26 U.S.C. 162(e)(1)(A) & (4)(A)
Employees of Congress	Yes 2 U.S.C. 1602(8)(A)(i) & (4)(C) & (D)	Yes 26 U.S.C. 4911(d)(1)(B)	Yes 26 U.S.C. 162(e)(1)(A) & (4)(A)
Contacts with executive branch officials			
President, Vice President; Executive Schedule level I, cabinet-level officials, and their immediate deputies	Yes 2 U.S.C. 1602(8)(A)(i) & (3)(A), (B) & (D)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A) & (4)(A)
Executive Schedule levels II, III, IV, and V (excluding cabinet-level officials and their immediate deputies)	Yes 2 U.S.C. 1602(8)(A)(i) & (3)(D)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A) & (4)(A)
Uniformed services at or above O-7	Yes 2 U.S.C. 1602(8)(A)(i) & (3)(E)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A) & (4)(A)
Officials serving in a confidential, policymaking, or advocating position (Schedule C appointees)	Yes 2 U.S.C. 1602(8)(A)(i) & (3)(F)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A) & (4)(A)
Entire office of the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(i) & (3)(C)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A) & (4)(A)
White House Office of the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(i) & (3)(C)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A) & (4)(A)
The two most senior officers of each agency in the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(i) & (3)(C)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A) & (4)(A)

Contacts, activities, and expenses	Covered under		
	LDA	IRC section 4911	IRC section 162(e)
Contacts with any executive branch officials who may participate in the formulation of legislation	Maybe[b]	Yes 26 U.S.C. 4911(d)(1)(B)	Yes 26 U.S.C. 162(e)(1)(A) & (4)(A)
Contacts to influence rules, regulations, or executive orders			
Contacts with legislative branch officials			
Members of Congress	Yes 2 U.S.C. 1602(8)(A)(ii) & (4)(A)	No	No
Employees of Congress	Yes 2 U.S.C. 1602(8)(A)(ii) & (4)(C) & (D)	No	No
Contacts with executive branch officials			
President, Vice President; Executive Schedule level I, cabinet-level officials, and their immediate deputies	Yes 2 U.S.C. 1602(8)(A)(ii) & (3)(A), (B) & (D)	No	Maybe[c] 26 U.S.C. 162(e)(1)(D) & (6)(A),(B) & (D)
Executive Schedule levels II, III, IV, and V (excluding cabinet-level officials and their immediate deputies)	Yes 2 U.S.C. 1602(8)(A)(ii) & (3)(D)	No	No
Uniformed services at or above O-7	Yes 2 U.S.C. 1602(8)(A)(ii) & (3)(E)	No	No
Officials serving in a confidential, policymaking, or advocating position (Schedule C appointees)	Yes 2 U.S.C. 1602(8)(A)(ii) & (3)(F)	No	No
Entire office of the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(ii) & (3)(C)	No	No
White House Office of the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(ii) & (3)(C)	No	Maybe[c] 26 U.S.C. 162(e)(1)(D) & (6)(C)
The two most senior officers of each agency in the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(ii) & (3)(C)	No	Maybe[c] 26 U.S.C. 162(e)(1)(D) & (6)(C)
Contacts regarding the administration of a program or policy			
Contacts with legislative branch officials			
Members of Congress	Yes 2 U.S.C. 1602(8)(A)(iii) & 4(A)	No	No

Contacts, activities, and expenses	Covered under		
	LDA	IRC section 4911	IRC section 162(e)
Employees of Congress	Yes 2 U.S.C. 1602(8)(A)(iii) & (4)(C) & (D)	No	No
Contacts with executive branch officials			
President, Vice President; Executive Schedule level I, cabinet-level officials, and their immediate deputies	Yes 2 U.S.C. 1602(8)(A)(iii) & (3)(A), (B) & (D)	No	Maybe[c] 26 U.S.C. 162(e)(1)(D) & (6)(A), (B), & (D)
Executive Schedule levels II, III, IV, and V (excluding cabinet-level officials and their immediate deputies)	Yes 2 U.S.C. 1602(8)(A)(iii) & (3)(D)	No	No
Uniformed services at or above O-7	Yes 2 U.S.C. 1602(8)(A)(iii) & (3)(E)	No	No
Officials serving in a confidential, policymaking, or advocating position (Schedule C appointees)	Yes 2 U.S.C. 1602(8)(A)(iii) & (3)(F)	No	No
Entire office of the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(iii) & (3)(C)	No	No
White House Office of the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(iii) & (3)(C)	No	Maybe[c] 26 U.S.C. 162(e)(1)(D) & (6)(C)
The two most senior officers of each agency in the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(iii) & (3)(C)	No	Maybe[c] 26 U.S.C. 162(e)(1)(D) & (6)(C)
Contacts with executive branch officials to influence official actions or positions of the officials			
President, Vice President; Executive Schedule level I, cabinet-level officials, and their immediate deputies	Yes[d] 2 U.S.C. 1602(8)(A) & (3)(A), (B) & (D)	No	Yes 26 U.S.C. 162(e)(1)(D) & (6)(A), (B), & (D)
Executive Schedule levels II, III, IV, and V (excluding cabinet-level officials and their immediate deputies)	Yes[d] 2 U.S.C. 1602(8)(A) & (3)(D)	No	No
Uniformed services at or above O-7	Yes[d] 2 U.S.C. 1602(8)(A) & (3)(E)	No	No
Officials serving in a confidential, policymaking, or advocating position (Schedule C appointees)	Yes[d] 2 U.S.C. 1602(8)(A) & (3)(F)	No	No

Contacts, activities, and expenses	Covered under		
	LDA	IRC section 4911	IRC section 162(e)
Entire office of the Executive Office of the President	Yes[d] 2 U.S.C. 1602(8)(A) & (3)(C)	No	No
White House Office of the Executive Office of the President	Yes[d] 2 U.S.C. 1602(8)(A) & (3)(C)	No	Yes 26 U.S.C. 162(e)(1)(D) & (6)(C)
The two most senior officers of each agency in the Executive Office of the President	Yes[d] 2 U.S.C. 1602(8)(A) & (3)(C)	No	Yes 26 U.S.C. 162(e)(1)(D) & (6)(C)
Contacts to influence the nomination or confirmation of official subject to confirmation by the Senate[e]			
Contacts with legislative branch officials			
Members of Congress	Yes 2 U.S.C. 1602(8)(A)(iv) & (4)(A)	Yes 26 U.S.C. 4911(d)(1)(B)	Yes 26 U.S.C. 162(e)(1)(A)& (4)(A)
Employees of Congress	Yes 2 U.S.C. 1602(8)(A)(iv) &(4)(C) & (D)	Yes 26 U.S.C. 4911(d)(1)(B)	Yes 26 U.S.C. 162(e)(1)(A)& (4)(A)
Contacts with executive branch officials			
President, Vice President; Executive Schedule level I, cabinet-level officials, and their immediate deputies	Yes 2 U.S.C. 1602(8)(A)(iv) & (3)(A), (B) & (D)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A)& (4)(A)
Executive Schedule levels II, III, IV, and V (excluding cabinet-level officials and their immediate deputies)	Yes 2 U.S.C. 1602(8)(A)(iv) & (3)(D)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A)& (4)(A)
Uniformed services at or above O-7	Yes 2 U.S.C. 1602(8)(A)(iv) & (3)(E)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A)& (4)(A)
Officials serving in a confidential, policymaking, or advocating position (Schedule C appointees)	Yes 2 U.S.C. 1602(8)(A)(iv) & (3)(F)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A)& (4)(A)
Entire office of the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(iv) & (3)(C)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A)& (4)(A)
White House Office of the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(iv) & (3)(C)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A)& (4)(A)
The two most senior officers of each agency in the Executive Office of the President	Yes 2 U.S.C. 1602(8)(A)(iv) & (3)(C)	Yes[a] 26 U.S.C. 4911(d)(1)(B)	Yes[a] 26 U.S.C. 162(e)(1)(A)& (4)(A)

Contacts, activities, and expenses	Covered under		
	LDA	IRC section 4911	IRC section 162(e)
Attempts to influence the general public regarding legislation, referenda, ballot initiatives, constitutional amendments, and treaties	No	Yes 26 U.S.C. 4911(d)(1)(A) & (e)(2)	Yes 26 U.S.C. 162(e)(1)(C) & (4)(B) 26 U.S.C. 4911(e)(2)

[a]IRC sections 4911 and 162(e) do not specify which executive branch officials are covered when contacts are made to influence legislation. However, under IRC sections 4911(d)(1)(B) and 162(e)(4)(A), if contacts are made to influence legislation with any government official or employee who may participate in the formulation of legislation, then those contacts fall under the IRC definitions of lobbying.

[b]Contacts with executive branch officials are covered under LDA if the officials are on LDA's list of covered executive branch officials. LDA has no requirement that executive branch officials must participate in the formulation of legislation for contacts with them to be covered.

[c]IRC section 162(e) includes as lobbying "any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official." However, unlike LDA, this IRC section does not specifically name nonlegislative matters about which contacts with covered officials will be considered as lobbying. Further, it does not define what "official actions or positions" are.

[d]LDA specifically names several nonlegislative matters, such as federal rules, regulations, executive orders, and the administration or execution of a federal program or policy, about which contacts with covered executive branch or legislative branch officials will be considered as lobbying. The provision that defines as lobbying "any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official" is from IRC section 162(e).

[e]According to IRS officials, contacts to influence the nomination or confirmation of an official subject to confirmation by the Senate are considered to be contacts to influence legislation under IRC sections 4911 and 162(e). See Treasury Regulations 1.162-20(b)(ii)(3) and 56.4911-2(b)(4)(ii)(B) example 6.

Table II.2: Coverage of State Lobbying

Contacts, activities, and expenses	Covered under		
	LDA	IRC section 4911	IRC section 162(e)
Efforts in support of lobbying contacts, including preparation and planning activities, research, and other background work	No	Yes Treas. Reg. § 56.4911-3(a)	Yes 26 U.S.C. 162(e)(5)(C)
Contacts to influence legislation			
Contacts with legislative branch officials			
Members of state legislature	No	Yes 26 U.S.C. 4911(d)(1)(B) & (e)(2)	Yes 26 U.S.C. 162(e)(1)(A) & (4)(A)
Employees of state legislature	No	Yes 26 U.S.C. 4911(d)(1)(B) & (e)(2)	Yes 26 U.S.C. 162(e)(1)(A) & (4)(A)
Contacts with executive branch officials who may participate in the formulation of legislation	No	Yes 26 U.S.C. 4911(d)(1)(B) & (e)(2)	Yes 26 U.S.C. 162(e)(1)(A) & (4)(A)
Contacts to influence rules, regulations, or executive orders	No	No	No
Contacts regarding the administration of a program or policy	No	No	No
Contacts with executive branch official to influence official actions or positions of the official	No	No	No
Attempts to influence the general public regarding legislation, referenda, ballot initiatives, and constitutional amendments	No	Yes 26 U.S.C. 4911(d)(1)(A) & (e)(2)	Yes 26 U.S.C. 162(e)(1)(C) & (4)(B) 26 U.S.C. 4911(e)(2)

Table II.3: Coverage of Local Lobbying

Contacts, activities, and expenses	Covered under		
	LDA	IRC section 4911	IRC section 162(e)
Efforts in support of lobbying contacts, including preparation and planning activities, research and other background work	No	Yes Treas. Reg. § 56.4911-3(a)	Yes 26 U.S.C. 162(e)(5)(C)
Contacts to influence legislation			
Contacts with legislative branch officials	No	Yes 26 U.S.C. 4911(d)(1)(B) & (e)(2)	Maybe[a] 26 U.S.C. 162(e)(1)(A) & (e)(4)(A) & (e)(2)
Members of local council	No	Yes 26 U.S.C. 4911(d)(1)(B) & (e)(2)	Maybe[a] 26 U.S.C. 162(e)(1)(A) & (e)(4)(A) & (e)(2)
Employees of local council	No	Yes 26 U.S.C. 4911(d)(1)(B) & (e)(2)	Maybe[a] 26 U.S.C. 162(e)(1)(A) & (e)(4)(A) & (e)(2)
Contacts with executive branch officials who may participate in the formulation of legislation	No	Yes 26 U.S.C. 4911(d)(1)(B)	Yes 26 U.S.C. 162(e)(1)(A) & (e)(4)(A)
Contacts to influence rules, regulations, or executive orders	No	No	No
Contacts regarding the administration of a program or policy	No	No	No
Contacts with executive branch official to influence official actions or positions of the official	No	No	No
Attempts to influence the general public regarding legislation, referenda, ballot initiatives, and constitutional amendments	No	Yes 26 U.S.C. 4911(d)(1)(A) & (e)(2)	Yes 26 U.S.C. 162(e)(1)(C)& (e)(4)(B) 26 U.S.C. 4911 (e)(2)

[a]IRC section 162(e)(2) includes an exception for lobbying local government legislative branch officials concerning legislation that is of direct interest to the taxpayer. Therefore, only contacts with local government legislative branch officials about legislation that is not of direct interest to the taxpayer are covered by the IRC section 162(e) lobbying definition.

Exceptions to the LDA and IRC Lobbying Definitions

Exceptions to the LDA Lobbying Definition

Title 2 of the United States Code[1] contains 19 exceptions to LDA's lobbying definition. Under Title 2, the term "lobbying contact" does not include a communication that is:

1. made by a public official acting in the public official's official capacity;

2. made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

3. made in a speech, article, publication, or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;

4. made on behalf of a government of a foreign country or a foreign political party and disclosed under the Foreign Agents Registration Act of 1938;[2]

5. a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered executive branch official or a covered legislative branch official;

6. made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;

7. testimony given before a committee, subcommittee, or task force of Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

8. information provided in writing in response to an oral or written request by a covered executive branch official or a covered legislative branch official for specific information;

9. required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of Congress or an agency, including any communication compelled by a federal contract, grant, loan, permit, or license;

[1] 2 U.S.C. 1602(8)(B).

[2] 22 U.S.C. 611 et seq.

10. made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;

11. not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;

12. made to an official in an agency with regard to—(1) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or (2) a filing or proceeding that the government is specifically required by statute or regulation to maintain or conduct on a confidential basis–if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;

13. made in compliance with written agency procedures regarding an adjudication conducted by the agency under section 554 of Title 5 or substantially similar provisions;

14. a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;

15. a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures;

16. made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with—(1) a covered executive branch official, or (2) a covered legislative branch official (other than the individual's elected Members of Congress or employees who work under such Member's direct supervision)–with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

17. a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989[3] under the Inspector General Act of 1978[4] or under another provision of law;

[3] 5 U.S.C.A. sec. 1211 et seq.

[4] 5 U.S.C.A. App. 3.

18. made by (1) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a federal income tax return under paragraph (2)(A)(i) of such section 6033(a) of Title 26, or (2) a religious order that is exempt from filing a federal income tax return under paragraph (2)(A)(iii) of such section 6033(a); and

19. between (1) officials of a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act) that is registered with or established by the Securities and Exchange Commission as required by that act or a similar organization that is designated by or registered with the Commodities Future Trading Commission as provided under the Commodity Exchange Act; and (2) the Securities and Exchange Commission or the Commodities Future Trading Commission, respectively, relating to the regulatory responsibilities of such organization under the act.

Exceptions to the IRC Section 4911 Lobbying Definition

Title 26 of the United States Code[5] contains five exceptions to the lobbying definition in IRC section 4911. Under IRC section 4911, the term "influencing legislation", with respect to an organization, does not include:

1. making available the results of nonpartisan analysis, study, or research;

2. providing technical advice or assistance (where such advice would otherwise constitute influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;

3. appearances before, or communications to, any legislative body with respect to a possible decision of such body that might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

4. communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications that directly encourage the members to take action to influence legislation;

5. any communication with a government official or employee, other than (1) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of

[5] 26 U.S.C. 4911(d)(2)

legislation), or (2) a communication the principal purpose of which is to influence legislation.

Exceptions to the IRC Section 162(e) Lobbying Definition

Title 26 of the United States Code[6] contains a single exception to the lobbying definition in IRC section 162(e):

1. appearances before, submission of statements to, or sending communications to the committees, or individual members, of local councils or similar governing bodies with respect to legislation or proposed legislation of direct interest to the taxpayer.

In addition, the Treasury Regulations contain eight exceptions:

2. any communication compelled by subpoena, or otherwise compelled by federal or state law;[7]

3. expenditures for institutional or "good will" advertising which keeps the taxpayer's name before the public or which presents views on economic, financial, social, or other subjects of a general nature but which do not attempt to influence the public with respect to legislative matters;[8]

4. before evidencing a purpose to influence any specific legislation—determining the existence or procedural status of specific legislation, or the time, place, and subject of any hearing to be held by a legislative body with respect to specific legislation;[9]

5. before evidencing a purpose to influence any specific legislation—preparing routine, brief summaries of the provisions of specific legislation;

6. performing an activity for purposes of complying with the requirements of any law;

7. reading any publications available to the general public or viewing or listening to other mass media communications; and

8. merely attending a widely attended speech.

[6] 26 U.S.C. 162(e)(2)(B)(i).

[7] Treasury Regulation section 1.162-29(b)(3).

[8] Treasury Regulation Section 1.162-20(a)(2).

[9] This exception and the following four exceptions are from Treasury Regulation Section 1.162-29(c)(3).

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