

STRENGTHENING THE LOBBYING DISCLOSURE ACT

The right to lobby the government is enshrined in the First Amendment constitutional guarantee for the people to petition their government for their redress of grievances. However, from time to time, Congress must further define what qualifies as lobbying and who should register as a lobbyist, as it did in the 1995 Lobbying Disclosure Act (LDA). The bill notes, “Responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decision-making process in both the legislative and executive branches of the Federal Government.” Although federal lobbying disclosure laws have repeatedly been challenged in court over the years, the U.S. Supreme Court has recognized that the right to lobby comes coupled with the need for disclosure to protect against the appearance of corruption. For example, in the *U.S. v. Harris* (1954) decision, Chief Justice Earl Warren’s noted: “[T]he voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent.”

Current Law

The tools and people that influence elected officials have evolved to create what now constitutes as a registered lobbyist. Under current law, as reformed by the 2007 Honest Government and Open Leadership Act, a registered lobbyist:

- ▶ Meets with two or more Members of Congress or staff of the executive branch about policy issues.
- ▶ Spends at least 20 percent of his or her time during any calendar quarter engaging in “lobbying activities” for compensation greater than \$2,500 (\$3,000 indexed for inflation) from a single client.
- ▶ Files quarterly reports detailing the issues he or she lobbied on and the amount of compensation to the nearest \$10,000.

The Failure to Accurately Disclose Lobbying

Despite widespread public support for lobbying disclosure and repeated affirmation of the law’s constitutionality, the current LDA still falls short of its objective of unveiling lobbying activities to public scrutiny.

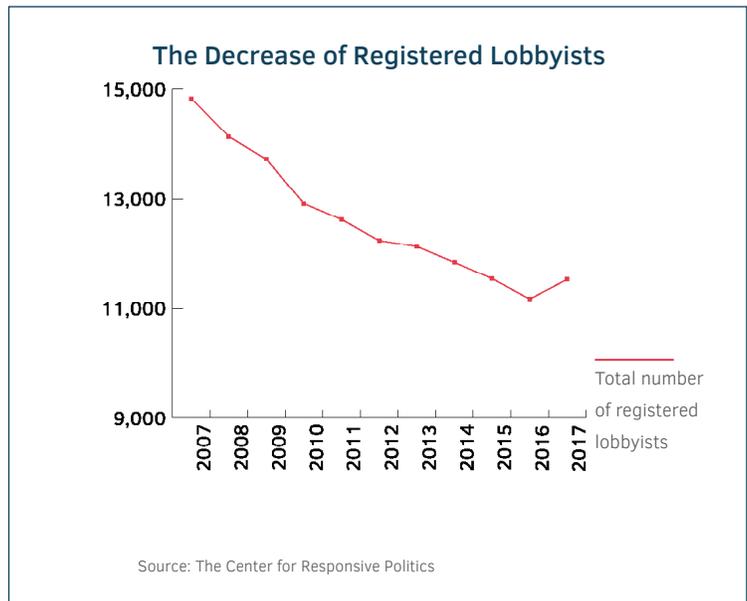
In short: While spending on lobbying grows, the number of registered lobbyists has dropped.

Consider President Trump’s former personal lawyer, Michael Cohen, who was found to have received more than \$1 million from numerous companies — including AT&T and Novartis — to deliver access to the Trump administration. He provided information, connections and spoke to government officials on their behalf, but never registered as a lobbyist.

Weaknesses of the LDA:

- ▶ The 20 percent time threshold is too high and is too subjective to be enforceable.
- ▶ The current reporting requirements fail to disclose the names of those individuals who may direct the effort behind the scenes.
- ▶ Shadow lobbying is on the rise and the true number of lobbyists is grossly underexaggerated.

However, there are not fewer actual lobbyists; rather, there are simply fewer registered lobbyists. The Center for Responsive Politics found that from 2007 to 2014, the number of registered lobbyists dropped more than 16 percent while the amount of money spent on lobbying increased during that same period by 20 percent. Of those who de-registered between 2011 and 2012, close to 46 percent still worked in similar capacities. Despite a current registered total of about 11,000 in 2018, estimates range as high as 100,000 for the true number of lobbyists currently working in Washington. That is because current law requires individuals to register as lobbyists only if they spend 20 percent time of their time on lobbying activities. Further, the current reporting requirements fail to disclose the names of those individuals who may direct the effort behind the scenes or who provide significant support for lobbying through strategic planning, public communications or polling operations.



Potential Reforms

To address these issues and the ineffectiveness of the current LDA, in 2011, the American Bar Association appointed a bipartisan Task Force to review federal lobbying laws. The Task Force, made up of K Street practitioners, public interest lobbyists, and academics, recommended reforms that were largely adopted by the almost 400,000-member ABA. The recommendations include:

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