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The Failure of the Lobbying Disclosure Act (LDA) and Proposed Reforms

The Lobbying Disclosure Act (LDA) is failing in its goal of “ensuring public awareness of the efforts of paid lobbyists to influence the public decision-making process” in order to “increase public confidence in the integrity of Government.” While spending on lobbying continues to grow, the number of registered lobbyists has dropped. However, there are not fewer actual lobbyists; there are simply fewer *registered* lobbyists. Due to inadequate standards and weak enforcement, the current law falls far short of providing the public with accurate information regarding who is lobbying and who is footing the bill to sway the votes and actions of their elected representatives in Washington.

The right to lobby the government is enshrined in the constitutional guarantee for the people to petition their government for redress of their grievances. Yet, as the Supreme Court has recognized, with this right comes the need for disclosure to protect against the threat of corruption. Effective disclosure of lobbying enables officials to gain full understanding of those seeking to influence them, allows the public to monitor spending on advocacy and to respond accordingly, and inhibits potentially corrupt activities. Federal lobby disclosure laws have repeatedly withstood court challenge, beginning with the observations of Chief Justice Warren in the Supreme Court’s decision in [*U.S. v. Harriss \(1954\)*](#):

Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent.

Toward that end, Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose.

A subsequent challenge in 2008 to federal lobbying disclosure laws by the National Association of Manufacturers was also [rejected](#). Despite widespread [public support](#) for lobbying disclosure and repeated affirmation of the law’s constitutional validity, the LDA still falls short of its objective of unveiling lobbying activities to public scrutiny.

The failure of the law to bring about effective disclosure of lobbying is not a new phenomenon. In the 1980s, questions were raised about the adequacy of the lobby disclosure law when former

Secretary of Defense, White House Counsel and Washington “wise man” Clark Clifford advocated before Congress and the executive branch on behalf of numerous companies looking to gain access to the federal government. Among his clients was the infamous [Bank of Credit and Commerce International](#). He never registered as a lobbyist. Former Ambassador, DNC Chairman and Washington “insider’s insider” [Robert Strauss](#) maintained a government relations and law practice in Washington, D.C. for decades and was a regular on Capitol Hill, courting Congress and the executive branch. He never registered as a lobbyist.

CURRENT LAW

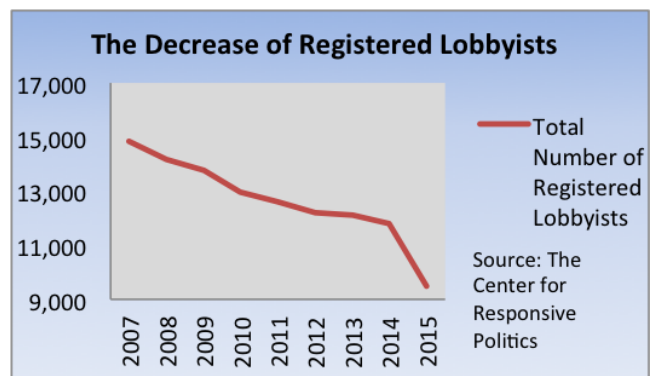
An individual [must register as a federal lobbyist](#) if he or she makes two or more “lobbying contacts” with Congress or the executive branch **and** spends at least 20% of his or her time during any calendar quarter engaging in “lobbying activities” for compensation greater than \$2,500 (\$3,000 indexed for inflation) from a single client. A registered lobbyist is required to file quarterly reports detailing the issues he or she lobbied on and the amount of compensation to the nearest \$10,000.

Two major weaknesses in current law stand out. First, the 20% time threshold is too high and is unenforceable since it is almost impossible for anyone other than the person engaging in lobbying activity to gauge the correct percentage. Second, the current reporting requirements fail to disclose the names of those individuals who may direct the effort behind the scenes or who provide significant support for lobbying through strategic planning, public communications or polling operations.

GROWING FAILURE TO ACCURATELY DISCLOSE LOBBYING

There are several reasons why, even as the law has been strengthened through the years, the serious flaws in federal lobbying laws have grown more obvious. The [Lobbying and Disclosure Act of 1995](#) made changes to the statute for the first time in more than 50 years, including long-overdue changes to clarify the standards for registration. Then, in 2007, the [Honest Leadership and Open Government Act](#) placed new restrictions on lobbyists’ ability to give gifts to Members of Congress as well as pay for Members’ travel. Lastly, less than 48 hours after taking office, President Obama issued an [Executive Order](#) prohibiting the hiring of lobbyists in the executive branch unless a waiver was obtained. Previous Administrations had brought in a significant number of lobbyists to high-level positions in agencies, which raised concerns about potential conflicts of interest with their previous clients. While all of these revisions were much-needed improvements, they not surprisingly created new incentives to de-register, since the central shortcomings of the statute remained. With new incentives to de-register, the failure of the LDA to accurately and appropriately disclose lobbying has become readily apparent.

The Center for Responsive Politics found that from [2007 to 2014](#), the number of registered lobbyists dropped more than 16% while the amount of money spent on lobbying increased during that same period by 20%. Of those who de-registered between 2011 and 2012, close to [46%](#) still worked in similar capacities. Despite a current registered total of [about 9,400](#) in 2015, [estimates](#) range as high as 100,000 for the true number of lobbyists currently working in



Washington.

NOTABLE EXAMPLES

- Former Speaker of the House Newt Gingrich claimed he worked as a “strategic adviser” from 2001-2010 for various groups with federal policymaking interests and claimed he “[never did any lobbying](#)” despite [arranging meetings](#) between companies and elected officials according to *The Washington Post* and *The New York Times*. He never registered as a lobbyist.
- Major Democratic fundraiser Michael Kempner ran a team of [Washington lobbyists](#) from his New Jersey firm, MWW Group, according to *The New York Times*. He [never registered](#) as a lobbyist.
- Former Senate Majority Leader Tom Daschle worked as a “[strategic advisor](#)” for several lobbying firms for [ten years](#), representing numerous clients. Yet he reportedly did not spend enough of his time lobbying for a single client, according to the *Huffington Post*. He never registered as a lobbyist until March 2015, when he registered under the Foreign Agents Registration Act (FARA).
- Andy Stern, president of Service Employees International Union (SEIU), visited the White House [more than 20 times](#) in President Obama’s first six months in office. Responding to complaints about his failure to register, he claimed that he did not spend more than 20% of his time lobbying elected officials, according to *The New York Times*. He de-registered as a lobbyist in 2007 before President Obama’s election and [never again registered](#) as a lobbyist.
- Former U.S. Representative and President of the Biotechnology Industry Organization James Greenwood defended against claims of lobbying alleged by *Politico*, stating that he did not spend more than 20% of his time lobbying, according to his spokesman. He [never registered](#) as a lobbyist.
- Former House Ways and Means Chairman Bill Thomas worked as a senior advisor for the lobbying and law firm Buchanan Ingersoll & Rooney, but claimed he did not lobby enough to qualify, according to *Politico*. He [never registered](#) as a lobbyist.
- Former U.S. Representative Tom Reynolds worked as a “senior strategic political advisor” at the lobbying firm Nixon Peabody, according to *Politico*. He [never registered](#) as a lobbyist.
- Andy Spahn is the owner of a government relations company, which advertises its extensive connections to Washington, D.C. According to *The New York Times*, Spahn has worked on lobbying efforts for a roster of clients, including DreamWorks film studios. He [never registered](#) as a lobbyist.

PROPOSED REFORMS

To address these issues and the ineffectiveness of the current LDA, in 2011, the American Bar Association appointed a Task Force to review federal lobbying laws. Co-chaired by Campaign Legal Center President and former Republican Chairman of the Federal Election Commission (FEC) Trevor Potter, former Reagan Administration Solicitor General Charles Fried, former Deputy General Counsel to the Democratic National Committee (DNC) Rebecca Gordon and former DNC General Counsel Joseph Sandler, the Task Force was made up of K Street practitioners, public interest lawyers, and academics. The Task Force reached a consensus in recommending several key reforms which were [largely adopted](#) by the almost 400,000-member ABA. Based on these recommendations, the proposals for reform include:

- Requiring individuals to register as lobbyists if (a) they make more than 1 lobbying contact, (b) receive compensation of more than \$2,500 or make expenditures of more than \$10,000 per quarter and (c) spend 12 hours or more per quarter conducting lobbying activity.
- Including in the reports filed by registered lobbyists the names of any individual who provides support for lobbying through strategic planning, public communications and polling operations;
- Shifting enforcement from the U.S. Attorney's office in Washington, D.C. to the Department of Justice to ensure greater effectiveness.

The [Association of Government Relations Professionals](#) (formerly the American League of Lobbyists) has proposed a similar set of reforms.