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Kathleen Whalen-Executive Order on Lobbying Reform

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UNITED STATES DEPARTMENT OF COMMERCE
Office of the Secretary
Washington, D.C. 20230

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SEP 21 1995

TO: Kate Carr

FAX # 456-6218

FROM: Melissa Moss-Silver

SUBJECT:

Number of Pages (including cover sheet) 21

REMARKS: [redacted]

Alexis-

What info can you give me on the exec order on lobbying reform before I head off to join the DC reps in West Virginia?

This is touchy and I hear the POTUS might sign it this weekend.

thanks Kate

THE WHITE HOUSE
OFFICE OF COUNSEL TO THE PRESIDENT

FACSIMILE TRANSMISSION COVER SHEET

DATE: 9/20/95

TO: Ginger Lew and David Peterson
Department of Commerce

FAX NO.: 482-0042

TEL.NO.: 482-4772

FROM: Kathleen Whalen

TEL.NO.: (202)456-6229

PAGES: ~~45~~ 44
(Including Cover)

COMMENTS: Per our telephone conversation, I am enclosing a draft of the Executive Order regarding lobbying reform. As I mentioned, we are meeting with several general counsel to discuss this draft at 5 p.m. on Wednesday, September 20, in room 180 of the OEOB. You or you designee are invited to attend. Please call Marna Madsen at (202)456-6229 by 3 p.m. to indicate who from your office should be "waved" into the OEOB. Marna will need the attendee's full name and birth date. The meeting will also be attended by officials from DOJ, who drafted the Executive Order, as well as from the White House Counsel's Office and the Domestic Policy Council. If you have only one or two points to make, feel free to fax these to us in lieu of attending the meeting. Faxes should be sent to me at 456-2146 by close of business Wednesday. Thanks for your help.

Kathleen Whalen

IF THERE ARE ANY PROBLEMS RECEIVING THIS TRANSMISSION, PLEASE CALL MARNA MADSEN AT 202.456.6229 IMMEDIATELY.

Office of the Deputy Attorney General
Washington, D.C. 20530

September 19, 1995

MEMORANDUM FOR AGENCY GENERAL COUNSELS

FROM: Jamie S. Gorelick
Deputy Attorney General

SUBJECT: Summary of Draft Executive Order on Lobbying Disclosure

SYNOPSIS: In August, the President directed the Attorney General to "work with various executive branch general counsels to prepare an executive order that would implement the lobby disclosure requirements of S. 1060 for the executive branch." A DOJ working group has prepared for discussion the draft order attached at TAB C.

DISCUSSION: Legislation to impose new disclosure requirements on lobbyists, S. 1060 (TAB A), passed the Senate on July 25. Shortly thereafter, the Speaker of the House indicated that the legislation would not receive prompt attention in the House. Despite the Speaker's words, a House subcommittee held a hearing on the bill on September 7. The House version of S. 1060 is presently being held "at the desk", and thus could move to the floor at any time with the consent of the leadership.

On August 4, in response to the Speaker's discouraging words and before announcement of the September 7 hearing, the President "requested that the Attorney General work with the various executive branch general counsels to prepare an executive order that would implement the lobby disclosure requirements of S. 1060 for the executive branch, to the full extent of the President's legal authority." White House Summary, "Presidential Action on Lobby Reform" (TAB B). The President further directed that "[t]he proposed executive order would direct executive branch employees to take necessary steps to assure themselves that professional lobbyists have made the necessary disclosures before the employees have contact with them." Id. He stated that "[t]he Attorney General is to assess the feasibility and legality of additional enforcement mechanisms that the executive order might employ, including an executive branch-wide bar on receiving contacts from noncomplying lobbyists. The executive order will rely on any existing statutory authority that provides sanctions as appropriate."

A DOJ working group was established under the auspices of the Deputy Attorney General to draft the executive order. The working group has produced the draft attached at TAB C, which we believe represents a workable approach to the task assigned by the President. In general outline, the draft provides as follows:

* No senior executive official may accept a lobbying contact from a professional lobbyist on behalf of a paying client unless that lobbyist has previously submitted a disclosure statement and any required semi-annual updates of such statement. See TAB C, Section 2(a)(1)(D).

* No senior executive official may accept a lobbying contact from a professional lobbyist on behalf of a paying client unless the lobbyist has disclosed to the official the identities of all paying clients on whose behalf the contact is made, and whether the client or anyone having a significant ownership interest in the client is a foreign entity. See TAB C, Section 2(a)(1)(A)-(C).

* Lobbyists subject to the disclosure rules are those who satisfy each of three requirements with respect to at least one paying client during a six-month period: 1) one or more lobbying contacts on behalf of the client; 2) perform lobbying activities during at least 20% of the total time devoted to the business of that client; and 3) receive at least $5,000 from that client for lobbying activities or, in the case of an employer whose employees lobby on its own behalf, expend at least $20,000 on lobbying activities. See TAB C, Section 1(l).

* Lobbying contacts covered by these requirements, subject to several exceptions, include contacts about legislation, regulations, programs, policies, or positions of the United States Government. See TAB C, Section 1(k).

* Disclosures will include the identity of the lobbyist and his employer and the nature of their businesses; the identity and address of all clients on whose behalf lobbying contacts are made; the name and address of other entities that fund the lobbying activity; a statement of the general and specific issue areas that are the subjects of the lobbying activity; and other matters. See TAB C, Sections 3 & 4. When lobbyists lobby the executive branch, they must disclosure all lobbying contacts with covered executive and legislative officials.

* The order does not subject senior executive officials to any new penalties or enforcement provisions.

* Lobbyists who make false statements or omissions in connection with their obligation to file disclosure forms or in the forms themselves will be subject to prosecution under 18 U.S.C. Section 1001. See TAB C, Section 6(b)(2)(G). This includes false statements to federal officials as to whether the lobbyists are subject to the disclosure requirements.

* The order leaves to OMB identification of the federal agency that will act as executive agent. The executive agent will promulgate regulations and receive and make available to the public the disclosures and updates required under the order. See TAB C, Section 6.

* The executive agent will compile and distribute to all federal agencies every two months a list of lobbyists who within the prior twelve months were found to have made false statements or omissions in connection with the order and of lobbyists who were previously found to have made false statements or omissions and have not corrected them. Senior executive officials may not accept lobbying contacts from any person who appears on the most recently circulated list. See TAB C, Section 6(b)(2)(E) & (F); section 2(a)(2).

* Non-profit entities incorporated under section 501(c)(3) that have elected to report lobbying efforts under the tax code may use the standards set forth in the tax code for defining lobbying and for reporting. Churches and religious organizations may also elect such treatment. (The standards in the tax code substantially reduce the number of contacts considered to be lobbying, and the scope of the reporting obligations with respect to those contacts that are reportable.) See TAB C, Section 5.

Consistent with the President's direction, the draft executive order follows the proposed legislation, to the degree practical. We have recommended substantive changes only where legally or practically necessary. As a result of those changes, however, the draft executive order would function differently from the legislation, in the following respects:

* It applies directly only to lobbying of the executive branch, not the legislative branch, although, as noted, executive officials may not meet with lobbyists who lobby the executive branch unless they disclose lobbying of both covered executive and legislative officials. See generally TAB C, Section 1(k).

* It imposes no new sanctions directly on lobbyists (although they continue to be subject to the duty not to make false statements or omissions to federal officials).

* It imposes duties on federal officials not to receive lobbying contacts absent certain conditions. See TAB C, Section 2(a)(1).

* It imposes a twelve-month, executive branch-wide bar on receiving contacts from lobbyists who it is determined have made, in bad faith, false statements or omissions in connection with the order, and a permanent bar on receiving contacts from such lobbyists unless they correct the false statement or omission. See TAB C, Section 2(a)(2). (The legislation has no such provision, but imposes civil penalties directly on lobbyists who fail to comply with its terms.) The debarment approach of the draft executive order will require significant resources for investigation and adjudication.

* It includes within the definition of "lobbyists" -- i.e., those persons who must make disclosures as a condition of meeting with covered officials -- those who make a <u>single</u> lobbying contact on behalf of a particular client, so long as they meet the other criteria in the order. See TAB C, Section 1(1). (The legislation required, in addition to other criteria, that the lobbyist make <u>more</u> than one contact. See TAB A, Secs. 3(10) and 4(a)(3)(A).)

* It effectively requires individuals who are "lobbyists" with respect to any client (see TAB C, Section 1(1)) to file disclosures for lobbying contacts on behalf of all clients, not just those for whom the individual meets the "lobbyist" time and money thresholds. See TAB C, Section 2(a). (The legislation would require disclosure of fewer contacts, because disclosure would be required only of contacts on behalf of clients for whom the time and money thresholds are met.)

* It omits an exemption provision contained in the legislation that would allow all for-profit lobbyists and businesses to avoid disclosure of many lobbying contacts that otherwise would be subject to disclosure under the proposed statute. TAB A, Section 15(b).

In addition, because certain questions have been raised concerning the constitutionality of a provision contained in the legislation exempting entirely from the disclosure obligations lobbying by churches and other religious organizations, TAB A, Section 3(8)(B)(xviii), we have in the current draft substituted for that provision language that affords churches and other religious organizations the same favorable treatment afforded certain other non-profit organizations under the executive order. In the current draft, churches and other religious organizations may use the far narrower definition of "influencing legislation" provided in the tax code for those other non-profit organizations. <u>See</u> TAB C, Section 5.

WORKING DRAFT #9 -- SEPTEMBER 19, 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, such officials are often subject to pressures, the sources of which are not 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 officer or employee serving in a position of a confidential policy-determining, policy-making, or policy-advocating character described in section 7511(b)(2) of title 5, United States Code.

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

(P) 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;

(Q) 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; and

(R) 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.

(l) "Lobbyist" means any individual who:

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

(2) for at least one client during the semiannual reporting period, 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 during such semiannual reporting period; 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; or

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

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

<u>Sec. 2</u>. <u>Duties of Covered Executive Branch Officials</u>.

(a) <u>Prohibition</u>. (1) A covered executive branch official may not accept a lobbying contact from a lobbyist unless:

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

(B) the lobbyist states to the covered official whether any such client is a foreign principal;

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

(D) the lobbyist states 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.

(b) 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 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 have been discussed since the last semiannual report or that are likely to be discussed in lobbying activities 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) Single Disclosure by an Employer. 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) Termination of Disclosure. 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, filed with 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 filing 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 income 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 income 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 filing period.

(c) Estimates of Income 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 income or expenses do not exceed $10,000, a statement that income 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.

Sec. 6. Executive Agent. (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.

<u>Sec. 7</u>. <u>Rules of Construction</u>. (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]

Name	Date
Sally Paxton	11/18/98

Counsel