



# GAO Finds Decline in Compliance with Reporting Lobbying Dollars; Enforcement on the Rise

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On Friday, March 31, 2017, the United States Government Accountability Office (GAO) published its annual audit of compliance with the Lobbying Disclosure Act of 1995 (LDA), as amended by the Honest Leadership and Open Government Act of 2007 (HLOGA). The results of the audit are published in, "2016 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements". Notable among the findings is the decline in the rate of compliance with reporting lobby income and expenditures which is now the lowest it has been since GAO began these audits. Also, the United States Attorney's Office (USAO) has increased its enforcement efforts against those who it deems "chronic offenders".

## **Decline In Compliance With Reporting Income and Expenditures**

The GAO audited eighty (80) quarterly Lobbying Reports (LD-2s) from the third and fourth quarters of 2015 and the first and second quarters of 2016. It found that 17% of lobbyists were unable to provide documentation of their reporting of lobbying organization expenses and lobbying firm income. According to the GAO analysis, this change may not be statistically significant because its estimates have a margin of error potentially as high as 12.5%. However, the 17% non-compliance rate found in the 2016 report is more than double what GAO reported in 2011, 2014 and 2015, and far in excess of the 3-4% non-compliance rates reported in 2010, 2012 and 2013. While the precise statistical significance of this particular finding is debatable, it is clear this decline in compliance will result in a continued focus on accurate reporting of lobbying expenditures and income.

## **Enforcement**

The USAO for the District of Columbia reviews each Lobbying Registrant referred to it for non-compliance by the Clerk of the United States House of Representatives ("the Clerk") and the Secretary of the United States

Senate ("the Secretary"). The USAO determines appropriate enforcement actions, which can range from civil fines to criminal penalties. Civil fines for noncompliance can amount to as much as two hundred thousand dollars (\$200,000) for each violation, such as a failure to correct a defective filing within sixty (60) days of being notified by the Clerk or the Secretary. Knowing and willful violations can be penalized by up to five (5) years of imprisonment. USAO officials reported to GAO that there were no criminal prosecutions in 2016, but there are four active cases involving chronic offenders that they expect to resolve in 2017. Further, they have added a new "chronic offender" letter to their system. The addition of this letter coincides with a change in USAO personnel handling these referrals.

The new chronic offender letter includes a list of all the chronic offender's outstanding referrals to the USAO from the Clerk and the Secretary. While this new letter does not establish a separate violation of the LDA, it seems intended to enhance the ability of the USAO to secure a settlement from a chronic offender before bringing a civil action. In a recent settlement agreement the chronic offender stipulated that it would pay the full \$200,000 penalty for each future failure to file within 60 days of receiving a non-compliance letter from the Clerk or the Secretary. The addition of the new chronic offender letter likely indicates an increased focus on securing penalties from those who show disregard for the authority of the Clerk and the Secretary to regulate federal lobbying.

### **Help With Compliance**

The next LDA reporting deadline is Thursday, April 20, 2017, for the first 2017 quarterly Lobbying Report. The Secretary of the Senate and the Clerk of the House publish guidance on LDA reporting and revise it semiannually (last revised June 15, 2016) to clarify compliance problems identified by disclosure officials in each chamber, and by GAO officials in these audits. Nossaman attorneys and compliance specialists have decades of experience with LDA compliance. Please reach out to us for assistance.