

LOBBYING DISCLOSURE LAW

ACT 134 OF 2006

Interim Guidelines for

Accounting and Reporting –

How to Comply with Act 134 of 2006

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Section I - Introduction

The Lobbying Disclosure law, Act 2006-134 (65 Pa.C.S. §1301-A *et seq.*), hereinafter the Act, requires reporting and recordkeeping by registered principals, lobbying firms and lobbyists.² This *Interim Guidelines for Accounting and Reporting – How to Comply with Act 134 of 2006* (hereinafter Interim Guidelines) is being drafted by the Interim Guidelines Subcommittee (Subcommittee), established by the Lobbying Disclosure Regulations Committee (Committee), as a reference tool to assist registrants in complying with the requirements of the Act until such time that the Committee promulgates final regulations at 51 Pa. Code § 51.1 *et seq.* After the full Committee reviews and formally approves the Interim Guidelines, they may be used for guidance until the finalization of the regulations, at which time the Committee will produce a final copy of the *Manual of Guidelines for Accounting and Reporting*, in compliance with section 1310-A(d)(5) of the Act.

For copies of selected chapters of these draft regulations, a proposed schedule of the meetings of the Committee, an agenda of the next meeting of the Committee, and a copy of the current version of the draft Interim Guidelines, go to the website of the Attorney General, <http://www.attorneygeneral.gov/theoffice.aspx?id=2099>. This link will bring you to the Lobbying Disclosure Regulations Committee, which is also linked to the websites of the Department of State (Department) and the Pennsylvania State Ethics Commission (Commission). Specifically, Chapter 55 of the draft regulations deals with reporting. Nothing in the Interim Guidelines should be construed as superseding the provisions of the Act or the regulations that the Committee later promulgates. **Although registrants may appropriately rely on these Interim Guidelines following their approval by the Committee, it is also appropriate for registrants to have utilized a different, reasonable method of estimation and allocation for the purposes of completing and filing reports for the quarter ending March 31, 2007, which reports were due on April 30, 2007.**

A. Comments on Interim Guidelines and Regulations

Anyone interested in making comments or sending comments about bookkeeping and recordkeeping on these Interim Guidelines or the draft regulations may send comments to the Office of Attorney General at: lobbyingdisclosure@attorneygeneral.gov. Although comments will be considered at any time, comments are most appropriate when the Committee is discussing the chapter on which the comments are relevant. Also, the Committee is planning a public hearing near the end of the draft regulations process, which will be announced on the proposed schedule of meetings on the Attorney General's website. Finally, after the Committee submits proposed regulations to IRRC, there will be a public comment period of at least thirty (30) days.

¹ **Highlighting** represents major issues in the text and footnotes for the Committee's consideration. Unless noted to the contrary, track changes show the changes to Version IX that staff drafted after the Committee meeting on May 3 to reflect the edits requested by Robin Hittie. **Major substantive changes to Version IX are also highlighted.**

² For information on the **registration requirements** for principals, lobbying firms and lobbyists, please refer to the Department of State website at www.dos.state.pa.us. The site contains forms and instructions for registration statements, as well as a copy and summary of Act 134. Section 1304-A of Act 134 addresses the registration requirements.

B. Questions

For additional information, or if you have any questions about completing registration statements (statements) or quarterly expense reports (reports), please contact the Department of State, Bureau of Commissions, Elections and Legislation, 210 North Office Building, Capitol Complex, Harrisburg, PA 17120; phone (717) 787-5280; fax (717) 787-2854. Additional information on the Act, a summary of the Act, Frequently Asked Questions, copies of the registration statements and quarterly expense reports along with instructions, are located on the Department's website at www.dos.state.pa.us. Click on "Lobbying Disclosure" on the left or right tool bar. Email inquiries on registration statements or quarterly expense reports should be directed to the Department at: RA-LobbyDisclosure@state.pa.us.

For official advice regarding compliance with the Act, contact the Ethics Commission at 309 Finance Building, P.O. Box 11470, Harrisburg, PA 17108-1470. For informal advice, contact the Commission by telephone at 1-800-932-0936 or (717) 783-1610 although the Commission does not issue official advisory opinions by telephone. Additional information on lobbying disclosure may be obtained through the State Ethics Commission at: www.ethics.state.pa.us.

Section II- Reporting Periods & Filing Quarterly Reports

A. Quarterly Reporting Periods:

Section 1305-A(a) of the Act requires quarterly reporting for quarters ending in March, June, September and December of each year. The due date of each report is *no later than* 30 days after the end of the quarterly reporting period.

However, if the 30th day falls on a weekend or holiday, or on another day the Department offices are closed or close early, the deadline is extended to the following **Commonwealth business** day.³

Except when the 30th day falls on a weekend or holiday, as noted above, the quarterly "reporting periods" are as follows:

- (1) January 1 through March 31 (Deadline April 30);
- (2) April 1 through June 30 (Deadline July 30);
- (3) July 1 through September 30 (Deadline October 30); and

³ The Statutory Construction Act at 1 Pa.C.S. § 1908 (relating to the computation of time), provides that in determining time in statutes, that whenever the last day of a deadline falls on a Saturday, Sunday or holiday, such day "shall be omitted from the computation of time." Furthermore, the Statutory Construction Act at 1 Pa.C.S. § 1991 (relating to definitions) defines "day" as "[t]he time from midnight to the next midnight." Because there is no definition of business day, the Committee may wish to use the phrase "Commonwealth business day" here and in the regulations.

(4) October 1 through December 31 (Deadline January 30).

Generally, the financial information that is to be disclosed in the quarterly expense report is to be limited to the particular quarter for which the report is being filed: do not list cumulative totals for the year. The only cumulative recordkeeping/reporting that is required concerns gifts, transportation, lodging and hospitality given to or provided to state officials or employees. These requirements are discussed in Section VI.

B. Filing Quarterly Reports:

Section 1305-A(a) of the Act requires a registered principal to file quarterly expense reports. If a lobbyist or lobbying firm reports all expenses to and through their respective principals, then the lobbyist or lobbying firm is not required to file quarterly expense reports.

However, if a principal does not submit a quarterly expense report, or if a principal does not include all expenses of a lobbying firm or lobbyist in its report, then section 1305-A(b)(6) of Act 134 requires a lobbying firm or a lobbyist not associated with a lobbying firm to file a quarterly expense report for any expenses not included in a principal's quarterly expense report. (See page 2 of the Department's Instructions for Paper Quarterly Expense Reports and page 3 of the Instructions for Online Reports.)

Section III – Reasonable Methods of Estimation and Allocation

Section 1305-A(b)(2.1) of the Act permits filers to use any reasonable methods of estimation and allocation. The initial determination that a registrant must make is whether the expense in question meets the definition of "lobbying" at section 1303-A of the Act. The first sentence of the definition of "lobbying" defines it as "[a]n effort to influence legislative action or administrative action in the Commonwealth." If the expense is not lobbying, then there is no requirement to report it on a quarterly expense report. If the expense is lobbying, however, then the registrant must report it.

The second sentence of the definition of "lobbying" at section 1303-A of the Act provides that the "term includes:

- (1) direct or indirect communication;
- (2) office expenses; and
- (3) providing any gift, hospitality, transportation or lodging to a State official or employee for the purpose of advancing the interest of the lobbyist or principal."

Some examples of lobbying would include the following under Act 134:

- Any efforts by a lobbyist or lobbying firm made on behalf of principals to secure the release of funds from the capital budget or efforts directed toward obtaining state-

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funded grants is considered lobbying and would trigger the registration and reporting requirements of Act 134.

- An association has members who routinely work on behalf of their clients with state departments and agencies on auditing, accounting, tax, and related matters. To the extent that such activities attempt to influence “administrative action,” as that term is defined in section 1303-A of Act 134, these activities could be considered “lobbying” as that term is also defined at section 1303-A of Act 134, and would be subject to reporting by the members unless such members or their activities would be exempt under section 1306-A of the Act. If an attorney represents clients in administrative adjudications before the Department of Revenue’s Board of Appeals or the Board of Finance and Revenue, that activity could be exempt from registration and reporting if the activity falls within the exemption at section 1306-A(13) of the Act.

Sometimes, an event may require reporting of lobbying expenses by a principal, but not necessarily by its members, where the principal is a trade association or a labor organization. An event requiring reporting of lobbying expenses by a principal will not require reporting by the principal’s members unless the members incur expenses that are not paid by the principal. For example, annually a principal hosts an event in Harrisburg where members come to discuss issues of importance to the principal’s profession. Part of the day is spent with members “walking the halls” of the capitol and in meetings with legislators and staff discussing and promoting the principal’s legislative agenda and related matters. The activities of a principal’s members would be reported as direct lobbying on the principal’s next quarterly expense report. However, expenses paid by the members would be attributable to them and reportable by them to the extent the members would not be exempt.

Furthermore, section 1305-A(b)(2)(iv) of the Act provides that all lobbying expenses shall be allocated to one of the three categories (gifts/hospitality/transportation/lodging, direct communication and indirect communication) listed in subsections 1305-A(b)(2)(i)-(iii). Subsection 1305-A(b)(2)(iv) also requires that “expenses shall not be included in more than one category.” The Committee believes that this means that an expense shall not be reported twice, but it does not mean that an expense for an event cannot be allocated between two different categories, provided that a reasonable method of estimation and allocation is used. The Committee believes that the primary goal of the Act is to ensure that all expenses are fully reported and that issues of allocation between the direct communication and indirect communication categories (i.e. whether an item fits neatly into one category or another) are secondary.

As stated in the second category of lobbying above, which includes “office expenses” as lobbying, section 1303-A of the Act defines direct and indirect communication to include “personnel expenses” and “office expenses,” which are also defined in the Act. Because the definitions of “gift” and “hospitality” in section 1303-A of the Act do not explicitly include personnel expenses and office expenses, if a principal sponsors an event for public officials and

Deleted: , if the expense of the activity meets the \$2,500 threshold of reporting at section 1306-A(4) or (6) and an employee lobbyist engages in lobbying on behalf of the individual’s employer if the lobbying meets the threshold of 20 hours during any reporting period at section 1306-A(5), unless this were a volunteer activity, as exempted at section 1306-A(3). (Any hours count toward the 20-hour requirement where the individual engages in lobbying on behalf of the individual’s employer.)

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employees, the principal's expenses for mailing invitations, and the time its staff spends planning this event should be reported as direct or indirect communication.⁴

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In using any reasonable method of estimation and allocation permitted in section 1305-A(b)(2.1), registrants could conceivably allocate personnel and office expenses differently from one calendar quarter to the next, depending on whether they conducted more direct or indirect communication during the calendar quarter. As an example, during the first quarter of 2007, a principal could spend most of its time communicating with the public or its employees, shareholders or members on its views of the important issues facing the Pennsylvania General Assembly during this legislative session, which constitute indirect communications. In estimating and allocating its personnel and office expenses, it is reasonable for such a principal to conclude that most of its personnel and office expenses were devoted to indirect communication, and that some expenses of its in-house lobbyists and the lobbying firms it hired were devoted to direct communication to new as well as incumbent legislators. The principal could then use the expense reports submitted by its in-house lobbyists and outside lobbying firms to report additional costs for hospitality as its lobbyists and lobbying firms sought to build relationships with new legislators and to maintain current relationships with incumbents.

To continue this example into the second quarter, where the principal's lobbying efforts focused on issues before the General Assembly, the principal may have spent more of its resources on direct lobbying efforts communicating directly with legislators with letters, white papers, phone calls and visits. While the lobbyists and lobbying firms delivered many of these messages personally, other executives might have spoken to legislators, and staff members may have worked to research and write the white papers. In estimating and allocating its personnel and office expenses, the principal could reasonably conclude that most of its personnel and office expenses were devoted to direct communications, while some expenses of its personnel and office expenses were devoted to continuing indirect communications to its employees, shareholders and the general public in disseminating the principal's views.

In addition, records of lobbying activity may be kept pursuant to any reasonable accounting basis, as discussed in the next section. Again, the Committee believes that the primary goal of the Act is to ensure that all expenses are fully reported and that issues of allocation between the direct communication and indirect communication categories are secondary.

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Section IV - Basis of Accounting

Section 1305-A(b)(2) of the Act indicates that expense reports must contain the total costs of all lobbying for the period, including the total amount spent for personnel and office expenses; the total amount spent for both direct and indirect communication; as well as the total costs for gifts, entertainment, recreation, meals, beverages, transportation, lodging and receptions given to or provided to state officials, employees, or their families. Section 1305-A(b)(2.1) of the Act permits filers to use any reasonable method of estimation and allocation. "Records of lobbying activity may be kept pursuant to any reasonable accounting basis, which includes" (but is not limited to): cash basis of accounting, accrual

⁴ The Subcommittee made this change on May 1, and also asked staff to make the same statement in the regulations at § 55.1. It is now consistent with the statement in the last paragraph of Section VII.

basis of accounting, and modified accrual basis of accounting, all of which are described below. *See* § 55.2(a)(3) of the draft of the proposed regulations.

Cash basis - revenue and related assets are recognized when received, and expenses are recognized when payment is disbursed. For example, payroll costs are reported when paid, not when the associated hours are worked.

Accrual basis - income is recognized when earned, and expenses when incurred. For example, payroll is recognized when the associated hours are worked regardless of when payment is made.

Modified Accrual basis – recognizes an economic transaction or event as revenues in the operating statement when the revenues are both measurable and available to liquidate liabilities of the current period. Available means collectible in the current period or soon enough thereafter to be used to pay liabilities of the current period. Similarly, expenditures are generally recognized when an event or transaction is expected to draw on current spendable resources.

The Committee recommends that filers be consistent in their use of accounting method for cumulative reporting over the two-year period, as stated in the draft of the proposed regulations at § 55.2(a)(6). If a filer must change its accounting method, the filer should internally keep an explanation on record, explaining the reason for this change, in the event that the filer is later audited or questioned regarding the basis of accounting and the reason for the change.

Section V - Recordkeeping

This section contains recordkeeping methods to ensure compliance with the Act concerning lobbying costs. Section VI pertains to the calculation of gifts, transportation, lodging and hospitality given to or provided to state officials or employees or their immediate family members, while Section VII provides information on direct communication, Section VIII discusses indirect communication, and Section IX deals with total costs of all lobbying.

Generally, a principal, lobbying firm or lobbyist is not required to file its actual receipts with a quarterly expense report. However, section 1305-A(c) of the Act requires principals, lobbying firms and lobbyists to keep receipts and all other documents reasonably necessary to substantiate their quarterly expense reports for four years from the date of filing the quarterly expense report.

A. Gifts, Hospitality, Transportation and Lodging

The reporting requirements for gifts, hospitality, transportation and lodging, under section 1305-A(b)(3) of the Act, are described in the next two sections:

1. Gifts

Section 1305-A(b)(3)(i) of the Act requires the filer to identify by name, position and each occurrence, ~~any individual~~ state official or employee provided a gift or gifts ~~in the aggregate of \$250 or more per calendar year, as described at section 1105(b)(6) of the Ethics Act, 65 Pa.C.S. §1105(b)(6).~~ This section of the report should be itemized only when gifts to any individual state employee or official aggregate in the amount of \$250 or more in a calendar year.

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The reporting of the provision of a gift to a state official or employee shall identify:

1. The name and position of the state official or employee, including the governmental body of the state official or employee;
2. The name and address of the source of the gift;
3. The date the gift was given and the value of the gift; and
4. The circumstances of the gift, including the description of the gift.

2. Payments and Reimbursements for Transportation, Lodging and Hospitality

The reporting of the provision of transportation, lodging, and hospitality to a state official or employee in connection with public office or employment shall identify the following:

1. The name and position of the state official or employee, including the governmental body of the state official or employee;
2. The name and address of the source of the payment;
3. The value of the transportation, lodging or hospitality and the date of the payment or reimbursement.

The report must also identify any state official or employee to whom payments or reimbursements were made for transportation, lodging or hospitality that **in the aggregate exceed \$650 per calendar year**. This section of the report should be itemized only when payments or reimbursements to any individual state official or employee aggregate more than \$650 in a calendar year.

The accounting records for gifts, transportation, lodging and hospitality should be designed and maintained to facilitate reporting of the total expenditures for these items as well as the amounts for individual state officials and employees. Each time such an item is provided, the following important points should be remembered:

1. Obtain the identifying information for each state official or employee.
2. Amounts paid for immediate family members⁵ of a state official or employee must be included in the aggregate total expenditures.

⁵ For the definition of immediate family, *see* § 55.1 (relating to definitions) of the draft of the proposed regulations.

B. Valuation Considerations

Section 55.1(k)⁶ of the draft of the proposed regulations contains rules for valuing gifts, hospitality, transportation and lodging:

1. Gifts and hospitality items that are returned unused to the donor within 30 days of the date of receipt need not be reported.
2. The valuation of a complimentary ticket to a fundraiser shall be based upon the reasonable amount of the goods or services received. Such valuation shall not include a political contribution, which is otherwise reported as required by law.
3. The value of gifts, transportation, lodging or hospitality shall equal the costs to the registrant if the items or services to be valued were in fact obtained by the registrant in marketplace transactions.
4. When item 3 does not apply, the value of the gifts, transportation, lodging or hospitality shall equal the fair market values as determined by the replacement costs, that is, the costs of purchasing the same or similar items or services in marketplace transactions.
5. When neither items 3 nor 4 apply, the registrant may use any reasonable method to determine the value of gifts, transportation, lodging or hospitality.
6. When more than one individual is the recipient of the gifts, transportation, lodging or hospitality, the registrant may calculate the value by one of the following methods:
 - i. Calculating the actual benefit provided to that individual.
 - ii. Dividing the totals of expenditures common to more than one beneficiary including that individual by the number of recipients.
 - iii. Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation.

Registrants must retain all documents reasonably necessary to substantiate the statements and reports made under sections 1304-A or 1305-A of the Act for four years from the date of filing of the report. **Records should be maintained in their original form to the extent possible.**

Section 55.2(c)(5) of the draft regulations provides for the use of affidavits if actual records

⁶ The Committee is currently drafting proposed regulations to subsections 55.1(k)(1) – (6), which may provide additional clarification of some of the valuation issues listed here, including the issue of whether to include a de minimis threshold for reporting in Chapter 55. Furthermore, in its review of Chapter 55 on March 15, the Committee asked the Department to consider defining “marketplace transactions,” as referenced in subsections 55.1(k)(3) & (4). “Marketplace transactions” could be defined as the “costs of goods or services in the market in which they were purchased.” When the Committee makes a final decision on the regulations, the Committee will update these Interim Guidelines accordingly. In the meantime, registrants should consult an attorney or accountant.

are lost, stolen or destroyed through no fault of the registrant; or if the actual records are otherwise unavailable, and cannot be recreated from other sources. Section 55.2(d) of the draft regulations provides for the creation of records where original source documents are not available to support reportable expenditures.

Details of specific records required by the Act are itemized in Chapter 55 of the draft regulations.

C. Valuation of Time

Because Section 1305-A(b)(2.1) provides that “a registrant may use any reasonable methods of estimation and allocation,” there is no specific method for valuing time required by the Act. The following are offered as viable options.

Current language of (a):

- a. Create a snapshot of representative time allocation. The snapshot will serve as a model to compute the value of future time. Registrants should keep a record on file explaining why the registrant selected that period of time. The Committee discussed whether that representative time should be thirty, sixty or ninety days, and whether time during the third quarter would be appropriate. A lobbyist, lobbying firm or principal should **consult with an attorney or accountant** to address this issue. If the snapshot concerns estimations of time for sales tax purposes, a registrant should consult with an attorney or accountant or contact the Department of Revenue.

Alternative to (a):⁷

- a. Use a good faith estimate using any reasonable method of estimation and allocation.
- b. Keep a record of all hours spent lobbying.
- c. Use the entire fee for lobbying, which could have sales tax implications.

Section VI – Calculation of Gifts, Hospitality, Transportation and Lodging

As noted in Section V above, all reportable costs for gifts, and the payment or reimbursement of hospitality, transportation and lodging should also be included in the total expenses related to lobbying. Section 1305(b)(2)(i) of the Act requires that the quarterly report contain the total costs for gifts, entertainment, meals, transportation, lodging and receptions, given to or provided to state officials or employees or their immediate families.

⁷ The “Current language of (a)” represents the opinion of the Subcommittee, while the “Alternative to (a)” comes from Ms. Hittie.

It is the value of the thing received as a gift, hospitality, transportation or lodging that determines what must be disclosed under the Act.

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A. Allocation and Reporting of Hospitality Provided to State Officials or Employees:

The question of whether to include items provided to immediate family members or others as attributable to a state official or employee for purposes of his or her individual totals depends upon the circumstances.

The ways in which a lobbying firm, lobbyist, or principal may allocate and report tickets given to a state official or employee for a sporting or entertainment event, are listed in the examples below. Please note that tickets should be valued at fair market value or the actual cost of the tickets. If the actual cost is unknown, then use the fair market value. **Note:** A lobbyist, lobbying firm or principal should not accept payment toward the cost of tickets from a state official or employee who asks to diminish the value of tickets in an effort to avoid disclosure.

- If a lobbying firm, lobbyist or principal provides tickets to a state official or employee, the tickets should be allocated toward the \$650 threshold for that state official or employee.
- If a lobbying firm, lobbyist or principal provides tickets to a state official or employee; all of the tickets provided are reported as being given to that state official or employee.
- A lobbying firm, lobbyist or principal provides 10 tickets to a state official or employee, and the state official or employee later informs the lobbying firm, lobbyist, or principal that only two tickets were used by the state official or employee. The lobbying firm, lobbyist or principal still allocates all of the 10 tickets to the state official or employee. The lobbying firm, lobbyist or principal does not need to verify who received all 10 tickets, as long as the recipients are not state officials or employees as noted in the following example.
- A lobbying firm, lobbyist or principal provides 10 tickets to a state official or employee, and the state official or employee informs the lobbying firm, lobbyist or principal that 4 of those tickets were used by another state official or employee. The lobbying firm, lobbyist or principal could allocate those tickets between the two state officials or employees (6 & 4). (The lobbying firm, lobbyist or principal does not need to verify who received each individual ticket.)

- A lobbying firm provides 10 tickets to a state employee. If the state employee fully reimburses the lobbyist for 6 out of the 10 tickets within thirty days of receipt,⁸ both

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⁸ In considering this issue, the staff recommends that the Committee see section 55.1(k)(1) of the draft of the proposed regulations, listed at Section 5(B) of these Guidelines, which provides for the return of unused gifts or hospitality within 30 days of receipt. It is suggested that reimbursement (in this example) and return (in the next example) be treated similarly and that the Committee should consider a reasonable time period for either.

the lobbying firm and state employee should report the value of 4 tickets. (The lobbying firm, lobbyist or principal does not need to verify who received the other 6 tickets.)

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- A principal provides 10 tickets to a state official. If the state official returns 6 of the 10 tickets to the principal unused within thirty days of the date of receipt, both the principal and the state official should report the value of 4 tickets.
- A lobbying firm, lobbyist or principal provides 10 tickets to a state official or employee, and the state official or employee pays for all 10 tickets. The lobbying firm, lobbyist or principal reports zero value.
- Things of value that are provided directly to someone other than a state official or employee, without any contact or involvement on the part of the state official or employee, are not attributable to the state official or employee.

B. Hospitality in the Form of Dinners and Receptions⁹

With respect to providing hospitality to state officials or employees in the form of a dinner, a lobbyist, lobbying firm or principal may either divide the bill by the number of people in attendance or keep accurate records of the menu items and beverages ordered by each person. If an event is described as both a reception and dinner, the principal should report the cost for both the reception and the dinner as hospitality. The principal would then determine what portion of the total amount spent is attributable to the reception and which portion is attributable to dinner and divide that number by the total number of people attending the event or keep accurate records of the menu items and beverages ordered by each person.

For the purpose of allocating costs of hospitality to individual state officials or employees, section 1305-A(b)(3)(iii) of the Act provides that the amount referred to in section 1105(b)(7) (relating to the \$650 threshold for reporting hospitality) shall not include the cost of a reception which the state official or employee attends in connection with public office or employment. Furthermore, section 1305-A(b)(3)(iv) of the Act requires that written notice must be given to each state official or employee who is listed in an expense report at least seven days prior to the report's submission to the Department.

Section VII– Calculation of Direct Communication

“Direct communication” is defined in section 1303-A of the Act as “[a]n effort, whether written, oral or by any other medium, made by a lobbyist or a principal, directed to a state official or employee, the purpose or foreseeable effect of which is to influence legislative action or administrative action. The term may include personnel expenses and office expenses.” Thus, a “direct communication” involves:

⁹ The Committee is currently considering adding a definition of “reception” to section 51.1 of the draft of the proposed regulations to distinguish a reception from a dinner meeting.

- (1) an “effort;”
- (2) that must be “directed to a State official or employee;”
- (3) ~~“the purpose or foreseeable effect of which is to influence legislative action or administrative action.”~~

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For an expense to be considered a “cost for direct communication,” each element of the definition must be met.

All reportable costs for direct communication should also be included in the total amount spent for expenses related to lobbying. Examples of direct communication include: meetings, letters, and phone calls with state officials and legislators. Direct communication costs may include personnel expenses and office expenses. As previously stated, the Committee believes that the primary goal of the Act is to ensure that all expenses are fully reported and that determination of whether a particular expense falls within direct or indirect communications is secondary.

Deleted: An “effort” implies that the registrant intends to influence legislative or administrative action. “Directed to” implies that there may be some actual contact with the state official or employee, including sending information to the state official or employee. The final requirement is that the purpose of the effort is to influence legislative or administrative action, and that the action may occur in the future or is foreseeable in the future.

Deleted: Overhead costs that do not constitute direct communication would not be included under direct communications in the quarterly expense report.

The action that triggers the expense reporting may be in any form and includes a personal visit, a telephone call, an email or a letter to a state official or employee by a registered lobbyist or principal where the purpose or foreseeable effect is to influence legislative or administrative action. If the purpose or foreseeable effect of such action is not to influence legislative or administrative action, it need not be reported. Once an expense associated with a particular action satisfies the above definition and qualifies as “lobbying,” all expenses associated with that action should be included in the relevant quarterly report. For example, personnel expenses or office expenses associated with preparing a report or letter directed to a legislator that is sent to that legislator with the purpose or foreseeable effect of influencing the outcome of legislative action should be reported. Personnel expenses¹⁰ and office expenses¹¹ associated with the lobbying activities of an employee must be included in the quarterly expense reports as costs for direct communication. A principal that is not exempt is required to report lobbying-related personnel expenses or office expenses relating to activities of employees and independent contractors (including attorneys) even if the employees or independent contractors are themselves exempt. For example, an employee of a principal who engages in lobbying on behalf of the principal, but does so for less than 20 hours in a reporting period, does not have to register as a lobbyist. (See section 1306-A(5) of the Act.) However, the principal must include in its reports the expenses associated with that work by the employee.

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In the same way, the expenses associated with a trip to Harrisburg to meet with a legislator in order to try to influence the enactment of legislation would need to be reported (including personnel costs associated with the travel time to and from Harrisburg). If the trip were for

¹⁰ Section 1303-A of the Act defines “Personnel Expense” as “[a]n expenditure for salaries or other forms of compensation, benefits, vehicle allowances, bonuses and reimbursable expenses paid to lobbyists, lobbying staff, research and monitoring staff, consultants, publications and public relations staff, technical staff, clerical and administrative support staff and includes individuals who engage in lobbying but are exempt from reporting under Section 1306-A (relating to exemption from registration and reporting). For an individual for whom lobbying is incidental to regular employment, the term means a good faith prorated estimate based on the value of the time devoted to lobbying.”

¹¹ Section 1303-A of the Act defines “Office expense” as “[a]n expenditure for an office, equipment or supplies, utilized for lobbying.”

multiple purposes, a reasonable allocation between lobbying and non-lobbying expenses should be made.

Additional examples of direct communications include, but are not limited to:

- Phone call to a representative explaining the principal's opposition to a bill;
- Phone call to a representative concerning the negative impact on a principal of a pending bill; and
- Follow-up letters to the representative above.

Also, if an expense is not required to be reported as a cost for direct communication, it may be reported as an indirect communication or as expenditures for gifts, hospitality, transportation and lodging for state officials or employees or their immediate families. In the definitions of direct and indirect communications in section 1303-A of the Act, either type of communication may include personnel expenses and office expenses.

Because the definitions of "gift" and "hospitality" in section 1303-A of the Act do not explicitly include personnel expenses and office expenses, if a principal sponsors an event for public officials and employees, the principal's expenses for mailing invitations, and the time its staff spends planning this event should be reported as direct or indirect communication.¹²

Section VIII – Calculation of Indirect Communication

"Indirect communication" is defined in section 1303-A of the Act as "[a]n effort, whether written, oral or by any other medium, to encourage others, including the general public, to take action, the purpose or foreseeable effect of which is to directly influence legislative action or administrative action." The definition then includes the following examples of what is included as well as what is excluded from the definition of "indirect communication":

- (1) "The term includes letter writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns on public issues.
- (2) The term does not include regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.
- (3) The term may include personnel expenses and office expenses."

¹² The Subcommittee made this change on May 1, and also asked staff to make the same statement in the regulations at § 55.1.

An indirect communication involves an effort, in any form, that is intended to encourage others to take action. The term “others” includes those individuals internal to the principal, as well as external to the principal, such as the general public.

As noted above, the definition of “indirect communication” lists certain activities as examples of this type of communication. This list is not exclusive and other types of similar communications having the same theme as the activities listed in the definition would be included. **Additional examples of indirect communications include, but are not limited to:**

- Communicating with others asking them to contact state officials or employees;
- Drafting materials for a public letter writing campaign;
- Drafting letters for a letter writing campaign to be sent to various representatives; and
- Writing a letter explaining a principal’s position requesting members to contact representatives. (This is commonly called “grassroots lobbying.”)

The definition of “Costs for Indirect Communication” specifically exempts “regularly published periodic newsletters primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation.” Note that the costs of other types of communication to members of an association or nonprofit corporation are not exempt. Also, the definition does not contain an exemption for communications to shareholders of for-profit corporations.

Note: Section 1305-A(e) of the Act requires that “[w]henver any person makes an expenditure for indirect communication . . . for the purpose of disseminating or initiating a communication, such as a mailing, telephone bank, print or electronic media advertisement, billboard, publication or education campaign, the communication shall clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.”

Deleted: Overhead costs and lobbying related costs that do not constitute indirect communication would not be included in indirect communication.

Section IX – Calculation of Total Costs of All Lobbying

Section 1305-A(b)(2) of the Act requires filers to disclose “the total costs of all lobbying for the period.” Section 1305-A(b)(2) requires that the total costs “shall include all office expenses, personnel expenses, expenditures related to gifts, hospitality, transportation and lodging to state officials or employees, and any other lobbying costs.”

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Subsection 1305-A(b)(2)(iv) of the Act requires that “expenses shall not be included in more than one category.” The Committee believes that this means that an expense shall not be reported twice, but it does not mean that an expense for an event cannot be allocated between two different categories, provided that a reasonable method of estimation and allocation is used.

Expenses to be reported include those made during the quarter in which the lobbyist or principal is first required to register. Expenses made before the quarter in which a principal or lobbyist is required to register should not be reported. Expenses made after the quarter in which the lobbyist or principal is first required to register shall be reported unless or until the lobbyist or principal terminates its reporting.

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Notes: In calculating the total costs of all lobbying for the period, any reasonable methods of estimation and allocation may be used, as described in Section II above, entitled “*Reasonable Methods of Estimation and Allocation.*”

Section 1305-A(b)(7) provides that a registered principal that attempts (or that retains a lobbying firm or lobbyist to attempt) to influence an agency’s preparing, bidding, entering into or approving a contract shall ensure that the related expenses are included under the total costs of lobbying for the period on the quarterly expense report and are thereby allocated under one of the following three categories on the quarterly expense report:

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1. Gifts, Hospitality, Transportation and Lodging;
2. Direct Communication; or
3. Indirect Communication.

As previously stated, in calculating total expenses, a registrant may use any reasonable method of estimation and allocation to allocate expenses between the three categories of expenses listed immediately above. The Committee believes that the primary goal of the Act is to ensure that all expenses are fully reported.

Section X – Additional Requirements

A. Lobbying Disclosure and Campaign Finance Provisions of the Pennsylvania Election Code

Section 1306-A(14) of the Act provides that “[e]xpenditures and other transactions subject to reporting under Article XVI of the act of June 3, 1937 . . . , known as the Pennsylvania Election Code” are not required by the Act to be reported on quarterly expense reports. Thus the campaign finance provisions of the Election Code, contained in the booklet entitled *Campaign Finance Reporting Law*, on the Department’s website at www.dos.state.pa.us, are separate requirements from the reporting of lobbying related activity already reported by state or local candidates or political committees, including political action committees (PACs).

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For example, if a lobbyist uses a principal’s political action committee (PAC) to pay for hospitality for state officials or employees at a legislative, non-profit, or other type of fundraiser and that lobbyist then invites a state official or employee to attend the fundraiser, the expenditure from the PAC is reportable on the PAC’s campaign finance report, as required by section 1626 of the Pennsylvania Election Code, 25 P.S. § 3246, where the PAC

is making a political contribution to an event that is a fundraiser.¹³ **(Current sentence):** The Committee believes that the exemption at section 1306-A(14) of the Act applies, so there is no requirement under Act 134 for the principal to report this expenditure on its next quarterly expense report. **(Alternative language to the last sentence: Furthermore, the Committee believes that the gift to the state official or employee who attends the fundraiser must be disclosed by the principal on its quarterly expense report.)**¹⁴

B. Providing Notice of Gifts and Hospitality to State officials and employees

A lobbyist must report a state official's or employee's attendance at a non-profit fundraiser where a lobbyist uses a principal's treasury funds to purchase tickets to the fundraiser. (Because the principal and not the PAC made the expenditure, this event would be considered as hospitality provided by the lobbyist to the state official or employee, and is therefore reportable by the principal.) The lobbyist must disclose on its quarterly expense report the purchase of the ticket for the state official or employee and inform the state official or employee of this expenditure as required by section 1305-A(b)(3)(iv). The state official or employee may also be required to report the receipt of the ticket on the Statement of Financial Interest if it exceeds the threshold of \$650 in the aggregate during a calendar year.

C. Contingency Fee for Procurement Work

The Committee **has determined** that there is no legal prohibition against lobbyists **or vendors** being paid fees for procurement lobbying contingent upon the successful outcome of their lobbying.¹⁵ However, federal funds **(with certain exceptions)** cannot be expended by any recipient of a federally-funded contract to pay any person for lobbying a federal agency, employee or member of Congress. **See 31 U.S. Code Section 1352.**

D. Lobbying Disclosure and the Sales Tax on Lobbying

Representatives of the Department of Revenue have referred the Committee to the regulations on the sales tax at 61 Pa. Code § 60.6 and advised that the Tax Reform Code defines taxable "lobbying services" as "providing the services of a lobbyist, as defined in the definition of 'lobbyist' in section 2 of the act of September 30, 1961 (P.L. 1778, no. 712), known as the 'Lobbying Registration and Regulation Act.' " 72 P.S. § 7201(w). The Committee is seeking further clarification from the Department of Revenue. Until the Committee obtains further clarification, registrants should consult with an attorney or accountant.

¹³ If the PAC is not making a contribution to a candidate's fundraiser, then the expenditure may not be "for the purpose of influencing the outcome of an election," as required by section 1621(d) of the Election Code, 25 P.S. § 3241(d).

¹⁴ **The "Current sentence" is the recommendation of the Subcommittee, while the "Alternative language" comes from Ms. Hittie, and is based on the Opinion rendered to Larry Light in 2000 (number 00-1001), which is available on the Ethics Commission's website at www.ethicsrulings.state.pa.us.**

¹⁵ **Subsections 1307-A(e)(1)(ii) & (e)(1)(ii) of Act 134 exempt lobbyists from the prohibition on contingent compensation as it relates to procurement lobbying. Also, subsection 1307-A(e)(3) provides that the restrictions on contingent compensation do not apply to vendors. Therefore, the change noted above would bring this statement into compliance with the Act. The Committee sought and received guidance provided by a representative of the Department of General Services to the Interim Guidelines Subcommittee on April 4, 2007.**

Section XI – Questions and Answers

These questions and answers were submitted to the Committee during its deliberations and are intended to provide interim guidance to the lobbying community. Please note that final regulations promulgated by the Committee or later advisory opinions issued by the Pennsylvania State Ethics Commission may supersede the answers provided to these questions.

1. Are public relations (PR) firms subject to lobbying disclosure?

They can be if the PR firm's activities meet the definition of "lobbying" at section 1303-A of the Act. If the PR firm's activities meet this definition of lobbying, then the PR must register and report as required by the Act.

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2. Where are quarterly expense reporting forms available?

Reporting forms are available for downloading on the Department's website <http://www.dos.state.pa.us> or at the Bureau of Commissions, Elections and Legislation, 210 North Office Building, Capitol Complex, Harrisburg, PA 17120.

3. What if a lobbyist or lobbying firm does not have notice that a principal did not submit a quarterly expense report?

Although the lobbyist or lobbying firm should remain in close contact with the principal to avoid this situation arising, the Lobbying Disclosure Regulations Committee has drafted a regulation in § 55.1(e) that it may propose giving a lobbyist or lobbying firm 30 additional days after the due date of the principal's report or 30 days after the lobbyist or lobbying firm discovered or should have reasonably discovered the principal's failure to file its quarterly expense report. (See page 2 of the Instructions for Paper Quarterly Expense Reports and page 3 of the Instructions for Online Reports.) However, please be aware that these draft regulations and the Department's Instructions do not yet have the force and effect of law.

4. Has the Pennsylvania State Ethics Commission issued any advisory opinions under Act 134?

On March 28, 2007, the Pennsylvania State Ethics Commission issued three advisory opinions dealing with Act 134. These opinions are 07-1001, 07-1002 and 07-1003. Copies of these opinions and future opinions on lobbying disclosure are available on the Ethics Commission's website at <http://www.ethics.state.pa.us>.