

# 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. 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**<sup>1</sup> 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 this Interim Guidelines should be construed as superseding the provisions of the Act or the regulations that the Committee later promulgates. **Until the Committee reviews and approves the Interim Guidelines, they do not have the force and effect of law.**

### **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](mailto: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.

### **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-

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<sup>1</sup> **Highlighting** represents major issues in the text and footnotes for the Committee's consideration.

2854. Additional information on the Act, a summary of the Act, Frequently Asked Questions, copies of the registration statements and quarterly expense reports, are located on the Department's website at [www.dos.state.pa.us](http://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](mailto: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](http://www.ethics.state.pa.us).

## **Section II – 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. What hours count toward the 20-hour threshold stated in Section 1306-A (5) of the Act?

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 (that were in the budget) or efforts directed toward obtaining state-funded grants, if the expense of the activity meets the \$2,500 threshold of reporting at section 1306-A(4) or (6) and 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.)

- A trade association has members who routinely represent clients on tax and related matters before the Department of Revenue's Board of Appeals and the Board of Finance and Revenue. They also routinely work on behalf of their clients with other state departments and agencies on auditing and accounting, tax, and related matters. These activities would be considered lobbying where the trade association members are making an effort to influence administrative action, as the terms "lobbying" and "administrative action" are defined at section 1303-A of Act 134, unless the activities of the members fall within the exemptions listed in section 1306-A of the Act.

Sometimes, one event will require reporting of lobbying expenses by a principal, but not by its members. 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. Unless an individual member exceeds the thresholds in section 1306-A of Act 134 by spending more than 20 hours a quarter lobbying and/or spends over \$2,500 lobbying, then that member does not have to register and report as a lobbyist.

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 Subcommittee and the Department believe 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.

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. Although the definitions of "gift" and "hospitality" in the Act do not include personnel expenses and office expenses, it is possible to allocate them to personnel and office expenses, as explained further in the last paragraph of Section VII on page 19.

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 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 maintaining 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.

### **Section III - Basis of Accounting**

Section 1305-A(b)(2) of the Act indicates that expense reports must contain good faith estimates of the total amount spent for personnel and office expenses; single aggregate good faith estimates of the total amount spent for both direct and indirect communication; as well as the total costs for gifts, entertainment, meals, 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 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 Subcommittee 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 IV- 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 working day.

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.

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

### **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 V - Recordkeeping**

This section contains recordkeeping methods to ensure compliance with the Act concerning the total costs of all lobbying. This includes recordkeeping for totals spent for direct and indirect communication, and gifts, transportation, lodging and hospitality given to or provided to state officials or employees or their immediate family members.

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. Salaries**

Any person involved in an effort to influence legislative action or administrative action as described by the Act should maintain records of activities performed, which could be in the form of timesheets or a log, along with the number of hours spent. Reporting for these activities should include:

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 transportation, lodging or hospitality.

Activities unrelated to lobbying, while not required to be reported, may be tracked by a lobbyist on a separate time sheet for their own internal bookkeeping.

Examples of potential activities performed by a contract lobbyist, in-house lobbyist and executive director of a trade association follow with time sheets designed to comply with the Act. *Please realize that maintaining such time sheets are voluntary and are not required by the Act.*

#### **Example: Contract Lobbyist:**

A contract lobbyist completed the following activities for the week ending 3/16/07. The corresponding timesheet for these activities follows below:

- drafted materials for a letter writing campaign for a client regarding a particular bill;
- researched a pending bill on behalf of a client;
- met with a client to discuss various approaches to addressing possible passage of a bill unfavorable to the client;
- made several phone calls to a state representative explaining a client's opposition to a bill;
- and

- performed various administrative duties.

Timesheet: Contract Lobbyist (Direct and Indirect Communication)

Activities	03/12	03/13	03/14	03/15	03/16	Total	Direct	Indirect
Draft materials for letter writing campaign. Client #2. <sup>2</sup>	3.0	2.7				5.7		5.7
Research Pending Bill. Client #6. <sup>1</sup>	0.6	3.2	6.0	2.1		11.9		
Conference with client on various approaches to addressing possible passage of an unfavorable bill. Client #9. <sup>3</sup>	2.4				8.0	10.4		
Phone calls to representative explaining client's opposition to a bill. Client #7. <sup>2</sup>	0.8	2.0		3.2		6.0	6.0	
Administrative duties	1.2	0.1	2.0	2.7		6.0		
Total	8.0	8.0	8.0	8.0	8.0	22.4	6.0	5.7

**NOTE:** For definitions of direct and indirect communication, refer to section 1303-A of the Act, 65 Pa.C.S. §1303-A. For further explanation, also see Sections VII and VIII of this Interim Guidelines on pages 18 & 20.

Example: In-house Lobbyist:

An in-house lobbyist completed the following activities for the week ending 3/16/07. The corresponding timesheet for these activities follows below:

- drafted materials for a letter writing campaign to various state representatives to be distributed to trade association members;
- assisted the Continuing Education Director to prepare for a seminar unrelated to lobbying issues; (This item is not reportable under the Act and therefore is not shown on the time sheet below.)
- made a phone call to a representative concerning negative impact of a particular bill on the lobbyist's organization;
- drafted follow-up letters for phone calls to representative; and
- completed administrative duties including completion of time sheets and preparation of

<sup>2</sup> Likely to be indirect communication.

<sup>3</sup> Likely to be direct communication.

materials for quarterly reporting under the Act.

Timesheet: In-house Lobbyist (Direct and Indirect Communication)

<b>Activities</b>	<b>03/12</b>	<b>03/13</b>	<b>03/14</b>	<b>03/15</b>	<b>03/16</b>	<b>Total</b>	<b>Direct</b>	<b>Indirect</b>
Draft letters for letter writing campaign to be sent to various representatives. <sup>1</sup>	3.0	2.7				5.7		5.7
Phone call to representative concerning negative impact on Association of pending bill. <sup>2</sup>	2.4					2.4	2.4	
Follow-up letters to representative above. <sup>2</sup>	0.8	2.0		3.2	8.0	14.0	14.0	
Administrative duties including completion of time sheet and completion of quarterly reporting under the Act. <sup>1 or 2</sup>	1.2	0.1	2.0	2.7		6.0		
<b>Total</b>	<b>7.4</b>	<b>4.8</b>	<b>2.0</b>	<b>5.9</b>	<b>8.0</b>	<b>28.1</b>	<b>16.4</b>	<b>5.7</b>

Example: Executive Director of a Trade Association:

The executive director of a trade association completed the following activities for the week ending 9/17. The corresponding timesheet for these activities follows below:

- met with the Board of Directors on issues unrelated to lobbying; (This item is not reportable under the Act and therefore is not shown on the time sheet below.)
- met with the Director of Continuing Education on personnel matters; (This item is not reportable under the Act and therefore is not shown on the time sheet below.)
- participated in a conference call to a lobbyist on how to approach passage of an unfavorable bill;
- wrote a letter explaining the trade association's position on how to approach passage of an unfavorable bill; (The letter requests association members to contact their representative and express the negative impact of the bill.) and
- completed administrative duties including weekly update meeting with in-house lobbyist concerning status of particular bills.

The executive director's time sheet could be completed as follows:

<sup>1</sup> Likely to be indirect communication.

<sup>2</sup> Likely to be direct communication.

Timesheet: Executive Director of a Trade Association (Indirect Communication)

<b>Activities</b>	<b>03/12</b>	<b>03/13</b>	<b>03/14</b>	<b>03/15</b>	<b>03/16</b>	<b>Total</b>	<b>Direct</b>	<b>Indirect</b>
Conference call to lobbyist on how to approach passage of an unfavorable bill.	3.6					3.6		
Write letter explaining Association position requesting members to contact representatives	0.8	2.1	2.0	3.2	8.0	16.1		16.1
Administrative duties weekly update meeting with in-house lobbyist concerning status of particular bills.				6.0		6.0		
<b>Total</b>	<b>4.4</b>	<b>2.1</b>	<b>2.0</b>	<b>9.2</b>	<b>8.0</b>	<b>25.7</b>		<b>16.1</b>

Generally, the following persons may need to keep records for the Act: lobbying staff, research and monitoring staff, consultants, lawyers, lobbyists, publications and public relations staff, technical staff, as well as clerical and administrative support staff who engage in lobbying but who are exempt from reporting under sections 1306-A(4) & (5) of the Act.

There are considerations for publications and public relations staff where the only involvement in lobbying is the production of a regularly published periodic newsletter primarily designed for and distributed to members of a bona fide association or charitable or fraternal nonprofit corporation. These types of activities are not reportable under the Act. As a result, the persons involved may not need to maintain time sheets as described above.

Clerical and administrative staff participating directly in lobbying activities should maintain time sheets. These types of duties would include typing letters or developing a database for a letter writing campaign where the letter's content falls under the Act's definition of lobbying. A receptionist who answers the phone, takes messages, and performs other similar duties would generally not participate directly in lobbying and would not likely need to maintain a time sheet for purposes of the Act.

Persons who already maintain this type of recordkeeping for Pennsylvania sales tax requirements should note that the definition of lobbying for sales tax may differ from the definition of lobbying found in the Act.

**B. Other Costs (Direct and Indirect Communication)**

For costs that can be specifically identified and allocated to lobbying such as travel, postage, research materials and similar items, the amount spent on lobbying should be recorded directly on the invoice, credit card receipt or expense report. The amount should be further broken down between direct and indirect lobbying. For example, a staff lobbyist incurs lodging expenses for a trip to Harrisburg for a meeting with a state representative and other activities. Two days were spent on direct lobbying and one day was spent on non-lobbying activities. The invoice could be marked as follows:

<b>XYZ HOTEL</b>		
8/12/99	ROOM CHARGE	\$89.99 Direct communication lobbying
8/13/99	ROOM CHARGE	\$89.99 Direct communication lobbying
8/14/99	ROOM CHARGE	<u>\$89.99</u> Non-lobbying
	<b>TOTAL</b>	<b>\$269.97</b>

If the portion of the costs used for lobbying is not known when an invoice is paid, the amount should be calculated at the end of the quarter. For example, when payment is made for a one-year subscription for research materials, the amount that will be spent on lobbying activities will likely not be known. The amount to include in a particular quarter can be an estimate of the cost for that quarter spent on lobbying as follows:

Annual subscription fee:	\$5,000
Cost per quarter (5000/4):	\$1,250
Lobbying usage in 1 <sup>st</sup> quarter:	50%
Reportable cost under the Act:	\$625

The lobbying usage for the 1st quarter shown above is an estimate based on the clients and types of projects on which time was spent. It assumes research materials are utilized for all clients, and that this lobbyist spent about 50% of the time this quarter on lobbying activities, to arrive at a reasonable percentage of cost to report. Any reasonable accounting method to calculate the lobbying usage and expense is acceptable.

For those organizations that pay a monthly retainer to a lobbyist, the entire amount paid should be considered a lobbying expense. The lobbyist receiving the retainer would be required to provide details of which portions to include in the direct and indirect communication categories.

Calculation of costs that do not relate specifically to lobbying, but which are incurred for an organization as a whole such as rent and utilities, are discussed in Sections VII and VIII. These types of costs are referred to as "overhead costs."

### **C. 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, the state official or employee provided a gift or gifts **in the aggregate of \$250 or more** per calendar year to an **individual** state employee or official, 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 an **individual** state employee or official aggregate in the amount of \$250 or more in a calendar year.

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 value and of the gift;
4. The circumstances of the gift, including the nature 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 an **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 (referred to throughout this section as “reportable persons”).

2. Amounts paid for immediate family members of a reportable person must be included in the aggregate total expenditures.

#### **D. Valuation Considerations**

Section 55.1(k) 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, and adding the resulting figures (quotients) together with the value of all other gifts, transportation, lodging or hospitality provided to that particular individual.
  - iii. Allocating a portion of the total expenditures common to more than one beneficiary to each individual based upon each individual's participation and adding that value to the value of all other gifts, transportation, lodging or hospitality provided to that individual.

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. Original records are to be maintained in their original form.

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

#### **E. Valuation of Time**

There are at least three options for valuing time:

- 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 Subcommittee discussed whether that representative time should be thirty, sixty or ninety days, and whether time during the third quarter would be appropriate. See the information from the Department of Revenue in Section X, subsection E. A lobbyist, lobbying firm or principal should **consult with an attorney or accountant** to address this issue.
- b. Keep a record of all hours spent. As noted in Section X, subsection E, the Department of Revenue has advised the Subcommittee to inform principals, lobbying firms and lobbyists that they should keep a complete log of their taxable time.
- 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 aggregate good faith estimate of 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.

In determining what is subject to the disclosure requirements of the Act, it is the value of the thing received as a gift, hospitality or entertainment.

#### **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, 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 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.
- If a lobbying firm, lobbyist or principal provides tickets to a state official or employee; the lobbyist, lobbying firm, or principal does not have to obtain the names of the individual recipients of these tickets.
- 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.
- 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 would 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 all 10 tickets.)
- A lobbying firm, lobbyist or principal provides 10 tickets to a state official or employee, and the state official or employee pays for 6 out of the 10 tickets. The lobbying firm, lobbyist or principal reports the value of 4 tickets. (The lobbying firm, lobbyist or principal does not need to verify who received all 10 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 Receptions**

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.

For the distinction between a dinner and a reception, see the answer to Question 5 in Section XI on pages 23-24.

## **Section VII– Calculation of Direct Communication**

As noted in Section V above, all reportable costs for direct communication should also be included in the aggregate good faith estimate of the total amount spent for personnel and office 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. Overhead costs that do not constitute direct communication would not be included.

“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:

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

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

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 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 and is intended to influence the outcome of legislative action should be reported. Personnel expenses<sup>4</sup> and office expenses<sup>5</sup> associated with the lobbying activities of an employee must be included in the paper quarterly expense reports as costs for direct communication. A principal may be required to report personnel expenses or office expenses relating to activities of employees and independent contractors (including attorneys) in situations where the employee or independent contractor is not required to register as a lobbyist. 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.

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 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 calls 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.

Expenses to be reported include only 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.

Also, if an expense is not required to be reported as a cost for direct communication, it may be reported as an indirect communication as expenditures for gifts, hospitality, transportation and

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<sup>4</sup> 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."

<sup>5</sup> Section 1303-A of the Act defines "Office expense" as "[a]n expenditure for an office, equipment or supplies, utilized for lobbying."

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.

Although the definitions of “gift” and “hospitality” in section 1303-A of the Act do not include personnel expenses and office expenses, it is possible to allocate them to personnel and office expenses, as Act 134 does not prohibit such an allocation. In fact, section 1305-A(b)(2.1) of the Act permits filers to use any reasonable methods of estimation and allocation. For example, 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 could be allocated for this category.

### **Section VIII – Calculation of Indirect Communication**

As noted in Section V above, all reportable costs for indirect communication should also be included in the aggregate good faith estimate for the total amount spent for personnel and office expenses related to lobbying.

“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.”

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:

- All communications with others to ask them to contact state officials or employees;
- Drafting materials for a public letter writing campaign;

- Drafting letters for 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]hensoever 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."

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)(1) of the Act requires filers to disclose "the total amount 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." The total costs of all lobbying equals the total of all three of these categories.

Subsection 1305-A(b)(2)(iv) of the Act requires that "expenses shall not be included in more than one category." The Department 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.

**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) requires 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:

1. Gifts, Hospitality, Transportation and Lodging;

2. Direct Communication; or
3. Indirect Communication.

## **Section X – Additional Requirements**

### **A. Retaining Documents**

Section 1305-A(c) of the Act requires registrants to retain all documents reasonably necessary to substantiate their quarterly expense reports for four years from the date of filing the report.

### **B. 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.” 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](http://www.dos.state.pa.us), are exempt from the reporting of lobbying related activity already reported by state or local candidates or political committees, including political action committees (PACs).

For example, if a lobbyist uses a principal’s political action committee (PAC) to pay for a foursome at a legislative, non-profit, or other type of golf outing and that lobbyist then invites a state official or employee to fill one of the slots in his foursome, 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 a legislator’s golf outing that is a fundraiser.<sup>6</sup> The Subcommittee 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.

### **C. Providing Notice of Gifts and Hospitality to State officials and employees**

The Subcommittee and Committee plan to consider whether 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 probably be considered as hospitality provided by the lobbyist to the state official or employee, and is therefore reportable by the principal.) The Subcommittee and Committee will consider whether that lobbyist must disclose on its quarterly expense report the purchase of the ticket for the State official or employee, as well as whether the lobbyist must inform the State official or employee of this expenditure and whether the State official or employee must disclose this ticket on his or her annual Statement of Financial Interest.

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<sup>6</sup> 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).

**D. Contingency Fee for Procurement Work**

On April 4, Chuck Anderson of the Department of General Services met with the Subcommittee and advised the Subcommittee to inform lobbyists that there is no legal prohibition against lobbyists being paid fees for procurement lobbying contingent upon the successful outcome of their lobbying. However, federal funds 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.

**E. Lobbying Disclosure and the Sales Tax on Lobbying**

On April 4, 2007, Department of Revenue attorneys Maryellen Martin and Lora Ann Kulick met with the Subcommittee regarding the sales tax on lobbying and referred the Subcommittee and the lobbying community in attendance to the Revenue Department's regulations on the sales tax at 61 Pa. Code § 60.6. In subsequent replies, the Revenue Department 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). Even though that law was repealed, the definition still exists. That definition remains the basis for determining what services are subject to Pennsylvania sales tax, regardless of the new lobbying laws. Furthermore, regardless of what a previous administration may have advised members of the Subcommittee, not all services required to be disclosed under the new lobbying law are subject to tax. The only items on which sales tax must be collected are those items that qualify as lobbying services.

Regarding keeping records of time for the purpose of sales tax, lobbyists, for audit record keeping purposes, will have to keep a complete log of their taxable time. Although they are authorized by law to choose a representative period from each calendar year to determine a taxable formula, during an audit, the auditor will also pick a representative period with which to compare formulas for accuracy. So, full records are required. Furthermore, a straight thirty-day period would not be considered "representative" because of the simple nature of the lobbying business. The representative period would have to include time from both the most active period in the year, as well as one that is less so.

**Section XI – Questions and Answers (*Move most to other sections*)**

These questions and answers were submitted to the Subcommittee 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. Who needs to file quarterly expense reporting forms?

Registered principals, and under certain circumstances lobbying firms and lobbyists, are required to file quarterly expense reports no later than 30 days after the last day of the

quarter. Section 1305-A(b)(6) of Act 134 provides: “A lobbying firm or a lobbyist not associated with a lobbying firm shall submit an expense report if during the reporting period the lobbying firm or lobbyist engaged in lobbying *which was not contained in any expense report* filed by a principal or principals represented.” (Emphasis added.)

Please note that the reporting of expenses is different from the filing of registration statements by lobbyists, lobbying firms and principals.

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

They can be if the PR firm meets the definition of “lobbying” at section 1303-A of the Act by conducting direct or indirect communication or by “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. If the PR firm meets this definition of lobbying, then the PR must register and report as required by the Act.

3. 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.

4. 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.**

5. What is a reception, as opposed to a dinner meeting?

The Lobbying Disclosure Regulations Committee is considering adding a definition of “reception” to Chapter 51 of its **draft** of the proposed regulations to distinguish it from a dinner meeting.

6. Where can I find more information on lobbying disclosure?

For additional information, please contact the Bureau of Commissions, Elections and Legislation, 210 North Office Building, Capitol Complex, Harrisburg, PA 17120; phone (717) 787-5280; fax (717) 787-2854; Web site: <http://www.dos.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 advisories by telephone. Also please be aware that the answers to these questions may be changed by regulations that will be drafted by the Lobbying Disclosure Regulations Committee.

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>.