

Definitions, Exceptions, and Examples

Revised February 2012

A. Federal Lobbying Reporting – Federal Tax Definitions, Exceptions, and Examples

1) Definitions.

Direct Lobbying: Any attempt to influence legislation through communication with: (i) Any member or employee of a legislative body, or (ii) any government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation. A communication with a legislator or government official will be treated as a direct lobbying communication, if, but only if, the communication: (i) refers to specific legislation, and (ii) reflects a view on such legislation.

Grassroots Lobbying: An attempt to influence legislation through an attempt to affect the opinions of the general public or any segment of the public. A communication with the general public will be treated as a grassroots lobbying communication if, but only if, it (i) refers to and reflects a view of specific legislation and (ii) encourages the recipient of the communication to take action with respect to such legislation by one of the following means:

- Stating that the recipient should contact legislators or other government employees who may participate in the formulation of legislation for the purpose of influencing legislation;
- Stating a legislator's address, phone number, or similar information;
- Providing a petition, tear-off postcard, or similar material for the recipient to send to a legislator; or
- Specifically identifying one or more legislators who will vote on legislation as opposing Duke's view on the legislation, being undecided about the legislation, being the recipient's representative in the legislature, or being a member of the legislative committee that will consider the legislation. (Merely naming the main sponsor(s) of the legislation for purposes of identifying the legislation will not constitute encouraging the recipient to take action.)

Legislation: Action by the United States Congress, any state legislature, any local council, or similar legislative body, or by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by administrative bodies, such as school boards, housing authorities, zoning boards, or similar bodies.

Lobbying: Any attempt to influence "legislation" on Duke's behalf through "direct lobbying" or "grassroots lobbying."

Specific legislation: Legislation that has already been introduced in a legislative body as well as a specific legislative proposal that may not have been introduced.

2) Exceptions. The Internal Revenue Service has recognized several narrow but useful lobbying exceptions for:

- Non-partisan legislative analysis, study or research which is purely educational in nature; available to the public, governmental bodies, officials, and employees; and does not advocate (expressly or implicitly) the adoption or rejection of legislation. Note that non-partisan analysis, study, or research may advocate a particular position or viewpoint as long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to

form an independent opinion or conclusion. However, non-partisan analysis may be deemed to be lobbying if it is later used to influence specific legislation.

- Communications in response to an official request for technical advice or assistance, such as requested testimony before a legislative committee.
- Appearances before or contacts with legislative bodies with respect to a possible action that might affect Duke's existence, its powers and duties, its tax-exempt status, or the deductibility of contributions to it (as opposed to possible actions that merely may affect the scope of the organizations future activities).

3) Examples. The Internal Revenue Service has provided several examples to illustrate the boundaries or what qualifies as lobbying (and therefore must be reported as noted above).

- An officer of Duke writes to a Member of Congress urging him or her to vote against an amendment that will be offered during the debate on a bill. This constitutes lobbying because it states a view about specific legislation.
- A member of the faculty visits a Member of Congress and requests on behalf of Duke that he sponsor model legislation proposed by a professional society. This constitutes lobbying because it refers to and reflects a view on a specific legislative proposal, although no bill has been introduced.
- A group of faculty conduct a research project collecting information on the dangers of the use of pesticides. They produce and publish a report that presents the advantages, disadvantages, and economic costs of current patterns of pesticide use and significantly reduced levels of pesticides. The report concludes that the costs outweigh the benefits and recommends that legislation should be adopted to control the use of pesticides. This does not constitute lobbying because it presents information on both sides of the issue and presents a full and fair exposition of the facts that will enable the reader to form an independent judgment.
- An officer of Duke contacts a Member of Congress requesting that she write to an Executive Branch agency concerning proposed regulations issued by that agency. This communication does not constitute lobbying because it does not reflect a view on specific legislation.

B. Federal Gift Exceptions (Lobbying Disclosure Act)

1) Widely attended events. A university may pay admission fees, including food costs, for a member of Congress or congressional staff to attend a convention, dinner or similar event if the event is related to official congressional duties, at least 25 other people are expected to attend (not counting members of Congress, staff and their spouse or companion) and the event is open to members of the public, to individuals throughout a given industry or profession, or to a range of persons interested in the subject matter.

2) Charity events. A university may pay the admission cost for a member of Congress or staff to attend most fundraising events it sponsors. Under the ethics rules, a "charity event" is defined as a lunch, dinner, golf tournament or the like the primary purpose of which is to raise funds for a 501(c) (3) organization.

3) Small constituent events. A group of a member of Congress' constituents generally may pay the cost for that member or his staff to attend a small meeting. Under the Senate rules, at least 5 constituents must be in attendance, lobbyists may not participate, and the cost of any meal must be limited to less than \$50.00. The House rules require such events to be open to members of the constituent organization as opposed to only officers or board members.

4) Free receptions with food or refreshments of nominal value. A university may invite members of Congress and staff to attend an event that does not require an admission fee, but the gift restrictions preclude food or refreshments unless of a nominal value. Thus, the university may host a reception for members and staff at which is provided the type food usually offered at receptions or morning meetings.

C. North Carolina Gift Exceptions (State Lobbying and Ethics Acts)

1) Open Meetings and Invited Gatherings. Members of the North Carolina General Assembly, their staff, and state government officials may attend "open meetings" (i.e., meetings that are open to the general public) and "invited gatherings" and accept food and beverage for immediate consumption paid for by Duke as long as the event meets specific criteria set forth in the North Carolina ethics laws. For more information on these and other exceptions, see the guidelines for Duke faculty & staff compliance at http://www.dukemedicine.org/AboutUs/government_relations/for_the_duhs_community/FAQsaboutNCEthicsLaws-4-2010.pdf, especially the requirements pertaining to invitations and attendance.

2) Expenses related to participation in certain educational events. Duke may pay for or reimburse a member of the North Carolina General Assembly or their staff, or a state government official for expenses (food, beverage, registration, transportation, entertainment) related to the individual's participation in an educational forum, seminar, conference, or speaker/panel presentation if the event is educational and participation in that event is related to the public duties of the individual. The event must have a formal agenda identifying the sponsor, which is distributed at least 10 days in advance of the event, and must be attended by at least 10 people not related to the covered persons invited to participate.

3) One-on-one meetings with covered persons. Such meetings are appropriate if the discussion at the meeting is directly related to the duties of the state official and the Duke employee or contractor is not acting as a lobbyist. No food or beverages may be offered as part of the meeting. If they are, however, these expenses must be reported.

4) Expenses related to participation in "director/officer/advisory/board member meetings." Duke may pay for or reimburse board members who are covered persons for food and beverage for immediate consumption, and related transportation, as long as these amenities are available to all meeting attendees on the same basis.