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Time Sheets for Lobbying Purposes

In order to track our time spent on lobbying, for purposes of the Lobbying Disclosure Act (“LDA”) and for tax purposes under the Internal Revenue Code (“IRC”), each employee involved in advocacy and governmental policy activities must record his or her time spent on lobbying activities and contacts. The attached time sheet is to be used for these purposes and must be completed weekly. Regardless of whether an employee tracks time to determine whether he or she is or is not a lobbyist, that person *must* complete the attached time sheet.

The following seven categories of activities must be treated as “lobbying” on your time sheet. Not all of these categories counts as “lobbying” under the LDA. You should only fill in the white boxes, the grey boxes are calculated automatically. The following numbers correspond to the line numbers on the time sheet.

1. Federal Legislative Lobbying

Communications with Members of Congress and Congressional staff (including personal office and committee staff), with respect to the formulation, modification, or adoption of legislation, rules, regulations, Executive Orders, any policy, program 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 or confirmation of a person subject to confirmation by the Senate.

2. Federal Executive Branch Communications

Any direct communication with a covered federal executive branch official in an attempt to influence the official actions or positions of such official, including regulatory, administrative or any other official actions or positions.

Covered federal executive branch officials include:

- President;
- Vice President;
- Any employee of the White House Office of the Executive Office of the President;
- The two most senior officers of each of the other agencies in the Executive Office of the President (e.g., Office of Management and Budget, United States Trade Representative, Council of Economic Advisers, National Security Council);
- Any individual (and his or her immediate deputy) serving in a position in level I of the Executive Schedule (e.g., Secretary of Commerce, other cabinet secretaries); and
- Any other individual (and his or her immediate deputy) designated by the President as having Cabinet-level status (e.g., White House Chief of Staff, Chairman of the Council of Economic Advisers, and EPA Administrator).

All other federal executive branch officials and employees are not covered under this category (e.g., Food and Drug Administration Commissioner, Federal Trade Commissioners, Assistant Attorney General for Antitrust).

In addition, this includes **any** communication with any executive branch employee (career or political appointee of any level) who may participate in the formulation of legislation.

3. State Legislative Lobbying

Communications with state legislators and their staff with respect to any bills, resolutions, or other legislation, including proposals that have not yet been introduced in the legislature. The communication must refer to legislation and reflect a view on the legislation (or clarify, amplify, or modify prior views on the legislation).

4. Grass Roots Lobbying

Any attempt to influence the general public, or segments of the general public, with respect to elections legislative matters, or referenda. This includes urging ASSOCIATION members to engage in grassroots lobbying (but would not include urging ASSOCIATION members to engage in direct lobbying). It also includes international grass roots efforts.

5. International Lobbying

Any attempt to influence any legislation through communication with any member or employee of a foreign legislative body, or with any government official or employee who may participate in the formulation of the legislation.

6. Political Activity

All efforts in support of ASSOCIATION PAC, including fundraising, attending fundraisers, and similar activities, or any other participation or intervention in a political campaign at the federal, state, or local level. Note: remember that federal law, and a number of state laws, prohibit direct contributions, or facilitating contributions, to candidates.

7. Supporting Activities

Any research, preparation, planning, and coordination (including deciding whether to make a lobbying communication) engaged in for a purpose of making or supporting any of the other six categories. In general, you should include preparation time within the other six categories. This line is to be used for activities that are not otherwise included in that time.

Purposes of Activity: You should look to the purpose of the activity at the time undertaken to determine whether it is a lobbying activity within these six categories. If the activity has multiple purposes, you may reasonably allocate your time between lobbying and non-lobbying, based on a percentage of the purpose.

8. Total Lobbying Hours

This line is calculated automatically. For IRC purposes, it includes items one through seven. For the LDA purposes, it only includes items one, two, and seven.

9. Non-Lobbying

You should enter all non-lobbying work on this line. For the LDA column, the time sheet adds your non-lobbying under the IRC with those categories of lobbying not included within the LDA definition. Thus, non-lobbying under the LDA usually will be higher number than the IRC.

10. Total Hours

This line is calculated automatically, and is the sum of lobbying and non-lobbying. Your total hours should approximately reflect the total hours you worked for ASSOCIATION during that week. For salaried employees, this may be above 40 hours. For hourly employees, this number should be no more than 40, unless you have received appropriate approval for working overtime.

11. Weekly Percentage

This line is also calculated automatically and provides a percentage of time spent on lobbying for both IRC and LDA purposes. Remember that a person who spends more than 20 percent of his or her time on lobbying activity in a full calendar quarter is considered to be a lobbyist. Thus, your percentage

may be higher than 20 in any given week without triggering registration requirements.

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Once you have completed your time sheet, please send it to ??? by the Tuesday following the week being reported. Failure to submit a time sheet can result in disciplinary sanctions, including termination.

Examples of Lobbying and Nonlobbying

Definitions of Influencing Legislation, Attempt to Influence Legislation, Lobbying Communication, Legislation, and Specific Legislation; Lobbying.

1. An Association employee is assigned to approach members of Congress to gain their support for a pending bill of potential benefit to Association members. The employee drafts a position letter on the bill, which is then sent to select members of Congress. Additionally, the employee personally contacts select congressional staff members to seek support for Association's position on the bill. The letter and the personal contacts are lobbying communications. Therefore, Association is influencing legislation.
2. Association's CEO is invited to provide testimony at a congressional oversight hearing concerning Food and Drug Administration ("FDA") implementation of legislation designed to streamline the new drug approval process. In his testimony, Association's CEO criticizes FDA-proposed regulations and urges significant revisions before the rules are finalized. Because Association's CEO does not refer to any specific legislation or reflect a view on any such legislation (it merely addressed proposed regulations), Association has not made a lobbying communication. Therefore, Association is not influencing legislation.
3. Association employees prepare a paper that asserts that lack of new capital is hurting the national economy. The paper suggests that lowering the capital gains tax rate would increase the availability of capital and increase federal tax receipts. Association forwards the paper to members of the House Ways and Means and Senate Finance Committees with a cover letter that says in part: "Association urges you to support a reduction in the capital gains tax rate." Association's communication is a lobbying communication because it refers to and reflects a view on a specific legislative proposal (i.e., lowering the capital gains tax rate). Therefore, Association is influencing legislation, and the time spent by Association employees preparing and sending the paper should be recorded as lobbying.
4. (a) Association's CEO meets with the Chairman of the House Commerce Health and Environment Subcommittee, which has jurisdiction over regulation of the mail-order drug industry, to

discuss the possibility of legislation to address current problems with the mail-order drug industry. Association's CEO recommends that legislation be introduced by the Chairman to help eliminate perceived unfair tax advantages currently enjoyed by the mail-order drug industry. The CEO's discussion with the Subcommittee Chairman is a lobbying communication because the CEO refers to and reflects a view on a specific legislative proposal. Therefore, Association is influencing legislation.

(b) The Subcommittee Chairman is not convinced that additional federal legislation is needed regarding the mail-order drug industry and requests that Association provide more information on the current state of the prescription drug market. After the meeting, the CEO has an Association employee prepare a brief background paper on the current state of the prescription drug market. The paper makes no explicit or implicit recommendations for new legislation. The CEO sends the paper to the Subcommittee Chairman with a cover letter that merely refers to the enclosed paper. Although the CEO's follow-up letter to the Subcommittee Chairman does not refer to specific legislation or reflect a view on such legislation, the letter and accompanying background paper support the views reflected in the earlier face-to-face lobbying communication. Therefore, the letter and accompanying paper are lobbying communications and Association is influencing legislation. All Association staff time spent drafting the background paper and cover letter is considered lobbying, except time spent by clerical staff where no significant judgment with respect to lobbying is involved, and except time spent by employees who spend less than 5% of their total time on lobbying activities. (Note: If no initial lobbying communication from Association had ever taken place on this matter, and if the background paper had not been prepared with any future lobbying purpose in mind, the time spent preparing and sending the paper would not be considered lobbying. In such a circumstance, it would be generally advisable to document the nonlobbying purpose(s) of preparing the paper by creating a brief file memorandum.)

Covered Federal Executive Branch Officials.

1. An Association employee drafts a letter advocating changes to Medicare regulations and sends it to the Administrator of the Health Care Financing Administration ("HCFA"). The letter does not constitute a lobbying communication because the letter does not refer to any specific legislation, but merely to regulatory matters. Furthermore, because the HCFA Administrator is not a covered federal executive branch official, the letter does not constitute a lobbying communication by way of this additional category.
2. An Association employee drafts a letter advocating proposed Medicare reform legislation and sends it to the Administrator of the Health Care Financing Administration urging HCFA support. The letter constitutes a lobbying communication because it refers to and reflects a view on specific legislation, and is directed at a government official who may participate in the formulation of such legislation.

3. An Association employee drafts a letter advocating changes to Medicare regulations and sends it to the Secretary of the Department of Health and Human Services. The letter constitutes a lobbying communication because it is directed to a covered federal executive branch official (i.e., a Cabinet Secretary) in an attempt to influence an official action or position of such official. Note that communications to such covered officials are considered lobbying even if such communications relate solely to regulatory actions.
4. An Association employee drafts a letter advocating changes to Medicare regulations and sends it to the Assistant Secretary for Planning and Evaluation at the Department of Health and Human Services. The letter does not constitute a lobbying communication because it does not refer to any specific legislation (it refers only to regulatory matters), and because it is not addressed to the HHS Secretary, the Deputy HHS Secretary, or any other covered federal executive branch official (rather, it is addressed to the Assistant HHS Secretary, who is not a covered federal executive branch official).

The Purpose Test; Multiple Purposes; Exception for Routine, Brief Summaries of Legislation; Communications with Association Members.

1. **Facts.** In 2008, the Department of Health and Human Services (“HHS”) issues proposed regulations relating to Medicare coverage for prescription drugs. There is no pending or proposed legislation during 2008 that is similar to the regulatory proposal. Association undertakes a study of the impact of the proposed regulations on its members. Association incorporates the results of that study in comments sent to HHS in 2008. In 2009, Medicare reform legislation is introduced in Congress that includes provisions similar to the aforementioned regulatory proposal. Also in 2009, Association’s CEO writes a letter to the Chairmen of the Senate Finance and House Ways and Means Committees stating that Association opposes these provisions of the proposed legislation. Association’s CEO encloses with the letter a copy of the comments previously sent to HHS.

Analysis. Association’s letter to the respective Senate and House Committee Chairmen refers to and reflects a view on specific legislation and therefore is a lobbying communication. Although Association’s study of the impact of the proposed regulations is proximate in time and similar in subject matter to the lobbying communication, Association performed the study and incorporated the results in comments sent to HHS when no legislation with a similar subject matter was pending or proposed (a nonlobbying use). On these facts, Association engaged in the study solely for a nonlobbying purpose.

2. **Facts.** The Governor of California proposes a budget that includes a proposed sales tax on electricity. After gathering records of electricity consumption from all of its members’ stores in California, Association estimates the additional costs

that the budget proposal would impose upon its members. In that same year, Association writes to members of the California state legislature and explains that it opposes the proposed sales tax. In its letter, Association includes its estimate of the costs that the sales tax would impose on its members. Association does not demonstrate any other use of its estimates.

Analysis. The letter is a lobbying communication because it refers to and reflects a view on specific legislation — the Governor’s proposed budget. Association’s estimate of additional member costs under the proposal supports the lobbying communication, is proximate in time and similar in subject matter to a specific legislative proposal then in existence, and is not used for a nonlobbying purpose. Based on these facts, Association estimated the additional member costs under the budget proposal solely to support the lobbying communication. Therefore, all Association staff time spent gathering and estimating the additional member costs must be counted as lobbying.

3. **Facts.** Association’s CEO travels to a two-day National Retail Federation conference in Sacramento, California on emerging trends in the retail industry. The CEO plans to spend a third day in Sacramento meeting with state legislators to explain why Association opposes the Governor’s proposed sales tax on electricity (a bill unrelated to the subject of the conference). At the meetings with the legislators, the CEO makes lobbying communications by referring to and reflecting a view on the pending bill.

Analysis. The CEO’s trip is partially for the purpose of making lobbying communications and partially for a nonlobbying purpose (attending the National Retail Federation conference). As a result, the CEO must reasonably allocate his travel expenses (e.g., transportation, meals, lodging), as well as his travel time (for salary allocation purposes), between these two purposes. (Of course, the CEO’s time spent in the meetings with state legislators must also be recorded as lobbying.) Allocating to lobbying only the CEO’s incremental travel time and transportation expenses (i.e., the taxi travel time and taxi fare to meet with the state legislators) does not result in a reasonable allocation of travel time and expenses to lobbying; some reasonable portion of the CEO’s total travel time and expenses (e.g., air travel time, airfare, hotel, meals) must also be allocated to lobbying.

4. **Facts.** On February 1, 2009, a bill regarding Medicare coverage for prescription drugs is introduced in Congress. Employees in Association’s Federal Government Affairs Division, as is customary, prepare a brief summary of the bill and periodically confirm the procedural status of the bill through conversations with House Ways and Means and Senate Finance Committee staffers. This brief bill summary is included in certain Association newsletters sent to Association members. On May 1, 2009, Association’s Vice President for Government Affairs sends a memo to Association’s Vice President for Pharmacy Affairs requesting his department’s help in analyzing the bill and

drafting a position letter in opposition to the bill. Employees in Association's Federal Government Affairs Division continue to confirm periodically the procedural status of the bill, and Association members are kept apprised of the bill's status through member newsletters. On October 1, 2009, Association's position letter in opposition to the bill is delivered to all members of Congress.

Analysis. Association's position letter is a lobbying communication because it refers to and reflects a view on specific legislation. The May 1 memo from Association's VP for Government Affairs to the VP for Pharmacy Affairs requesting assistance in analyzing the bill and assistance in drafting a position letter in opposition to the bill evidences a purpose to influence legislation. Neither the activity of periodically confirming the procedural status of the bill nor the activity of preparing the routine, brief summary of the bill (as well as reporting on both to Association members) before May 1 constitutes influencing legislation; the statutory exceptions for these activities apply. In contrast, periodically confirming the procedural status of the bill (and reporting on such to Association members) on or after May 1 relates to the same subject as, and is close in time to, the October 1 lobbying communication and is used for no nonlobbying purpose. Furthermore, because the activity occurs after Association evidences a lobbying purpose with regard to the pending bill, the statutory exception does not apply. Consequently, after May 1, Association is deemed to have determined the procedural status of the bill (and apprised Association members of such) for the sole purpose of supporting the October 1 lobbying communication. The time spent by Association employees on such activities must be recorded as lobbying.

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