



Lobbying and Ethics Reforms in the Honest Leadership and Open Government Act: Guidance for Lutheran Social Ministry Organizations

Lutheran Services in America has prepared this fact sheet to assist Lutheran social ministry organizations in understanding 2007 changes to federal lobbying laws and ethics rules made by the Honest Leadership and Open Government Act (HLOGA).

What is the Honest Leadership and Open Government Act?

The Honest Leadership and Open Government Act (HLOGA), enacted by Congress in September 2007 (P.L. 110-81), strengthens federal lobbying laws and ethics rules. The provisions of HLOGA fall into several subject areas, three of which may directly affect the public policy advocacy activities of Lutheran social ministry organizations: 1) lobbying disclosure; 2) restrictions on the giving and receipt of gifts and favors; and 3) earmark disclosures.

The other subject areas of HLOGA pertain to restrictions on legislator and staff post government-employment as lobbyists; government official pension reform; and Congressional internal procedure transparency.

How does HLOGA affect the public policy advocacy activities of Lutheran social ministry organizations?

HLOGA may or may not affect the public policy advocacy activities of Lutheran social ministry organizations.

If your social ministry organization does not engage in lobbying or retain a contract lobbyist or lobbying firm or employ an in-house lobbyist, you are not affected by HLOGA. According to the Center for Lobbying in the Public Interest (CLPI), direct lobbying occurs when you state your position on specific legislation to legislators or other government employees who are involved in the formulation of legislation, or urge your members to do so. Even if the organization has not taken a position on legislation but comments on the bill and asks the general public to take action, that can be construed as lobbying. Grassroots lobbying occurs when you state your position or comment on legislation to the general public and ask the general public to contact legislators or other government employees who participate in the formulation of legislation.

If your social ministry organization does not give gifts or travel to federal public officials, you are not affected by HLOGA.

Does HLOGA require consultants or staff of social ministry organizations to register as lobbyists?

HLOGA does not alter the types of activities that are considered to be lobbying and covered by the Lobbying Disclosure Act (LDA), or the types of persons covered by the LDA. For example, HLOGA does not substantively alter the federal definitions of “lobbyist,” “lobbying activities,” or “lobbying contacts” prescribed in the LDA.

Therefore, if your social ministry organization does not currently consider any of your public policy advocacy activities, contractors or employees to be covered by the LDA, then you are not affected by HLOGA.

However, if your social ministry organization does engage in activities that are considered to be lobbying, or you retain a contractor(s) or employee(s) that are considered to be lobbyists, then both the social ministry organization and the lobbyist have new disclosure responsibilities under HLOGA.

HLOGA alters the amount of lobbying activity that could trigger an individual falling under the lobbyist registration requirement of LDA. Under prior law, individuals who spent less than 20 percent of their time over a six month period engaged in lobbying for a client or an employer were exempt from registration. Under HLOGA, the time period is now shortened to 20 percent of time over a *three-month period*. This change may capture some individuals who would not previously have been considered to be lobbyists.

Social ministry organizations seeking guidance as to whether their public policy advocacy activities constitute “lobbying” and whether they need to ensure registration of their consultants or employees as lobbyists should consult with their legal counsel, the *LSA Public Policy Advocacy Toolkit* (available for purchase by contacting Evia Cozart at ecozart@lutheranservices.org), or one of the nonprofit advocacy expert organizations listed at the end of this fact sheet.

Does HLOGA affect the current law exempting from lobbying registration requirements for a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986?

The LDA excludes from the term “lobbying contact” communications with legislative branch officials and executive branch officials made by a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986.

HLOGA did not amend this provision within the LDA. Therefore, churches, their integrated auxiliaries, and conventions or associations of churches that are exempt from filing a Federal income tax return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986 remain exempt from the LDA.

My social ministry organization does retain/employ a registered lobbyist(s). What new responsibilities does HLOGA require of registered lobbyists?

HLOGA expands the information that registered lobbyists are required to disclose and the frequency of disclosure. Registered lobbyists and registered organizations are required by HLOGA to:

- File quarterly reports, rather than semi-annual reports.
- Specify if the client is a state or local government, department, agency, district, or other instrumentality.
- Report the names of all political committees established or controlled by the lobbyist or registered organization.
- Report the name of each federal candidate or officeholder, leadership Political Action Committee, or political party committee to which contributions of more than \$200 were made in a semi-annual period, unless such contributions are made to a person required to report such contributions under the Federal Election Campaign Act.
- Report payments for events or to entities connected with government officials.
- Report contributions of \$200 or more made during a semi-annual period to presidential library foundations or presidential inaugural committees.
- Report if they served as a “covered executive branch or legislative branch official” within the past 20 years.

Reports are to be filed electronically to the Clerk of the House and Secretary of the Senate. See the links below under Lobbying Disclosure Guidance for reporting instructions.

How does HLOGA affect the ability of Lutheran social ministry organizations to provide gifts or travel to Members of Congress or their employees?

Registered lobbyists and organizations that employ registered lobbyists are prohibited under HLOGA from making a gift or providing travel to a Member of Congress or an employee of Congress if the lobbyist/organization has knowledge that the gift or travel offered may not be accepted by the Member or staff under House or Senate ethics rules. In addition to this prohibition, registered lobbyists are required under HLOGA to certify in their lobbying disclosure reports their familiarity with the gift rules and their conformance to them.

The burden on accepting or refusing gifts and travel from registered lobbyists falls equally on Members of Congress and Congressional staff. However, social ministry organizations should not assume that each Member of Congress or Congressional staff member knows every nuance of the complex gift and travel rules applicable to their chamber. It is incumbent on social ministry organizations considering offering a gift or travel to a Member of Congress or Congressional staff to review the gift and travel rules of the Member's appropriate chamber and make a determination as to whether the gift or travel is allowable. Links to the House and Senate ethics committees, which post guidance on their respective chambers' rules on gifts and travel, are available below. Highlights of the gifts and travel rules follow:

Members of Congress and officers and employees of the U.S. House of Representatives and United States Senate are prohibited from accepting anything having monetary value unless permitted by one of the exceptions stated in their respective chambers' Ethics Rules. Exceptions pertinent to private organizations include:

- Any gift (such as a meal or a ticket to a sporting event), other than cash or cash equivalent, valued at less than \$50, as long as the donor is not a registered lobbyist, foreign agent, or entity that retains or employs them. This exception is limited to \$100 in gifts from any private source in a calendar year.
- Any item of nominal value (i.e. less than \$10). Baseball caps and t-shirts are allowed if higher than \$10.
- Gifts based on personal friendship offered for a non-business purpose (but a gift over \$250 requires prior written permission from the Ethics Committee).
- Informational materials (books, videotapes, DVDs).
- "Home state products" of nominal value for distribution by House offices.
- Commemorative items, such as a plaque, if presented at an event and inscribed.
- Free attendance at receptions offering only "food or refreshments of nominal value" that are not "part of a meal."
- Free attendance at "widely attended events" that have at least 25 non-Hill attendees, be open to the public or a wide range of individuals, and are connected to one's official House duties.
- Free attendance at charity events (i.e. an event whose primary purpose is to raise money for a 501(c)(3) nonprofit organization).
- Senators and Senate officers and employees may accept free attendance in the Member's home state at a "constituent event," which is an event sponsored by constituents, or a group mainly of constituents, and attended by at least five of the Member's constituents, when a Member or staff member participates in the event as a speaker or panel participant, or where otherwise appropriate, and when a lobbyist will not be in attendance. Free attendance includes event fees, local transportation, meals under \$50, refreshments, entertainment, and instructional materials furnished to all participants. The House of Representatives does not have a similar exception to the gift rule.

- Travel sponsored by private entities that employ or retain a lobbyist only if the trip is one-day/one-night, involves de minimis planning by the lobbyist, and the lobbyist does not travel with the House member, officer, or employee. Transportation must be coach or business class. Food and lodging must be reasonable. Entertainment, recreational activities, and gifts are subject to the gift rule exceptions. Private sponsors must submit a pre-travel certification form. House members, officers, and employees must receive prior approval of the travel and file a post-disclosure trip form.
- Note that private entities that do not retain or employ a lobbyist generally may continue to provide officially-connected travel to Members and staff. This travel is subject to duration limits. It is also subject to the same prior certification and approval and post-travel disclosure as travel sponsored by private entities that employ or retain lobbyists.

HLOGA contains provisions that require Members of Congress to publicly disclose their earmark requests. How will this affect social ministry organizations?

An “earmark” is a “congressionally directed spending item, limited tax benefit, or limited tariff benefit.” U.S. Senators and U.S. Representatives, when seeking the inclusion of earmarks in legislation, are now required to identify and name the location of the earmark recipient, and the purpose of the earmark.

Earmark requests are recorded and reported in public records, including in the Congressional Record, and in searchable databases. Lutheran social ministry organizations requesting Members of Congress to secure earmarks for the SMO should be aware that any of their earmark requests, if advanced by a Member of Congress, will be disclosed to the general public.

April 2008

Resources

Nonprofit Advocacy Expert Organizations

Alliance for Justice – <http://www.afj.org/for-nonprofits-foundations/about-advocacy/lobbying.html>

Center for Law in the Public Interest – http://www.clpi.org/Home_Final.aspx

Independent Sector – <http://www.independentsector.org/programs/gr/lobbyreform.html>

NP Action – <http://www.npaction.org/>

OMB Watch – <http://www.ombwatch.org/lobbyreform>

Honest Leadership and Open Government Act Materials

HLOGA as enacted – http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ081.110.pdf

Lobbying Disclosure Act of 1995, as amended by HLOGA – http://www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act/TOC.htm

Congressional Research Service Summary of HLOGA Provisions – http://assets.opencrs.com/rpts/RL34166_20070907.pdf
<http://rules.senate.gov/senaterules/092407CRSreportS1.pdf>

American League of Lobbyists Summaries of HLOGA Provisions – <http://www.alldc.org/publicresources/newlobbylaw.cfm>

Congressional Lobbying Disclosure Guidance

<http://lobbyingdisclosure.house.gov/>

http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm

http://lobbyingdisclosure.house.gov/amended_lda_guide.html#125update

<http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf>

Congressional Ethics Committees

House Committee on Standards of Official Conduct – <http://www.house.gov/ethics/>

Senate Select Committee on Ethics – <http://ethics.senate.gov/>