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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 2, 1995

George Stephanopoulos

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus RGD
General Counsel

SUBJECT: Proposed Executive Order Entitled "Lobbying Disclosure"

Attached is a proposed Executive order entitled "Lobbying Disclosure."

It was prepared by the Department of Justice, in accordance with the provisions of Executive Order No. 11030, as amended.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning this proposal. If you have any comments or objections, they should be received no later than close of business Thursday, October 5, 1995. Please be advised that agencies that do not respond to the October 5, 1995 deadline will be recorded as not objecting to the proposal.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed of this office (Phone: 395-3563; Fax: 395-7294).

Thank you.

Attachments - Distribution List
Proposed Executive Order

cc: Alice Rivlin
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WORKING DRAFT #11 -- SEPTEMBER 27, 1995

Executive Order _____

Lobbying Disclosure

The status quo with respect to lobbying is marked by two significant problems for officials who are charged with making policy. First, the sources of information or opinions provided to government officials are not always fully revealed. Where executive branch officials in the policy-making area do not have access to the full range of information regarding those who are seeking to influence their judgments, such officials are not fully able to assess the arguments and advocacy that are made to them and so are deprived of the ability to make fully informed judgments on matters of significant governmental policy. In addition, the absence of such information leads to a public perception that governmental decisions are not fully informed or, worse, are improperly influenced.

To avoid these two problems in the executive branch, I am ordering that executive branch policymaking officials secure relevant and important information before receiving a lobbying contact and that this information be made available to the public. For ease of administration, this information shall be systematized and centrally collected and maintained.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Definitions. For the purposes of this order:

(a) "Agency" has the meaning given that term in section 105 of title 5, United States Code.

(b) "Client" means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on the person's or entity's own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

(c) "Covered executive branch official" means

(1) the President;

(2) the Vice President;

(3) any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;

(4) any officer or employee serving in a position in level I, II, III, IV, or V of the Executive Schedule, as designated by statute or Executive order;

(5) any member of the uniformed services whose pay grade is at or above O-7 under section 201 of title 37, United States Code; and

(6) any member of the Senior Executive Service described in 5 U.S.C. §§ 3131 and 3132, the Senior Cryptologic Executive Service, the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service described in 5 U.S.C. § 3151, the Defense Intelligence Senior Executive Service described in 10 U.S.C. § 1601, or the Senior Foreign Service described in 31 U.S.C. § 733.

(d) "Covered legislative branch official" means

(1) a Member of Congress;

(2) an elected officer of either House of Congress;

(3) any employee of, or any other individual functioning in the capacity of an employee of

(A) a Member of Congress;

(B) a committee of either House of Congress;

(C) the leadership staff of the House of Representatives or the leadership staff of the Senate;

(D) a joint committee of Congress; or

(E) a working group or caucus organized to provide legislative services or other assistance to Members of Congress; and

(4) any other legislative branch employee serving in a position described under section 109(13) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(e) "Employee" means any individual who is an officer, employee, partner, director, or proprietor of a person or entity, but does not include (1) independent contractors or (2) volunteers who receive no financial or other compensation from the person or entity for their services.

(f) "Employer" means any person or organization that has one or more employees who are lobbyists, including self-employed persons who are lobbyists.

(g) "Executive Agent" means the agency designated by the Office of Management and Budget to perform the responsibilities assigned the Executive Agent under this order.

(h) "Foreign principal" means a foreign principal as defined in section 1(b) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(b)).

(i) "Legislation" means bills, treaties, resolutions, amendments, and other matters pending or proposed in either House of Congress, and includes any other matter, other than a nomination, which may be the subject of action by either House.

(j) "Lobbying activities" means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

(k)(1) "Lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official, regardless of who initiated the communication, that is made on behalf of a client with regard to

> (A) the formulation, modification, or adoption of federal legislation (including legislative proposals);
>
> (B) the formulation, modification, or adoption of a federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government; or
>
> (C) 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).

(2) Exceptions. The term "lobbying contact" does not include a communication that is

> (A) made by a public official acting in the public official's official capacity;

(B) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

(C) made on behalf of a foreign principal and disclosed under the Foreign Agents Registration Act of 1938, as amended, (22 U.S.C. 611 et seq.);

(D) made in a speech or article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;

(E) a request for a meeting, a request for the status of an action, or any other similar administrative request;

(F) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;

(G) testimony given before a committee, subcommittee, or task force of the Congress, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;

(H) information provided to any covered executive branch official or covered legislative branch official in response to an oral or written request by such official for specific information;

(I) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency;

(J) made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;

(K) not possible to report without disclosing information, the authorized disclosure of which is prohibited by law;

(L) made to an official in an agency with regard to

(i) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or

(ii) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis,

if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;

(M) made in compliance with written agency procedures regarding an adjudication conducted by the agency under section 554 of title 5, United States Code, or substantially similar provisions;

(N) a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;

(O) made on behalf of a federal employee organization, concerning the terms and conditions of federal employment of the members of that organization, to a federal official charged with responsibility for such terms and conditions;

(P) a petition for agency action made in writing and required to be a matter of public record pursuant to agency procedures;

(Q) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with

(1) a covered executive branch official, or

(2) a covered legislative branch official (other than the individual's elected Members of Congress or employees who work under such Members' direct supervision),

with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;

(R) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978 (5 U.S.C. App. 3), or under another provision of law;

(S) between

(i) officials of a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act (15 U.S.C. 78c(a)(26))) that is registered with or established by the Securities and Exchange Commission as required by that Act or a similar organization that is designated by or registered with the Commodities Future Trading Commission as provided under the Commodity Exchange Act (7 U.S.C. 1 et seq); and

(ii) the Securities and Exchange Commission or the Commodities Future Trading Commission, respectively,

relating to the regulatory responsibilities of such organization under that Act;

(T) a diplomatic communication, including with an employee of the American Institute of Taiwan; and

(U) such other exceptions as the Executive Agent deems consistent with the purposes of this order and essential to its fair and efficient administration.

(l) "Lobbyist" means any individual who during the semiannual reporting period meets all three of the following criteria with respect to at least one client:

(1) is employed or retained by a client for financial or other compensation for services that include one or more lobbying contacts;

(2) performs or expects to perform lobbying activities during at least 20% of the total time the individual is engaged in providing services for that client; and

(3) either

(A) is paid or expects to be paid at least $5,000 by that client for all matters related to lobbying activities on behalf of that client; or

(B) in the case of an employer whose employees engage in lobbying activities on its own behalf, expends or expects to expend at least $20,000 in connection with such lobbying activities.

(m) "Media organization" means a person or entity engaged in disseminating information to the general public through a newspaper, magazine, other publication, radio, television, cable television, or other medium of mass communication.

(n) "Member of Congress" means a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

(o) "Organization" means a person or entity other than an individual.

(p) "Person or entity" means any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or state or local government.

(q) "Public official" means any elected official, appointed official, or employee of

(1) a federal, state, or local unit of government in the United States other than

(A) a college or university;

(B) a government-sponsored enterprise as defined in section 3(8) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 622(8));

(C) a public utility that provides gas, electricity, water, or communications;

(D) a guaranty agency as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1085(j)), including any affiliate of such an agency; or

(E) an agency of any state functioning as a student loan secondary market pursuant to section 435(d)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)(1)(F));

(2) a government corporation as defined in section 9101 of title 31, United States Code;

(3) an organization of State or local elected or appointed officials other than officials of an entity described in clause (A), (B), (C), (D), or (E) of subsection (1), above;

(4) an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(5) a national or State political party or any organizational unit thereof;

(6) a national, regional, or local unit of any foreign government; or

(7) an international organization in which the United States participates.

(r) "semiannual reporting period" means the semiannual period described in section 4(a) of this order;

(s) "State" means each of the several states, the District of Columbia, and any commonwealth, territory, or possession of the United States.

Sec. 2. Duties of Covered Executive Branch Officials.

(a) Prohibition. (1) A covered executive branch official may not accept an in-person or other oral lobbying contact from a lobbyist unless:

(A) the lobbyist has stated to the covered official or designee the identity of all clients on whose behalf the lobbying contact is made;

(B) the lobbyist has stated to the covered official or designee whether any such client is a foreign principal;

(C) the lobbyist has stated to the covered official or designee the identity of any foreign principal described under section 3(a)(4) that has a direct interest in the outcome of the lobbying contact; and

(D) the lobbyist has stated to the covered official or designee within the current semiannual reporting period that the lobbyist has submitted to the Executive Agent, with respect to each client on whose behalf the lobbying contact is made, the disclosure described in section 3 of this order and the current semiannual report described in section 4 of this order, or that the lobbyist's employer has submitted, with respect to each client on whose behalf the lobbying contact is made, the single disclosure described in section 3(b) and the current semiannual report described in section 4.

(2) Notwithstanding the provisions of subsection (a)(1), a covered executive branch official may not accept any lobbying contact with those lobbyists or employers that appear on the most recent bi-monthly list compiled and distributed pursuant to section 6(b)(2)(F) of this order, unless such contact is by an employee of

a listed employer solely on behalf of such employer and not on behalf of any other client of the employer.

(b) Because it is impractical to apply them in such contexts, the prohibitions of section 2(a) do not apply to incidental contacts occurring at social events or large gatherings, other than with an individual or representative of an organization that hosted such event or gathering, or that invited or directly funded the covered official's participation in such event or gathering.

(c) The covered executive official is not required to create or maintain any records in order to comply with this executive order.

(d) Identification as a Covered Official. Upon request by a person or entity making a lobbying contact, a covered executive branch official who is contacted shall indicate that he or she is a covered executive branch official.

Sec. 3. Disclosure. (a) Contents of Disclosure. A disclosure under this order is a record, with respect to a particular client, that contains:

(1) the name, address, business telephone number, principal place of business, and a general description of business activities of the lobbyist (or, in the case of a single disclosure described in subsection (b), below, the employer);

(2) the name, address, and principal place of business of the client, a general description of the client's business or activities (if different from that described in subsection (1) of this section), and a statement whether the client is a foreign principal;

(3) the name, address, and principal place of business of any individual or organization, other than the client, that contributes more than $10,000 toward the lobbying activities of the lobbyist (or, in the case of a single disclosure described in subsection (b), the employer) on behalf of the client in a semiannual period described in section 4(a);

(4) the name, address, principal place of business, amount of any contribution of more than $10,000 to the lobbying activities of the lobbyist (or, in the case of a single disclosure described in subsection (b), the employer) on behalf of the client, and approximate percentage of equitable ownership in the client (if any) of any foreign principal that

(A) holds at least 20 percent equitable ownership in the client or any organization identified under subsection (3), above;

(B) directly or indirectly, in whole or major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the client or any organization under subsection (3), above; or

(C) is an affiliate of the client or any organization identified under subsection (3), above, and has a direct interest in the outcome of the lobbying activity;

(5) a statement of

(A) the general issue areas in which the lobbyist or employer expects to engage in lobbying activities on behalf of the client; and

(B) to the extent practicable, specific issues that, since the last semiannual report, have been or are likely to be the subject of lobbying activities by the lobbyist on behalf of the client;

(6) the name of each employee of the lobbyist or employer who has acted or whom the lobbyist or employer expects to act as a lobbyist on behalf of the client and, if any such employee has served as a covered executive branch official or a covered legislative branch official in the two years before the date on which such employee first acted (after the effective date of this order) as a lobbyist on behalf of the client, the position in which such employee served; and

(7) if the lobbyist has served as a covered executive branch official or a covered legislative branch official in the two years before the date on which the lobbyist first acted (after the effective date of this order) as a lobbyist on behalf of the client, the position in which the lobbyist served.

(b) <u>Single Disclosure by an Employer</u>. A single disclosure by a lobbyist's employer referred to in section 2(a)(1)(D) is one disclosure on behalf of all employees of the employer who are lobbyists containing the information described in subsection (a), above.

(c) <u>Termination of Disclosure</u>. A lobbyist or employer who, after disclosure,

(1) is no longer employed or retained by a client to conduct lobbying activities and

(2) does not anticipate any additional lobbying activities for such client

may so notify the Executive Agent and terminate its disclosure.

Sec. 4. Semiannual Reports. (a) Semiannual report. A semiannual report under this order is a separate record, for each client, submitted to the Executive Agent by a lobbyist or employer within 45 days after the end of the semiannual period beginning on the first day of each January and the first day of each July of each year in which the lobbyist or employer submits a disclosure under section 3, that provides the information described in subsection (b), below, about lobbying activities, on behalf of such client, during such semiannual period.

(b) Contents of report. The information referred to in subsection (a), above, is

(1) the name of the lobbyist or employer, the name of the client, and any changes or updates to the information provided in the disclosure concerning such client as described in section 3 of this order;

(2) for each general issue area in which the lobbyist or employer engaged in lobbying activities on behalf of the client during the semiannual reporting period

(A) a list of the specific issues upon which a lobbyist employed by the reporting lobbyist or employer engaged in lobbying activities, including, to the maximum extent practicable, a list of bill numbers and references to specific executive branch actions;

(B) a statement of the Houses of Congress and the federal agencies contacted by lobbyists employed by the reporting lobbyist or employer on behalf of the client;

(C) a list of the employees of the reporting lobbyist or employer who acted as lobbyists on behalf of the client; and

(D) a description of the interest, if any, of any foreign principal identified under section 3(a) in the specific issues listed under subsection (A), above;

(3) a good faith estimate of the total amount of all financial or other compensation from the client (including any payments to the lobbyist or employer by any other person for lobbying activities on behalf of the client) during the semiannual period, other than financial or other compensation for matters that are unrelated to lobbying activities, provided that no disclosure under subsection 4(b)(3) is required if the client is the employer itself; and

(4) if the client is the employer itself, a good faith estimate of the total expenses that the reporting lobbyist or employer and its employees incurred in connection with lobbying activities during the semiannual reporting period.

(c) Estimates of Financial or Other Compensation or Expenses. For purposes of this section, estimates of income or expenses include the following:

(1) estimates of amounts in excess of $10,000 that are rounded to the nearest $20,000; and

(2) in the event financial or other compensation or expenses do not exceed $10,000, a statement that financial or other compensation or expenses totalled less than $10,000 for the reporting period.

Sec. 5. Entities Covered by Section 6033(b) of the Internal Revenue Code of 1986 and Certain Religious Organizations. In the case of a lobbyist who is required to report and does report lobbying expenditures pursuant to section 6033(b)(8) of the Internal Revenue Code of 1986 (26 U.S.C. § 6033(b)(8)); or in the case of an employer that is a church, an integrated auxiliary of a church, 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 (26 U.S.C. § 6033(a)); or in the case of an employer that is a religious order that is exempt from filing a federal income tax return under paragraph 2(A)(iii) of such section 6033(a):

(a) the amounts described in sections 4(b)(3) and 4(b)(4) may be, in lieu of the amounts described therein, good-faith estimates (by category of dollar value) for the appropriate semiannual period of applicable amounts that would be required to be disclosed under section 6033(b)(8) of the Internal Revenue Code of 1986 (26 U.S.C. § 6033(b)(8)), provided that the lobbyist or employer informs the Executive Agent of its election in the applicable calendar year both to make the estimates described in this subsection and to use the definition described in subsection 5(b); and

(b) the definition of "lobbying activities" may be, in lieu of the definition in section 1(j), only those activities that are influencing legislation as defined in section 4911(d) of the Internal Revenue Code of 1986 (26 U.S.C. § 4911(d)), provided that the lobbyist or employer informs the Executive Agent of its election in the applicable calendar year both to make the estimates described in subsection 5(a) and to use the definition described in this subsection.

<u>Sec. 6</u>. <u>Executive Agent</u>. (a) Within 30 days of the date of this order, the Office of Management and Budget shall designate an agency to act as the Executive Agent for the purposes of this order.

(b)(1) Within 120 days of such designation, the Executive Agent shall

(A) develop and promulgate regulations for the administration of this order;

(B) provide guidance on the provisions of this order; and

(C) adopt appropriate procedures to review disclosures and semiannual reports described in sections 3 and 4 of this order.

(b)(2) The Executive Agent shall

(A) develop filing, coding, and cross-indexing systems to carry out the purposes of this order, including

(i) a publicly available list of all disclosed or reported lobbyists and employers, and their clients; and

(ii) computerized systems designed to minimize the burden of filing and maximize public access to materials submitted under this order;

(B) make available for public inspection and copying at reasonable times the disclosures and reports submitted under this order;

(C) upon request from a lobbyist or employer that, at the time of the request, is no longer employed or retained by a client to conduct lobbying activities and does not anticipate any additional lobbying activities for such client, terminate the disclosure filed by such lobbyist or employer on behalf of such client;

(D) retain disclosures for a period of at least six (6) years after they are terminated and reports for a period of at least six (6) years after they are filed;

(E) under such rules and procedures as the Executive Agent shall prescribe, identify lobbyists and employers that have made, other than in good faith, a false statement or omission in connection with the operation of this order (including, without limitation, the applicability of the definition of lobbyist and lobbying contact in Section 1, the applicability of Section 2(a), a statement under Section 2(a), a disclosure under Section 3, a semiannual report under Section 4, or a statement to the Executive Agent in connection with the administration of this order);

(F) every two months --

(i) compile a list that contains the names of the lobbyists and employers the executive agent has identified pursuant to subsection 6(b)(2)(E) during the preceding twelve-month period, and the names of the lobbyists and employers the executive agent identified prior to the preceding twelve-month period who have not corrected a false statement or omission in a disclosure under Section 3 or a semiannual report under Section 4 that was the basis for their identification under subsection 6(b)(2)(E); and

(ii) distribute to all federal agencies the most recent list compiled pursuant to subsection 6(b)(2)(F)(i); and

(G) refer or consider referring for prosecution any lobbyist or employer who, in connection with the operation of this order (including, without limitation, the applicability of the definition of lobbyist in Section 1(l), the applicability of Section 2(a), a statement under Section 2(a), a disclosure under Section 3, or a semiannual report under Section 4), may have violated section 1001 of title 18, United States Code, or any other statute.

(c) The prohibitions contained in section 2 shall become effective upon the issuance of a final rule pursuant to section 6(b).

Sec. 7. Rules of Construction. (a) This order shall be construed in a manner that conforms to all constitutional and statutory rights, including

(1) the right to petition the government for the redress of grievances;

(2) the right to freedom of speech;

(3) the right of association;

(4) the right to free exercise of religion; and

(5) rights protected by the Religious Freedom Restoration Act (42 U.S.C. 2000bb - 2000bb-4).

(b) This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

WILLIAM J. CLINTON
THE WHITE HOUSE
[Date]