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Openness and transparency are key components to a responsible lobbying system. Pennsylvanians deserve a clear accounting of the efforts and expenditures of lobbyists who try to influence their government.

This manual provides the necessary guidelines to implement Pennsylvania's lobbyist registration, reporting, and compliance program. It represents the efforts of the members of the Lobbying Disclosure Regulations Committee to develop a workable reporting system for the Commonwealth, and I am grateful for the many hours of service provided by these hardworking individuals. I also appreciate the valuable participation and input from members of the public while this manual was being developed.

As Pennsylvania's Attorney General, I am pleased to bring you this Compliance Manual and the important reforms these guidelines bring to Pennsylvania. I look forward to improving access to state government and ensuring greater openness for the citizens of this Commonwealth.

Sincerely,

A handwritten signature in black ink that reads "Tom Corbett".

TOM CORBETT
Attorney General

STATEMENTS OF POLICY

LOBBYING DISCLOSURE REGULATIONS COMMITTEE

Manual 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. § 13A01 *et seq.*), hereinafter the Act, requires reporting and recordkeeping by registered principals, lobbying firms and lobbyists.¹ This *Manual for Accounting and Reporting* (hereinafter Manual) was drafted by the Lobbying Disclosure Regulations Committee (Committee) in compliance with section 13A10(d)(5) of the Act, as a reference tool to assist registrants in complying with the requirements of the Act and related regulations at 51 Pa. Code § 51.1 *et seq.* On April 11, 2009, the final form regulations were published in the *Pennsylvania Bulletin* and were effective as of that date. Nothing in the Manual should be

¹ 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 the Act. Section 13A04 of the Act addresses the registration requirements.

construed as superseding the provisions of the act or the regulations, although the Manual may be relied upon for guidance.

A. Comments on the Manual

Anyone interested in making comments or sending comments about bookkeeping and recordkeeping on the Manual may send comments to the Office of Attorney General at: lobbyingdisclosure@attorneygeneral.gov.

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 guidance, 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 13A05(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.

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
- (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 13A05(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 13A05(b)(6) of the Act 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 13A05(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 13A03 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 13A03 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 the Act:

- Any efforts by a lobbyist or lobbying firm made on behalf of principals for the inclusion of funds into the capital budget is considered lobbying and would trigger the registration and reporting requirements of the Act.
- 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 13A03 of the Act, these activities could be considered "lobbying" as that term is also defined at section 13A03 of the Act, and would be subject to reporting by the members unless such members or their activities would be exempt under section 13A06 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 13A06(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 13A05(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 13A05(b)(2)(i)—(iii). Subsection 13A05(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 13A03 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 13A03 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.

In using any reasonable method of estimation and allocation permitted in section 13A05(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 2009, 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.

Section IV—Basis of Accounting

Section 13A05(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 13A05(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 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.

Filers should be consistent in their use of an accounting method for cumulative reporting over the two-year period, as stated in the 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 13A05(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 13A05(b)(3) of the Act, are described in the next two sections:

1. Gifts

Section 13A05(b)(3)(i) of the Act requires the filer to identify by name, position and each occurrence, any **individual** state official or employee is 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.

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

- a. The name and position of the state official or employee, including the governmental body of the state official or employee;
- b. The name and address of the source of the gift;
- c. The date the gift was given and the value of the gift; and
- d. 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:

- a. The name and position of the state official or employee, including the governmental body of the state official or employee;
- b. The name and address of the source of the payment;
- c. 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:

a. Obtain the identifying information for each state official or employee.

b. Amounts paid for immediate family members² of a state official or employee must be included in the aggregate total expenditures.

B. Valuation Considerations

Section 55.1(k) of the 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 13A04 or 13A05 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 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 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 regulations.

C. Valuation of Time

Because Section 13A05(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 examples of viable options:

1. Employ a good faith estimate by using any reasonable method of estimation and allocation.

2. Keep a record of all hours spent lobbying.

3. Use the entire fee for lobbying, which could have sales tax implications.

NOTE: Regardless of the method used to value time, registrants may wish to **consult with an attorney or accountant** to address this issue.

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 13A05(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.

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

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.

- 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 each ticket.)
- A lobbying firm, lobbyist or principal provides 10 tickets to a state official or employee. If the state official or employee reimburses the lobbying firm, lobbyist, or principal for 6 out of the 10 tickets within thirty days of receipt, both the donor and the recipient should report the value of 4 tickets. (The lobbying firm, lobbyist or principal does not need to verify who received each ticket.)
- A lobbying firm, lobbyist or principal provides 10 tickets to a state official or employee. If the state official or employee returns 6 of the 10 tickets to the lobbying firm, lobbyist or principal unused within thirty days of the date of receipt, both the donor and

² For the definition of immediate family, see § 55.1 (relating to definitions) of the regulations.

the recipient should report the value of 4 tickets. (The lobbying firm, lobbyist or principal does not need to verify who received each ticket.)

- 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 within thirty days of receipt. 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 13A05(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 13A05(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 13A03 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) “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.

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.

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 expenses³ and office expenses⁴ 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 13A06(5) of the Act.) However, the principal must include in its reports the expenses associated with that work by the employee.

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 calls 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 13A03 of the Act, either type of communication may include personnel expenses and office expenses.

Because the definitions of “gift” and “hospitality” in section 13A03 of the Act do not explicitly include personnel expenses and office expenses, if a principal sponsors

³ Section 13A03 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 13A06 (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.”

⁴ Section 13A03 of the Act defines “Office expense” as “[a]n expenditure for an office, equipment or supplies, utilized for lobbying.”

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.

Section VIII—Calculation of Indirect Communication

"Indirect communication" is defined in section 13A03 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:

- 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 13A05(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."

Section IX—Calculation of Total Costs of All Lobbying

Section 13A05(b)(2) of the Act requires filers to disclose "the total costs of all lobbying for the period." Section

13A05(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."

Subsection 13A05(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 registration, in which case a final quarterly expense report would be filed for the quarter in which the registration is terminated.

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 13A05(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:

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 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 13A06(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 subject to reporting by state or local candidates or political committees, including political action committees (PACs).

B. Providing Notice of Gifts and Hospitality to State Officials and Employees

Section 13A05(b)(3)(iv) of the Act details the requirements for identifying in the expense report, and providing notice to, each state official or employee who receives from a principal or lobbyist anything of value that must

be included in the state official's or employee's State of Financial Interests pursuant to section 1105(b)(6) and (7) of the Public Official and Employee Ethics Act.

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.⁵ 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

The Department of Revenue has determined that the Revenue Code's reference to "lobbyist" within the definition of "lobbying services" at 72 P. S. § 7201(w) must be referring to "lobbyist" as it is defined in the Act. Although the Revenue Code's current definition of "lobbying services" specifically refers to the 1961 Lobbying Registration and Regulation Act (P. L. 1778, no. 712), pursuant to the Statutory Construction Act at 1 Pa.C.S. § 1937, references to previous laws include any new law substituted for the previous statute. Registrants should consult with an attorney or accountant for further guidance on the tax implications of lobbying.

Section XI—Questions and Answers

These questions and answers were submitted to the Committee during its deliberations and are intended to provide guidance to the lobbying community. Please note that any further 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?

⁵ Subsections 13A07(e)(1)(ii) & (e)(2)(ii) of the Act exempt lobbyists from the prohibition on contingent compensation as it relates to procurement lobbying. Also, subsection 13A07(e)(3) provides that the restrictions on contingent compensation do not apply to vendors.

They can be if the PR firm's activities meet the definition of "lobbying" at section 13A03 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.

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 regulations in § 55.1(e) state that a lobbyist or lobbying firm has 30 additional days after the due date of the principal's report 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.)

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

As of the publication of this Manual, the Pennsylvania State Ethics Commission has issued the following advisory opinions dealing with the act: 07-1001, 07-1002, 07-1003, 07-1004, 08-1001, 08-1002, 09-1001 and 09-1002. 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>.

ROBERT A. MULLE,
Chairperson

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