

EFFECTIVE ADVOCACY: HOW TO IMPACT FEDERAL POLICY

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**A QUICK(ISH) NOTE ON
“LOBBYING”**

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At a general level, any kind of advocacy = lobbying

However, for purposes of federal law, federal agencies, and Congress, lobbying and related disclosures are governed by the Lobbying Disclosure Act (LDA)

- Create specific definitions of “lobbying” and “lobbyist”
- Sets requirements for registering as a lobbyist

THE LDA

Generally, an individual must register as a lobbyist with House/Senate when he or she meets four qualifications:

- Is a lobbyist per the LDA;
- employed or retained to make lobbying contacts;
- employed to make the contacts under (2) for a specific client; **AND**
- with income or expenses from lobbying activities for that client over a specific monetary threshold (this year, \$3,000 per quarter).

THE LDA

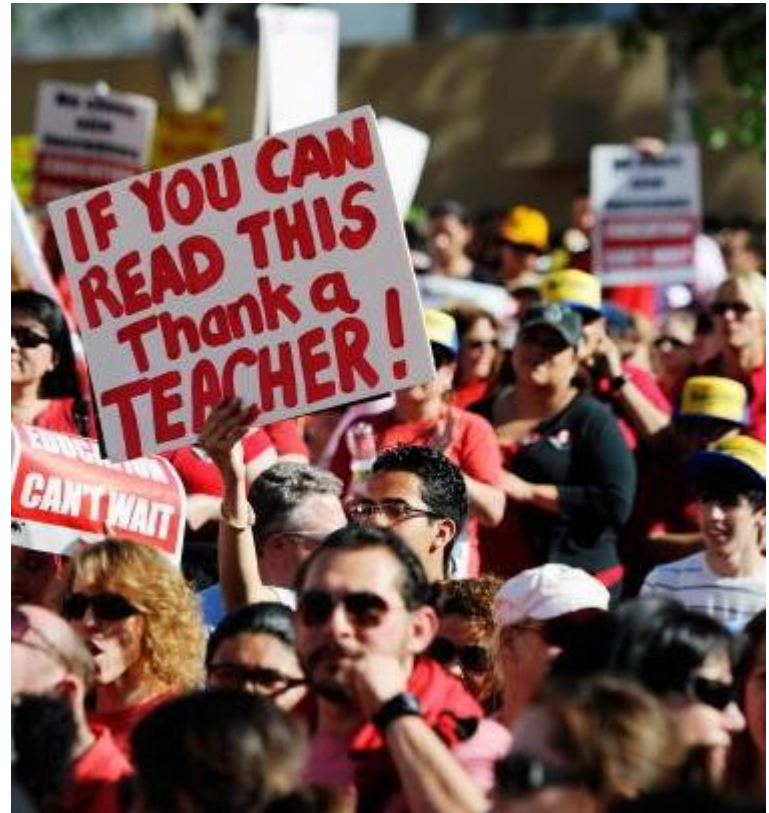
In order to be considered a lobbyist under the LDA, an individual must meet **all three** of the following requirements:

- Employed or retained by a client for financial or other compensation;
- Whose services that include more than one lobbying contacts; **AND**
- Lobbying activities must constitute 20% or more of his or her services' time on behalf of that client during a three-month period.*

*may be *any* three-month period, not necessarily quarterly

THE LDA

...note this definition doesn't really square with job description for State/LEA employees



THE LDA

A “lobbying contact” is any oral, written, or electronic communication with legislative or executive branch officials or employees made on behalf of a client with regard to:

- The formulation, modification, or adoption of federal legislation, including legislative proposals;
- The formulation, modification, or adoptions of a federal rule, regulations, executive order, or any other program, policy, or position of the United States Government;
- The administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, permit, or license); or
- The nomination of a person for a position subject to confirmation by the Senate.

THE LDA

Exceptions to the lobbying contacts rules include:

- **Administrative requests**
 - Includes requests for a meeting, scheduling meetings, requests for the status of an action, and requests for transcripts, records, or regulations);
 - Communications are NOT exempted when the request itself constitutes an attempt to influence government activity (must look to intent)
- **Information provided at the request of a lobbying contact;**
 - Response must be in writing and directed to the same person who requested the information
 - Informational requests from an individual to a covered official MAY be considered lobbying contacts – this depends on the motivation as it is a gray area in the law
- **Responses to formal solicitations in the federal register or other publications;**
 - The response must be to the official and in the format requested in the publication

THE LDA

Communications with regard to agency-initiated civil, criminal, and administrative proceedings;

- UNLESS the communication constitutes commentary on the overall process or policy

Communications in formal administrative hearings;

Written comments and other communications in public proceedings; and

- E.g. comments on rulemakings

Communications to the public.

- Any sort of speech, article, publication, or other material distributed and made available to the public, or expressed/made available through radio, television, cable television, or other medium of communications



THE LDA



Notes:

- Exceptions are narrowly construed
 - Even if the communication would be exempted, it may still be considered lobbying if it is made in support of a lobbying contact.
 - This includes activities which are not strictly lobbying contacts themselves, but are done with the intent of pursuing later lobbying contracts, e.g.:
 - A status request on a draft bill
 - Drafting talking points on a policy or area of interest
- Intent and tone of communications is important!

FEDERAL FUNDS AND LOBBYING



RESTRICTIONS ON FEDERAL FUNDS

As a general rule, any grant award notification specifies that federal funds can't be used for lobbying

- Applies to any recipient of a federal contract, grant, loan or cooperative agreement
- Specifically prohibits using federally appropriated funds to influence the executive branch or Congress in connection with any federal contract, grant, loan or cooperative agreement (including for the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement)

Source:

- The Byrd amendment (31 USC 1352)

RESTRICTIONS ON FEDERAL FUNDS

“Each person who requests or receives a Federal contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file... a written declaration”

- Must contain:
 - The name of any lobbying registrants
 - “a certification that the person making the declaration has not made, and will not make, any payment prohibited...”

Source:

- The Byrd amendment (31 USC 1352)

RESTRICTIONS ON FEDERAL FUNDS

Also part of the Uniform Grants Guidance (2 CFR 200.450):

- The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost.
- “Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.”

RESTRICTIONS ON FEDERAL FUNDS

Additional Restrictions for IHEs and non-profits

- No attempts to influence federal, State, or local elections or other political activities
- No attempts to influence the introduction, passage, or modification of federal or State laws
- No legislative liaison activities including attendance at hearings or analysis of legislation when preparing for possible lobbying

Exceptions:

- Technical/factual presentations (travel/lodging/meals still unallowable)
- Any costs exempted under the LDA
- Efforts to reduce costs
- Items directly permitted under a grant

GENERAL NOTES

LDA descriptions envision hired lobbyists, not State/local employees

State/local employees generally can't participate in lobbying using federal funds due to funding rules

But these rules only apply to federal legislation/policy

Check your GAN for any additional restrictions!

HOW TO ADVOCATE EFFECTIVELY



WHY?

Organizations/individuals often have specific policy interests or issues which can be addressed through specific legislation, regulations, or guidance

Constitutional right to “petition the government for a redress of grievances”

Senators and Representatives are there to represent YOU (make them work for it)

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United States Senate

ARMED SERVICES
BANKING, HOUSING, AND
URBAN AFFAIRS
JOINT ECONOMIC COMMITTEE
SELECT COMMITTEE ON INTELLIGENCE
SPECIAL COMMITTEE ON AGING

October 17, 2017

This letter is immediate notification that all communication must cease and desist immediately with all offices of **US Senator Tom Cotton**.

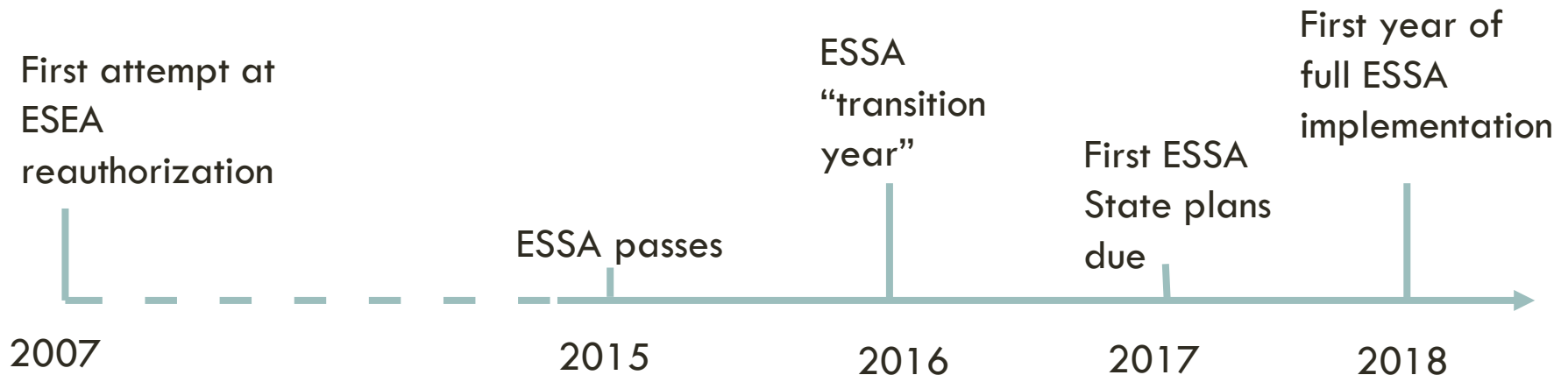
All other contact will be deemed harassment and will be reported to the United States Capitol Police.

The Office of U.S. Senator Tom Cotton

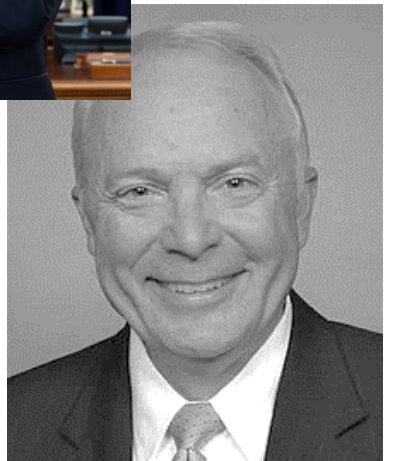
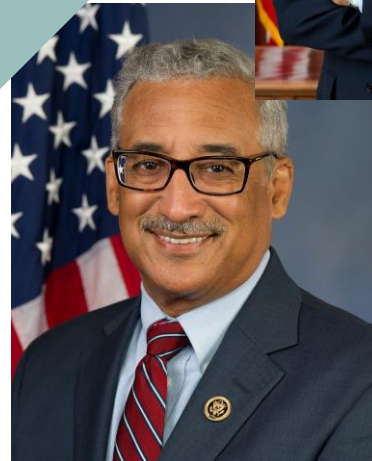
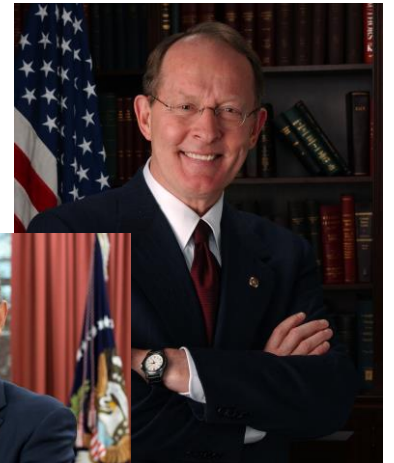
WHY?

Lawmakers don't always know something is a problem until they hear from you!

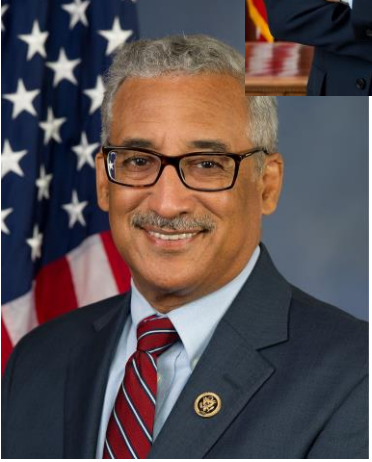
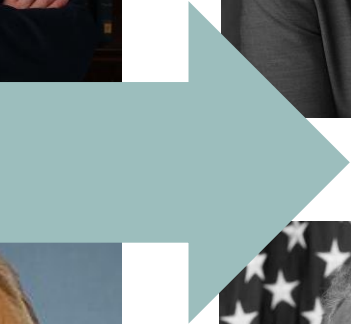
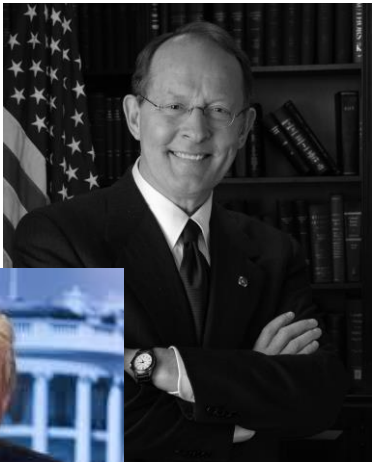
- Lots of time elapses from passage of law to implementation – easy to lose track, get distracted – or new members elected!
- Problems develop as time goes on



WHY?



WHY?



WHO?

Who should advocate?

- Advocacy organizations (i.e. NAESPA, NAFEPA, NAFIS, NASSP, NASB, etc.)
- Local governmental organizations: SEA, LEA, School boards
- Professionals in their professional capacity bringing technical expertise
 - Caution: Restrictions on use of federal funds for lobbying and restrictions on tax exempt organizations
- Individuals

WHAT?

What can be the target of effective advocacy?

- Federal statutes (i.e. ESSA but also smaller laws)
 - Changes can only come from Congress
- Federal funding/appropriations levels (Congress)
- Federal regulations-must be formally changed
- Agency guidance, policy letters

WHERE?

Washington D.C.

- Home to many agency decision-makers
- Offices of Representatives and Senators where policy staffers work
 - DC tends to be the office where policy staffers are housed
 - Remember, elected officials rely on staff work, especially for technical matters
- **BUT! Remember restrictions on federal funds!**



WHERE? (CONT.)

At home in the Congressional district

- Lawmakers spend lots of time in their home districts and this can be a good opportunity to meet directly with them
 - However, they may not have their policy staff with them (follow-up may be lackluster)-(see above re: staffers)
 - Check the congressional calendar for dates and times of “district work periods” (aka Congressional recess)

WHERE? (CONT.)

Remotely

- Via solicitations for comments on the Federal Register
 - E.g. ED's recent solicitation for comments on delay of enforcement for disproportionate identification rules
 - Lots of comments on proposed rules:
 - NCLB had 700 comments, ESSA had over 21,000
 - Not all substantive – some copy and paste
 - Remember: Comments on proposed regulations which are filed through this system and are publicly available are not considered lobbying

WHERE? (CONT.)

- Via letter to agency staff/heads or Congressional delegation
 - Less effective than face to face
 - Large scale letter writing - especially form letters - not generally as effective

In-State

- Periodic regional/local meetings and visits
 - E.g. ED's 2017 public meeting regarding ESSA regulation in Los Angeles

Negotiated Rulemaking

- Get on committee or contact existing committee member

WHEN?

AS EARLY AS POSSIBLE!

Legislation

- Discussions on legislation begin months or years before a major reauthorization is completed
- Earlier discussions- and even agency action-can become a part of “legacy”
 - Attempts at ESEA reauthorization in 2007, 2011, 2013 informed ESSA
 - Final Alexander bill began with 2011 draft



WHEN? (CONT.)

Legislation

- Members can lay groundwork for years before legislation is passed
 - E.g. Jared Huffman (D-CA) has a legislative portfolio full of work on education, especially IDEA. Not a member of those committees now, but wants to be. And when he gets there, he wants to be regarded as a subject-matter expert.
- Once reauthorized, little appetite to “open up” legislation again for some time.

WHEN? (CONT.)

Appropriations

- Process starts in earnest in April for following fiscal year (starting in October)
- Offices begin to talk about wish lists in March
- Agencies start debating budget asks in January
 - President's budget request is due to Congress in February



WHEN? (CONT.)

Regulations

- Far easier to influence regulations when they are being drafted than when they are established practice
- Easier to influence regulations when they are proposed than interim
 - Some may skip proposed phase and go straight to interim if there is urgency
- Easier to influence interim than final
- Earliest step in process is negotiated rulemaking (if applicable)

WHEN? (CONT.)

Guidance

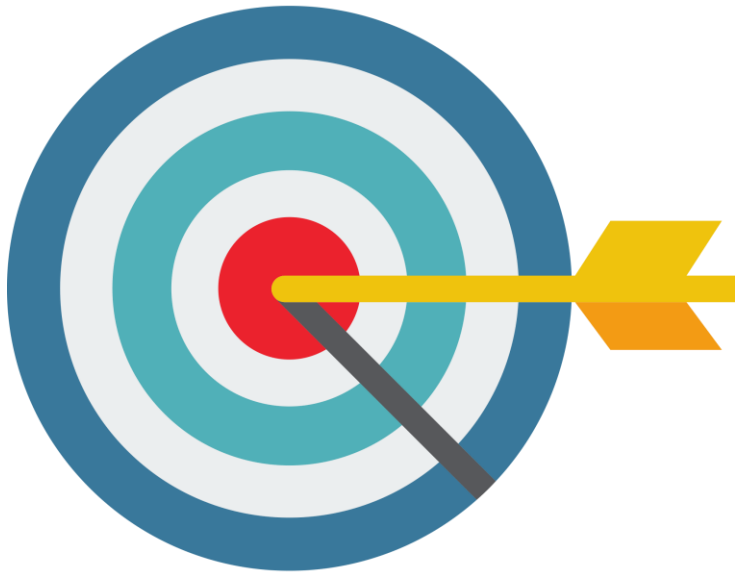
- The earlier, the better
- Guidance is rarely overturned by the same administration
 - Exception: IDEA LEA MOE, where guidance was changed in various letters after pressure from disability groups
 - ...and the implicit exception: when there's a new administration (see 2017)

HOW?

Figure out exactly what you want to change

- Determine who can change it
 - Only Congress can change statutes
 - Regulatory change requires agency rulemaking
 - Guidance can't overrule laws or regulations
 - If you're citing to USC, it's statute; if it's CFR, it's regulations
- Statute can sometimes overrule regulations or previous statute
 - E.g. ESSA implementation date
 - Congress reluctant to tinker with new law or agency rulemaking

HOW?



Identify personnel to target

- Your member of Congress?
- Another member of Congress from your State who is on the relevant committee?
- Committee chairs?
- Agency officials?
- Congressional/agency staff?

HOW?

Need an “ask”

- Don't go into an office with just a problem and expect them to come up with a solution: bring expert analysis
 - Numbers/facts on impact
 - Specific sections of law or regulations
- Don't go in with general dissatisfaction
 - Why did Congress do this? The agency is treating me unfairly! I don't have enough money to do anything!

HOW?

Be a problem solver

- What kind of change would address this program?
- Do you want more discretion? Or should it be written in statute/regulation?
- Providing a solution (legislative/suggested regulatory language) is even better!



BEST PRACTICES FOR ADVOCACY



BEST PRACTICES FOR ADVOCACY

Be Timely

- The best time to influence the contents of a bill: ASAP!

Come prepared

- Be ready to present hard facts on potential impact of legislation or status quo
- Provide draft legislative language, if possible
- Have your subject-matter experts ready to do the talking

Listen to staff

- Often a good source of information
- May know more about substantive policy than Member of Congress

BEST PRACTICES FOR ADVOCACY

Be realistic

- What can be done? Acknowledge obstacles

Know your deal-breakers

- What kinds of compromise would you be able to live with?
- If your provision isn't included/excluded, would you still want the bill as a whole?

Follow-up

- Say thank you and offer yourself as a resource
- Always provide additional information if asked and follow up on any news

Keep Coming back

- Reauthorization – especially for major laws – takes time



QUESTIONS? |

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