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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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The Honorable  
Abraham A. Ribicoff  
Chairman, Committee on  
Governmental Affairs  
United States Senate

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Dear Mr. Chairman:

[Comments on] S. 2160

This responds to your request for our views on S. 2160 a bill entitled "The Lobbying Disclosure Act of 1979." S. 2160 is the successor bill to S. 1564, a disclosure measure on which we provided our views and recommendations in testimony before the Committee on September 26, 1979. By letter dated January 18, 1980, we also provided comments on S. 1782, another lobbying disclosure bill pending before the Committee.

S. 2160 would replace the present lobbying disclosure law, the Federal Regulation of Lobbying Act (2 U.S.C. §§261 et seq.), with a new statute defining the organizations that must register and report as lobbyists, and specifically describing the information those organizations must disclose. We consider the bill enforceable, essentially fair, and conducive to sound and effective administration.

Although we have expressed our views on S. 1782 and S. 2160's predecessor, S. 1564, we believe several of the more significant differences between these bills and S. 2160 deserve comment. We also have several suggested refinements to S. 2160 that would further reduce paperwork and serve to clarify the bill's registration and reporting requirements.

I. Scope of Coverage (Section 4)

Section 4 would define who must comply with the bill's registration, recordkeeping, and reporting requirements. S. 2160 would apply to any "organization," a term defined by subsection 3(10), whose lobbying activities during a quarterly filing period satisfied one of two so-called threshold tests.

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A. Threshold Tests (Section 4)

1. Retained Lobbyist Quarterly Expenditure Threshold (\$4(a)(1))

Under subsection 4(a)(1), the bill would apply to any organization that spends in excess of \$5,000 in any quarterly filing period to retain another person or persons to engage in lobbying activities on the retaining organization's behalf.

Although we have no opinion on the precise minimum expenditure that should be required before an organization must register and report, a quarterly expenditure threshold applicable to organizations who retain others to lobby does seem desirable. Expenditures to retained lobbyists should not be difficult for the retaining organization to determine under S. 2160, particularly since the definition of "expenditure" excludes general operating overhead. In addition, the dollar level of the threshold set by the bill is intended to be sufficiently high to exclude from coverage organizations whose efforts to influence the Congress are neither regular, intense, nor costly. Unlike the \$500 threshold proposed by S. 1564, we think the \$5,000 quarterly expenditure threshold in S. 2160 will accomplish this objective.

S. 2160 also clarifies an ambiguity in the comparable S. 1782 threshold, namely, the bill explicitly extends coverage to retainees who spend in excess of \$5,000 to draft lobbying communications to be made exclusively by the retaining organization's employees.

2. Employed Lobbyist Threshold (\$4(a)(2))

Under subsection 4(a)(2), the bill also would apply to any organization which, acting through its paid officers, directors, or employees, made over a set period of days a prescribed minimum number of oral or written lobbying communications. General overhead costs would not be computed in determining whether an organization crossed the threshold.

We recommend this threshold be clarified to state specifically whether the \$5,000 expenditure must be spent on the minimum number of communications required to cross the threshold or, alternatively, whether the expenditure is keyed to all lobbying communications made by the organization during the quarterly filing period.

B. Coverage of Lobbying Communications  
Directed to Legislative and Executive  
Branch Agencies

S. 2160's registration, recordkeeping, and reporting requirements apply only to organizations whose lobbying activities include retention of another or the use of an organization's employees to make lobbying communications directed to a "Federal officer or employee" on legislative matters. The term "Federal officer or employee" includes any Member of Congress, congressional officer or employee, certain officers of the General Accounting Office, and high-level executive branch officials.

We also believe the Congress should consider disclosure legislation that covers the lobbying by private interest groups on matters that are not legislative, but instead, are matters of administration or of activities peculiar to the executive branch. Adding the dimension of all aspects of executive branch lobbying to lobbying disclosure, however, will require time and careful study. The principal thrust of S. 2160 concerns lobbying on legislative matters. This subject, unlike lobbying on nonlegislative issues, has already received exhaustive attention by the 94th, 95th and 96th Congresses. We recognize, therefore, that the Committee may prefer to cover lobbying on nonlegislative issues through a vehicle other than S. 2160.

C. Coverage of Lobbying Communications

S. 2160's registration requirements apply to organizations whose lobbying activities involve the retention of another or the use of an organization's employees to make lobbying communications "directed to" a Federal officer or employee. To the extent an organization only lobbies the general public to communicate a viewpoint on legislation to the Congress, such lobbying will not be "directed to" the Congress. This type of lobbying, called indirect or grassroots lobbying, will not be computed in determining whether an organization met S. 2160's threshold tests.

Indirect or grassroots lobbying is completely excluded from coverage under the current Federal Regulation of Lobbying Act. Some criticism has focused on this exclusion due to the significant role indirect lobbying plays in contemporary lobbying campaigns. S. 2160 covers indirect lobbying as a reporting requirement, but would do so only after a lobbying organization met one of the bill's direct lobbying thresholds.

D. Exempt Communications

Certain communications that could otherwise qualify as lobbying communications are specifically excluded from coverage under S. 2160.

Under subsection 3(9), communications by an individual "solely for redress of personal grievances or solely to express his personal opinion" are excluded from the definition of "lobbying communication". Communications of this type will not be included in a threshold tally or be subject to disclosure. We recognize that one purpose of this exemption is to exclude from coverage a lobbying campaign undertaken by an individual in such individual's personal capacity. However, we recommend the Committee clarify the intended operation of this exemption when, for example, the chief executive officer of a lobbying organization shares the same views as the organization he represents, and claims to be lobbying Congress for the adoption of those views in a personal capacity.

Another exemption, also contained in subsection 3(9), provides that the bill shall not apply to:

"A communication made to a Federal officer or employee in response to a request from that Federal officer or employee, or a communication made by any employee of the Federal Government, or a communication made in the form of public testimony given before a committee or officer of the Congress or submitted for inclusion in the public record;"

We believe the exclusion of testimony and communications submitted for the public record is both necessary and wise. This type of lobbying is almost always conducted in such a manner as to be visible to the public eye, and is recorded in documents that are available for public inspection. We also support the exclusion of communications made to a Federal officer in response to a request from that Federal officer. By limiting this exemption to communications made to the requesting Federal officer, the exemption clearly would not extend to situations where a Federal officer requests an organization to lobby other Federal officers.

Subsection 3(9) further exempts from coverage a communication by an organization if the communication is directed to a Member of Congress that represents the State

here the organization maintains its principal place of business. This exemption is commonly referred to as the "home-State" exemption.

This particular version of the home-State exemption recognizes that because of the interdependent nature of many areas of a State, an organization may in one sense be a constituent of Members of Congress other than those that represent its Congressional District. On the other hand, we might point out that lobbying organizations located in a State having a large congressional delegation will be able to communicate with more representatives without registering or reporting than those whose principal place of business is located in a State having a smaller congressional delegation. | |

Finally, S. 2160 contains several exemptions not explicitly set forth in S. 1782. For example, the bill excludes government corporations from the definition of "organization," and excludes communications by a Federal officer or employee from the definition of "lobbying communication."

## II. Registration (Section 5)

Section 5 of the bill would require each organization that had crossed a lobbying threshold to register with the Comptroller General within 30 days after becoming a lobbyist.

### A. Retained Lobbyist and Parent/Affiliate Registration Responsibilities

S. 2160 places the primary responsibility for registration on the organization on whose behalf lobbying services are performed. There is one situation, however, where the bill appears to place a responsibility to register on both the organization on whose behalf services are performed and the organization performing the service. This situation could occur if one organization retained another organization to lobby on its behalf. The retaining organization could meet the retained lobbyist threshold in subsection 4(a)(1), and the retained organization could employ individuals to perform the services for which it was retained and cross the employed lobbyist threshold in subsection 4(a)(2). Both organizations, as the bill is presently drafted, apparently would be required to register. An identical situation could occur under S. 1564 and S. 1782.

We are not certain that the sponsors of S. 2160 intended a dual registration requirement that could result in two organizations disclosing the same information. For this reason, we recommend the committee clarify the applicability of the bill's registration requirements to organizations that cross the employed lobbyist threshold solely as a result of performing lobbying services for a registered lobbying organization. ||

S. 2160 clarifies the registration and reporting responsibilities of parent organizations and their affiliates. The term "affiliate" (§3(1)) is broadly defined:

"[An] organization which is associated with another organization through a formal relationship based upon ownership or an agreement (including a charter, franchise agreement, or by-laws) under which one of the organizations maintains actual control or has the right of potential control of all or a part of the activities of the other organization . . ."

Some organizations or associations undoubtedly will consider parts of their organization and structure, such as subsidiary corporations and interlocking directorates, to be "affiliates" under this definition. Despite the breadth of the definition, however, other provisions of the bill make clear that an affiliate, like its parent, may be an organization subject to registration and reporting obligations.

Under subsection 4(a)(3), the parent may in its discretion report for affiliates and if it does, the affiliates need not register or file quarterly reports. Under other versions of the proposed lobbying law, a parent organization conceivably could avoid registration by directing its affiliates to lobby, and elect not to report for those affiliates. The resultant lobbying activity would not be reportable as a matter of law by the parent and in view of the home-state exemption, the same could be true for the affiliates. S. 2160 cannot be circumvented in this manner, since under subsection 6(b)(8) communications that direct affiliates to lobby, together with affiliate solicitations, must be disclosed by the reporting parent.

#### B. Registration Disclosure Requirements

The amount and types of information that an organization must disclose when registering under S. 2160 would simplify

the process of registration substantially. The bill's registration disclosure requirements generally seem clear and not overly burdensome.

Subsection 5(b) would require that an organization's registration statement contain (1) an identification of the organization; (2) an identification of certain of the persons retained or employed by the registrant to lobby; (3) an identification of the affiliates for whom the parent is registering; and (4) certain lobbying-related contributions received by the registrant from other organizations.

We note that S. 2160 does not require disclosure of contributions received during a year in which the registering organization was not a lobbyist. The omission of such a requirement from S. 2160 differs markedly from S. 1564, which would require registrants to report contributions received during periods in which they were not lobbyists. Disclosure requirements of this type could place organizations in the anomalous position of complying with the lobbying law's record-keeping requirements when they are not lobbyists or, alternatively, correctly anticipating their status as nonlobbyists in the calendar year first succeeding the year in which a contribution is received. S. 2160 avoids this situation by keying contributor disclosure to contributions received during periods in which the organization is a lobbyist.

To reduce the burden of registration in general, we suggest the Committee consider deletion of the subsection 5(c) requirement that organizations notify the Comptroller General by January 31 of each year that their registration has expired. Under subsection 5(c)(1), a registration filed in one calendar year will be effective until January of the succeeding calendar year, at which time it will expire of its own force without action by the registrant. When the organization crosses a threshold in the new calendar year, other provisions of the bill require the filing of a new registration statement. Under these circumstances, we question the need for an additional requirement that registrants inform the Comptroller General that their annual registration statement has expired.

### III. Quarterly Reports (Section 6)

Section 6 of the bill would require registered lobbying organizations to file quarterly reports with the Comptroller General. The information required in these reports would be considerably more detailed than the information required for registration.

Quarterly reports filed under section 6 would include: (1) an identification of the reporting organization; (2) an identification of the reporting organization's retained lobbyists and certain of its employed lobbyists, together with a statement disclosing the retainers and salaries paid for lobbying; (3) a description of the twenty or fewer issues upon which the organization spent the most significant amount of its lobbying effort; (4) an itemized record of certain gifts to Federal officers; (5) a listing of expenditures for any reception, dinner, or similar event held in whole or in part for Federal officers when the total cost of the event exceeds \$500; and (6) information about the organization's indirect lobbying activities.

Several of these disclosure requirements differ materially from those of S. 1782. Unlike S. 2160, a report filed under S. 1782 would not disclose gifts in excess of \$35 that were made to a Member of Congress, or report receptions, dinners, and similar events that cost in excess of \$500 and which were held for the benefit of congressional officials. We endorse coverage of these expenditures, since in the context of a particular lobbying campaign these costs may represent a significant and not otherwise disclosed component of the total lobbying effort.

S. 2160 differs from S. 1782 in two other important particulars, namely, major solicitations for indirect lobbying and contributions by one organization to finance the lobbying activities of the reporting organization generally will be disclosed under S. 2160. Neither would be reportable under S. 1782. We recognize that inclusion of a reporting requirement for solicitations and contributions is among the more significant and controversial issues facing the Congress in its deliberation upon the pending disclosure proposals. As we indicated in testimony before the Committee, however, it is our view that any contributor disclosure requirement should cover contributions only to the extent such contributions are used to finance an organization's lobbying effort. As for coverage of solicitations, we recommended in testimony on S. 1564 that the Committee place a ceiling, comparable to that applicable to direct lobbying, on the number of indirectly lobbied issues that must be disclosed. S. 2160 incorporates this latter suggestion.

In the interest of simplifying quarterly reports and reducing paperwork, we might also point out that under subsection 6(b)(5) of the bill, employed lobbyists who do not individually meet a lobbying threshold will not be identified. For example, an organization may become a lobbyist if just

two of its employees make at least one lobbying contact on each of any seven days in a quarter. The bill would require the employing organization to identify these employees when it reports as a lobbyist. If other employees of the registering organization only lobby for six days each, they would not have individually met a threshold and under subsection 6(b)(5), they would not be identified.

Although subsection 6(b)(5) operates in a way that limits the amount of information an organization must disclose when reporting, it should be recognized that once an organization crosses a threshold it will still be necessary to maintain daily records of contacts. Only in this way will an organization be able to determine when the identity of its employed lobbyists must be disclosed.

We note that under subsection 6(b)(4) all retained lobbyists must be identified, regardless whether the amount of their retainer satisfies the retained lobbyist threshold. We recommend the Committee consider a similar disclosure requirement for employed lobbyists. This would ease the administrative and paperwork burden that could result from the bill's present requirement that only those employed individuals who have spent a prescribed number of days making lobbying contacts be identified in an organization's quarterly report.

We also believe S. 2160's issue disclosure requirement needs clarification. Under subsection 6(b)(6), a reporting organization would disclose the twenty issues upon which it spent the most "significant" amount of its direct lobbying effort. The bill is silent, however, on the yardstick or criterion to be used in defining what constitutes a "significant" effort.

In our opinion, the preferable approach to disclosure of directly lobbied issues would be to retain the numerical ceiling on reportable issues, and to identify those which must be reported through a percentage approximation of the amount of money expended on the issues involved. We note the bill adopts this type of test for determining which indirectly lobbied issues must be disclosed.

#### IV. Recordkeeping (Section 7)

Section 7 would require lobbying organizations, retainees, and, in certain circumstances, affiliates to maintain such records as are necessary to comply with the bill's registration and reporting requirements. Records must be retained for 5 years after the close of the quarterly filing period to which the records relate. This record retention

period corresponds to the 5-year statute of limitations for initiating a civil action. We consider the section 5 record maintenance requirements, together with the record retention period, essential to the effective administration and enforcement of the new lobbying disclosure law.

S. 2160 recognizes the importance of reducing paperwork burdens and keeping to a minimum the additional records that must be maintained to comply with a new lobbying law. To comply with the bill's reporting requirements, taxpayer and certain tax-exempt organizations should be able to draw to some extent upon records and accounting systems already maintained under the Internal Revenue Code. Under subsection 8(b)(8) of the bill, certain tax exempt organizations may satisfy the bill's expenditure disclosure obligations for solicitations by following substantially the same accounting and reporting procedures as are followed when filing IRS statements. As for taxpayer organizations, the IRS Code generally allows deductions for direct lobbying, but disallows deductions for indirect lobbying. To the extent existing record and accounting systems are used to document or identify deductible and nondeductible lobbying expenditures, these systems could be used to facilitate compliance with S. 2160.

V. Administration and Enforcement (Sections 8 and 9)

S. 2160 would designate the Comptroller General as the official with primary responsibility for administering the new lobbying law.

We, the Justice Department, and others have recognized that one unusual and crippling feature of the present law is that the officials responsible for administration act only as repositories of information. They lack authority to provide meaningful assistance and guidance to lobbyists, to issue implementing regulations, to provide oversight to ensure that information received is reported in a timely, accurate and complete manner, or to handle minor compliance problems for which prosecution is not appropriate. Our 1975 report on the present law, as well as studies performed by others, confirmed the near total ineffectiveness of this kind of administration. The problems encountered in administering and enforcing the very limited requirements of the Federal Regulation of Lobbying Act would be compounded if a new and more comprehensive lobbying law were to retain the present law's administrative and enforcement mechanisms. It therefore has been our consistent position that unless the Comptroller General is given the tools to administer the law effectively, he should not be designated as the official responsible for

administration and for providing complete lobbying information to the Congress. S. 2160, however, would correct the bulk of the administrative and enforcement deficiencies contained in existing law.

Under S. 2160, the duties of the Comptroller General would include maintaining registration statements and reports, making them available to the public for inspection and copying, cross-indexing lobbying information, and compiling and summarizing on a quarterly basis the information contained in registration statements and quarterly reports. Under sections 8 and 9 of the bill, the Comptroller General, after consulting with the Attorney General, would be authorized to promulgate implementing rules, regulations, and forms. The Comptroller General also would be in a position to provide meaningful assistance and guidance to lobbying organizations, to review and verify filings, and he would be empowered to administratively correct compliance problems for which prosecution by the Department of Justice is neither necessary nor desirable. We endorse these authorizations, and consider them essential to sound administration and effective enforcement.

We also wish to underscore the importance of subsection 8(a)(9) of the bill, which provides that filed registration statements and filed quarterly reports should be reviewed and verified by the Comptroller General to ensure that they are complete, accurate, and timely. To verify filings under this authorization, we anticipate it occasionally will be necessary to require access to relevant lobbying records of the registrant. We consider the review and verification function indispensable to the proper administration of any new lobbying law. As our 1975 report indicated, of the nearly 2,000 lobbyists who filed under the present law in one 3-month period in 1974, over 60 percent filed late and nearly 50 percent of the filings were defective on their face.

So that S. 2160's review function may not be frustrated by a lobbyist's refusal to verify or document a filing or to explain an inconsistent report, subsection 8(a)(9) should be amended to provide the Comptroller General limited authority to subpoena records that are required to be maintained and that relate to filed registration statements and filed quarterly reports. We also recommend that the Attorney General and the Comptroller General be authorized to petition for judicial review and enforcement of such subpoenas.

The subpoena authorization we recommend would be narrower in scope than the Comptroller General's existing subpoena

powers in the energy and social security areas, and would apply only when a registered organization refused access to its lobbying records. See 15 U.S.C. §§761, 771; 42 U.S.C. §6384; See also Department of Energy Organization Act, Pub. L. No. 95-91, Title II, §207, 91 Stat. 565, 574; Medicare-Medicaid, Fraud and Abuse Amendments of 1977, Pub. L. No. 95-142, §6, 91 Stat. 1175, 1192. Although we believe use of this authorization would be extremely rare, we also recognize that some reasonably effective means of ensuring access to required records will be necessary if filings by lobbying organizations are to be responsibly monitored and reviewed.

We hope this expression of views will prove useful to the Committee, and we will be pleased to provide whatever additional assistance you might require.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General  
of the United States

cc: The Honorable Lawton Chiles  
The Honorable Charles McC. Mathias, Jr.  
The Honorable Edmund S. Muskie  
The Honorable David Pryor

bcc: Mr. Staats  
Mr. Keller,  
Mr. Socolar, OGC  
Mr. Van Cleve, OGC  
Mr. Fitzgerald, OGC  
Mr. Voss, GGD  
Ms. Rubar, OGC  
Mr. Mead, OGC  
Mr. Read, GGD  
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