LOBBYING DISCLOSURES 101 AND NAVIGATING THE REVOLVING DOOR

In Washington, D.C., moving between private practice and public service is common. However, for lobbyists, there is a complex set of laws and policies in place that require registration, periodic disclosures, and “cooling off” when transitioning from the public to private sector. While lobbyists should be aware of state or local requirements, this guide provides a brief overview of the federal requirements, including the Lobbying Disclosure Act of 1995, as amended (“LDA”), the Foreign Agents Registration Act of 1938, as amended (“FARA”), and other ethics requirements, which govern when lobbyist registration is required, periodic disclosures, and how long public officials must “cool off” before lobbying certain offices. We strongly encourage those interested to read the LDA and FARA.

LDA REGISTRATION AND REPORTING REQUIREMENTS

The LDA defines a “lobbyist” as an individual who is employed or retained by a client for compensation, and makes more than one “lobbying contact” (i.e., communications regarding the formulation of federal legislation, rules, or programs), with certain officials (e.g., certain members of the legislative and executive branches), and spends 20% or more of his or her time during a 3-month period on federal “lobbying activities” (e.g., lobbying contacts and efforts in support of those contacts, such as preparation and research).

If you qualify as a lobbyist and your employer has lobbying income or expenses exceeding a certain amount, your employer must register with Congress within a certain timeframe and list you as a lobbyist on the registration on behalf of the client. Employers usually will also submit quarterly reports, which typically include information such as: the names of each company lobbyist working on behalf of the client, an estimate of total lobbying income, which agencies or house(s) of Congress the company lobbied, and the specific issues lobbied on by the company. In addition to quarterly reports, registered entities and individual lobbyists must submit semi-annual contribution reports, which typically disclose contributions, along with a certification of the House and Senate gift-giving rules. Violations of the LDA can result in serious fines and prison time. Visit https://lobbyingdisclosure.house.gov/ for U.S. House of Representatives Office of the Clerk latest announcements regarding lobbying disclosures.

FARA

Congress enacted FARA to promote transparency and identify the source of information from foreign agents seeking to influence American public opinion, laws, and policy. FARA requires “an agent of a foreign principal” to register with and disclose certain activities to the United States Department of Justice (“DOJ”). There are a number of exemptions to FARA’s registration obligations (e.g., diplomatic officers, humanitarian fundraising, academic pursuits). For additional guidance, see the DOJ’s FARA Frequently Asked Questions. Like the LDA, FARA violations can result in serious fines and prison time.

“COOLING OFF PERIODS”

Federal conflict of interest law requires some former federal employees to wait a certain amount of time (a “cooling off period”) before influencing certain governmental policies, or they may be permanently restricted. The law defines the types of activities that are prohibited during these periods, and which offices are covered. See 18 U.S.C. § 207. Like other former presidents who have issued ethics pledges, President Biden signed an Executive Order imposing a revolving door ban for different classes of appointees. See President Biden’s recently released Ethics Pledge for additional details.