

PRIORITY CHECKLISTS
STANDARDS AND INSTRUMENTS
TOOLS GUIDES MANUALS
GOOD PRACTICES
REVIEW MECHANISMS
MEASURING EFFECTIVENESS

CleanGovBiz
Integrity in practice

Lobbying: influencing decision making with transparency and integrity

July 2012

The CleanGovBiz Initiative supports governments, business and civil society in their efforts to build integrity and fight corruption. The initiative draws together existing instruments, reinforces their implementation, improves co-ordination among relevant players and monitors progress towards integrity.

The CleanGovBiz toolkit provides guidance on how corruption can best be tackled in different policy areas and offers access to relevant standards and instruments.

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Lobbying: influencing decision making with transparency and integrity

Private interests seeking to influence government decisions, legislation or the award of contracts is part of the policy-making process in modern democracies. Lobbying can improve government decisions by providing valuable insights and data.

Yet, lobbying can also lead to unfair advantages for vocal vested interests if the process is opaque and standards are lax. The interests of the community are at risk when negotiations are carried out behind closed doors. Moreover, informed voices have argued that recent economic crises were caused, partly, by the influence of specific interests on government decision-making. For example, an IMF working paper published in 2009 links intensive lobbying by the financial, insurance and real estate industries in the United States with high-risk lending practices.¹ The paper concludes that “the prevention of future crises might require weakening political influence of the financial industry or closer monitoring of lobbying activities to understand the incentives behind better.”

In addition, data is increasingly available to show the rising number of lobbyists and their annual spending. For example, almost 5 000 lobbyists are registered at the European Commission and Parliament and there are an estimated 15 000 lobbyists active in Brussels.² In the United States lobbying spending more than doubled between 1998 and 2011, increasing from USD 1.44 billion to USD 3.30 billion.³ In view of the downside risks of lobbying and the impressive mobilisation of private resources, public pressure is rising worldwide to put lobbying

¹ Igan et al, *A Fistful of Dollars: Lobbying and the Financial Crisis*, IMF Working Paper, 2009. See also OECD Transparency and Integrity in Lobbying.

² Access to the registries for both the European Commission and the European Parliament, http://europa.eu/transparency-register/index_en.htm.

³ Center for Responsive Politics.

regulations on the political agenda. Transparency, integrity and fairness in the decision-making process are crucial to safeguard the public interest and promote a level playing field for businesses.

To help address these concerns, OECD member countries have adopted a Recommendation with Principles for Transparency and Integrity in Lobbying as guidance to decision-makers on how to promote good governance in lobbying. Public officials and lobbyists share responsibility to apply the principles of good governance, in particular transparency and integrity, in order to maintain confidence in public decisions.

Priority checklist

1. Do all stakeholders have **fair and equitable access** to the development and implementation of public policies?
2. Do **rules and guidelines on lobbying** respect the socio-political and administrative context?
3. Are the rules and guidelines on lobbying **consistent with the wider policy and regulatory frameworks**?
4. Are the terms “**lobbying**” and “**lobbyist**” **clearly defined** in the rules and guidelines on lobbying?
5. Is sufficient **information on lobbying activities publicly available**?
6. Can lobbying activities be **scrutinised by stakeholders**?
7. Are there **clear rules and guidelines of conduct for public officials** on how to engage with lobbyists?
8. Do lobbyists comply with **standards of professionalism and transparency**?
9. Is there a coherent spectrum of **strategies and practices to ensure compliance** with rules on lobbying?
10. Is the functioning of rules and guidelines on lobbying periodically **reviewed** to ensure compliance?

Implementation guidance

1. Do all stakeholders have fair and equitable access to the development and implementation of public policies?

Public officials should preserve the benefits of the free flow of information and facilitate public engagement. Gaining balanced perspectives on issues leads to informed policy debate and formulation of effective policies.

Allowing all stakeholders, from the private sector and the public at large, fair and equitable access to participate in the development of public policies is crucial to protect the integrity of decisions and to safeguard the public interest by counterbalancing vocal vested interests. To foster citizens' trust in public decision making, public officials should promote fair and equitable representation of business and societal interests. It is important to find the right balance between regulating lobbying and ensuring that the right to lobbying is not reduced and that access to the development of public policies is increased.

Australia: Citizen summits help shape long-term strategy

The Australian Government hosted the Australia 2020 Summit over the weekend of 18-19 April 2008. The Summit enabled the Australian Government to engage with 1 000 Australians to harness ideas and help shape a long-term strategy for the nation's future and to tackle the long-term challenges confronting Australia by thinking in new ways. The Summit was supplemented by over 500 local summits throughout Australia, a national Youth Summit, and almost 8 800 public submissions. The need to have a greater focus on the citizen in the delivery of government services was considered a priority at the 2020 Summit (For more information see: www.australia2020.gov.au).

Source: OECD Studies on Public Engagement, Focus on Citizens: Public Engagement for Better Policy and Services, 2009.

2. Do rules and guidelines on lobbying respect the socio-political and administrative context?

Countries should weigh all available regulatory and policy options to select an appropriate solution that addresses key concerns such as accessibility and integrity, and takes into account the national context, for example the level of

public trust and measures necessary to achieve compliance. Countries should particularly consider constitutional principles and established democratic practices, such as public hearings or institutionalised consultation processes.

Countries should not directly replicate rules and guidelines from one jurisdiction to another. Instead, they should assess the potential and limitations of various policy and regulatory options and apply the lessons learned in other systems to their own context. Countries should also consider the scale and nature of the lobbying industry within their jurisdictions, for example where supply and demand for professional lobbying is limited, alternative options to mandatory regulation for enhancing transparency, accountability and integrity in public life should be contemplated. Where countries do opt for mandatory regulation, they should consider the administrative burden of compliance to ensure that it does not become an impediment to fair and equitable access to government.

3. Are the rules and guidelines on lobbying consistent with the wider policy and regulatory frameworks?

Effective rules and guidelines for transparency and integrity in lobbying should be an integral part of the wider policy and regulatory framework that sets the standards for good public governance. Countries should take into account how the regulatory and policy framework already in place can support a culture of transparency and integrity in lobbying. This includes stakeholder engagement through public consultation and participation, the right to petition government, freedom of information legislation, rules on political parties and election campaign financing, codes of conduct for public officials and lobbyists, mechanisms for keeping regulatory and supervisory authorities accountable and effective provisions against illicit influencing.

4. Are the terms “lobbying” and “lobbyist” clearly defined in the rules and guidelines on lobbying?

Definitions of 'lobbying' and 'lobbyists' should be robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes. In defining the scope of lobbying activities, it is necessary to balance the diversity of lobbying entities, their capacities and resources, with the measures to enhance transparency. Rules and guidelines should primarily target those who receive compensation for carrying out lobbying activities, such as consultant lobbyists and in-house lobbyists. However, definition of lobbying activities should also be

considered more broadly and inclusively to provide a level playing field for interest groups, whether business or not-for-profit entities, which aim to influence public decisions.

Definitions should also clearly specify the type of communications with public officials that are not considered 'lobbying' under the rules and guidelines. These include, for example, communication that is already on public record – such as formal presentations to legislative committees, public hearings and established consultation mechanisms.

A clear definition of lobbyist and lobbying

In the United States, the Lobbying Disclosure Act of 1995 provides the following definition of “lobbyist”:

- Makes more than one lobbying contact with a covered official;
- Receives financial or other compensation for services that include more than one lobbying contact;
- Spends at least 20% of work time per client or employer on lobbying activities.

“Lobbying activities” are defined as “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.”

The Australian Lobbying Code of Conduct also provides for a clear definition of lobbyists with a detailed description of those not considered lobbyists:

“Lobbyist” means any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client, but does not include:

- (a) charitable, religious and other organisations or funds that are endorsed as deductible gift recipients;
- (b) non-profit associations or organisations constituted to represent the interests of their members that are not endorsed as deductible gift recipients;
- (c) individuals making representations on behalf of relatives or friends about their personal affairs;
- (d) members of trade delegations visiting Australia;

(e) persons who are registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession; and

(f) members of professions, such as doctors, lawyers or accountants, and other service providers, who make occasional representations to Government on behalf of others in a way that is incidental to the provision to them of their professional or other services. However, if a significant or regular part of the services offered by a person employed or engaged by a firm of lawyers, doctors, accountants or other service providers involves lobbying activities on behalf of clients of that firm, the firm and the person offering those services must register and identify the clients for whom they carry out lobbying activities.

For the avoidance of doubt, this Code does not apply to any person, company or organisation, or the employees of such company or organisation, engaging in lobbying activities on their own behalf rather than for a client, and does not require any such person, company or organisation to be recorded in the Register of Lobbyists unless that person, company or organisation or its employees also engage in lobbying activities on behalf of a client or clients.

Source: United States Lobbying Disclosure Act of 1995 and Australian Lobbying Code of Conduct.

5. Is sufficient information on lobbying activities publicly available?

Disclosure of lobbying activities should provide sufficient and pertinent information on key aspects of lobbying activities to enable public scrutiny. It should be carefully balanced with considerations of legitimate exemptions, in particular the need to preserve confidential information in the public interest or to protect market-sensitive information when necessary.

Core disclosure requirements elicit information on in-house and consultant lobbyists, capture the objective of lobbying activity, identify its beneficiaries, in particular the ordering party, and point to those public offices that are its targets. Any supplementary disclosure requirements should take into consideration the legitimate information needs of key players in the public decision-making process. Supplementary disclosure requirements might shed light on where lobbying pressures and funding come from. Voluntary disclosure may involve social responsibility considerations about a business entity's participation in public

policy development and lobbying. To adequately serve the public interest, disclosure on lobbying activities and lobbyists should be stored in a publicly available register and should be updated in a timely manner in order to provide accurate information that allows effective analysis by public officials, citizens and businesses.

Lobbying Information Publicly Available in Canada

The Canadian Lobbyists Registration Act requires all lobbyists to disclose certain information within time limits specified in the Act. This information includes:

- the names of their clients, or corporate or organisational employers;
- the names of the parent or subsidiary companies that would benefit from the organisational members of coalition groups;
- the specific subject matters lobbied;
- the names of the federal departments or agencies contacted;
- the sources and amounts of any government funding received; and
- the communication techniques used, such as meetings, the lobbying activity;
- the name or description of the specific legislative proposals, bills, regulations;
- policies, programmes, grants, contributions or contracts sought;
- the names of the federal departments or other governmental institutions lobbied;
- the source and amount of any government funding; and
- the communication techniques used, such as grassroots lobbying.

Source: Canada, the Lobbyists Registration Act, as amended in 1995 and 2005.

6. Can lobbying activities be scrutinised by stakeholders?

The public has a right to know how public institutions and public officials made their decisions, including, where appropriate, who lobbied on relevant issues. Countries should consider using information and communication technologies, such as the Internet, to make information accessible to the public in a cost-effective manner. A vibrant civil society that includes observers, 'watchdogs', representative citizens groups and independent media is key to ensuring proper scrutiny of lobbying activities. Governments should also consider facilitating public scrutiny by indicating who has sought to influence legislative or policy-making processes, for example by disclosing a 'legislative footprint' that indicates the lobbyists consulted in the development of legislative initiatives. Ensuring timely access to such information enables the inclusion of diverse views of society and business to provide balanced information in the development and implementation of public decisions.

Canada's Registry of Lobbyists

The Registry of Lobbyists is the core tool of lobbying transparency in Canada. Registry information collected under the Lobbyist Registration Act and the Lobbyists Registration Regulations is a matter of public record so that information about who is being paid to communicate with federal public office holders is available. Accessible over the Internet (www.ocl-cal.gr.ca), the Registry is well-known and heavily used by lobbyists, journalists, public office holders, citizens and others.

Anyone may search the Registry for information and produce reports from their own computer. Users can search and retrieve information on:

- who lobbies for which firms, corporations, organisations or associations;
- the parent and subsidiary companies or corporations that may benefit from the lobbying;
- the organisational members of coalition groups;
- the activities that corporations and associations engage in (a general description);
- the government of Canada departments or agencies being contacted;
- the names or descriptions of the specific legislative proposals, bills, regulations, policies, programmes, grants, contributions or contracts

being sought; and

- the positions former public office holders have held with the government of Canada.

Users can also produce their own summary reports on registered lobbyists, as well as copies of individual registration forms, directly from the Registry. It is also possible to access a list of recent registrations that includes all new registrations, amendments and terminations processed within the previous 30 days. Users who search and retrieve the data directly from their own computers may do so free of charge.

Source: Office of the Commissioner of Lobbying of Canada, the Registry of Lobbyists.

7. Are there clear rules and guidelines of conduct for public officials on how to engage with lobbyists?

Countries should provide principles, rules, standards and procedures that give public officials clear directions on how they are permitted to engage with lobbyists. Public officials should conduct their communication with lobbyists in line with relevant rules, standards and guidelines in a way that bears the closest public scrutiny. In particular, they should cast no doubt on their impartiality to promote the public interest, share only authorised information and not misuse 'confidential information', disclose relevant private interests and avoid conflict of interest. Decision makers should set an example by their personal conduct in their relationship with lobbyists.

Countries should consider establishing restrictions for public officials leaving office in the following situations: to prevent conflict of interest when seeking a new position, to inhibit the misuse of 'confidential information', and to avoid post-public service 'switching sides' in specific processes in which the former officials were substantially involved. It may be necessary to impose a 'cooling-off' period that temporarily restricts former public officials from lobbying their past organisations. Conversely, countries may consider a similar temporary cooling-off period restriction on appointing or hiring a lobbyist to fill a regulatory or an advisory post.

Australia: Use of Separate Codes of Conduct for Politicians and Public Servants

In Australia, post-employment for public servants is covered by the Australian Public Service (APS) Values and Code of Conduct. To assist APS employees in understanding the practical application of the APS Values and Code of Conduct relevant to post-public employment, the APS Values and Code of Conduct in Practice provides a specific chapter on post-separation employment.

For ministerial conduct, the Prime Minister issued Standards of Ministerial Ethics in December 2007 to replace the relevant part of the Prime Minister's Guide on Key Elements of Ministerial Responsibility, last issued in December 1998. This guide did not impose any legal restrictions on ministers' post-public employment activity, but it did provide that "Ministers should not exercise the influence obtained from their public office, or use official information, to gain any improper benefit for themselves or another." The Standards of Ministerial Ethics, however, includes a specific section on "post-ministerial employment" in which:

"Ministers are required to undertake that, for an 18-month period after ceasing to be a minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as minister in their last 18 months in office.

Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a minister, where that information is not generally available to the public.

Ministers shall ensure that their personal conduct is consistent with the dignity, reputation and integrity of the Parliament" (Australian Government, 2007).

In addition to ministers, the Lobbying Code of Conduct, released on 13 May 2008, places restrictions on former members of the APS senior executive service not to "engage in lobbying activities for a 12 month period on any matters on which they have had official dealings as public servants over the last 12 months".

Source: APS Values and Code of Conduct in Practice, Standards of Ministerial Ethics, Lobbying Code of Conduct.

8. Do lobbyists comply with standards of professionalism and transparency?

Governments and legislators have the primary responsibility for establishing clear standards of conduct for public officials who are lobbied. However, lobbyists and their clients, as the ordering party, also bear an obligation to ensure that they avoid exercising illicit influence and comply with professional standards in their relations with public officials, with other lobbyists and their clients, and with the public.

To maintain trust in public decision making, in-house and consultant lobbyists should also promote principles of good governance. In particular, they should conduct their contact with public officials with integrity and honesty, provide reliable and accurate information, and avoid conflict of interest in relation to both public officials and the clients they represent, for example by not representing conflicting or competing interests.

Self-regulation of the lobbying profession in the UK

Founded in 1948 in London, the Chartered Institute of Public Relations (CIPR) is the leading public relations and lobbying association in Europe, with more than 9 000 individual members.

The CIPR has a highly developed and formalised ethics system for lobbyists and has developed a Code of Professional Conduct to which all members have to pledge adherence to. The Code of Conduct comprises principles that should guide the work of CIPR members, for example maintaining the highest standards of professional integrity and dealing honestly and fairly in business with employers, employees and clients. The Code of Conduct also states fundamental principles of good practice, namely integrity; competence; transparency and avoiding conflict of interest; confidentiality; and maintaining professional standards.

CIPR executive officers may initiate investigation into possible violations of the Code and complaints may be filed against a member for not respecting the Code.

Source: Lobbyists, Government and Public Trust, Volume 2: Promoting Integrity Through Self-regulation (forthcoming).

9. Is there a coherent spectrum of strategies and practices to ensure compliance with rules on lobbying?

Compliance is a particular challenge when countries address emerging concerns such as transparency in lobbying. Setting clear and enforceable rules and guidelines is necessary, but this alone is insufficient for success. To ensure compliance, and to deter and detect breaches, countries should design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement. Mechanisms should raise awareness of expected rules and standards; enhance skills and understanding of how to apply them; and verify disclosures on lobbying and public complaints. Countries should encourage organisational leadership to foster a culture of integrity and openness in public organisations and mandate formal reporting or audit of implementation and compliance. All key actors – in particular public officials, representatives of the lobbying consultancy industry, civil society and independent 'watchdogs' – should be involved both in establishing rules and standards, and putting them into effect. This helps to create a common understanding of expected standards. All elements of the strategies and mechanisms should reinforce each other; this co-ordination will help to achieve the overall objectives of enhancing transparency and integrity in lobbying.

Comprehensive implementation strategies and mechanisms should carefully balance risks with incentives for both public officials and lobbyists to create a culture of compliance. For example, lobbyists can be provided with convenient electronic registration and report-filing systems, facilitating access to relevant documents and consultations by an automatic alert system, and registration can be made a prerequisite to lobbying. Visible and proportional sanctions should combine innovative approaches, such as public reporting of confirmed breaches, with traditional financial or administrative sanctions, such as debarment, and criminal prosecution as appropriate.

Enforcing Lobbying Guidelines and Rules in Canada

A central part of the Commissioner of Lobbying's mandate is to conduct reviews and investigations to ensure compliance with the Lobbying Act and the Lobbyists' Code of Conduct. Administrative reviews and investigations are undertaken to examine alleged breaches of the Act or the Code. When the Commissioner concludes an investigation, she must table a Report on Investigation in both Houses of Parliament with her findings, conclusions and reasons for these.

The Commissioner also reviews requests for exemptions from the five-year prohibition on lobbying from former designated public office holders. The Commissioner may grant an exemption only if doing so as will not be contrary to the purposes of the Act. The Office has developed service standards for the exemption review process.

Sanctions for not complying with the lobbying guidelines and rules may vary between:

- a fine not exceeding CAD 50 000 or to imprisonment for a term not exceeding six months, or to both; and
- a fine not exceeding CAD 200 000 or to imprisonment for a term not exceeding two years, or to both.

Source: Office of the Commissioner of Lobbying of Canada.

10. Is the functioning of rules and guidelines on lobbying periodically reviewed to ensure compliance?

Countries should review – with the participation of representatives of lobbyists and civil society – the implementation and impact of rules and guidelines on lobbying in order to better understand what factors influence compliance. Refining specific rules and guidelines should be complemented by updating implementation strategies and mechanisms. Integrating these processes will help to meet evolving public expectations for transparency and integrity in lobbying. Review of implementation and impact, and public debate on its results are particularly crucial when rules, guidelines and implementation strategies for enhancing transparency and integrity in lobbying are developed incrementally as part of the political and administrative learning process.

Reviewing the Lobbying Act of Canada every 5 years

Canada has regularly reviewed the effectiveness and implementation of its Lobbying Act according to the following provision in the Act:

REVIEW BY PARLIAMENT

Marginal note: Review of Act by Parliamentary committee

14.1 (1) A comprehensive review of the provisions and operation of this Act must be undertaken, every five years after this section comes into force, by the committee of the Senate, of the House of Commons, or of both Houses of Parliament, that may be designated or established for that purpose.

Marginal note: Review and report

(2) The committee referred to in subsection (1) must, within a year after the review is undertaken or within any further period that the Senate, the House of Commons, or both Houses of Parliament, as the case may be, may authorize, submit a report on the review to Parliament that includes a statement of any changes to this Act or its operation that the committee recommends.

Source: Canada, the Lobbyists Registration Act.

Further Resources

OECD

STANDARDS AND PRINCIPLES

[OECD Principles for Transparency and Integrity in Lobbying](#)

In February 2010, the OECD Council approved the OECD Recommendation on Principles for Transparency and Integrity in Lobbying. This is the first international policy instrument to provide guidance for policy-makers on how to promote good governance principles in lobbying.

[OECD Guidelines for Managing Conflict of Interest in the Public Service](#)

The OECD Guidelines for Managing Conflict of Interest in the Public Service aim to help policy-makers and public managers consider existing conflict-of-interest policies and practices relating to public/civil servants, government employees and holders of public office.

[OECD Principles for Managing Ethics in the Public Service](#)

The OECD Principles for Managing Ethics in the Public Service provide guidance to policy makers to review their integrity management systems (instruments, processes and actors). The Principles are an instrument for countries to adapt to national conditions, and to find their own ways of balancing the various aspirational and compliance elements to arrive at an effective framework to suit their own circumstances.

TOOLS, GUIDANCE, MANUALS

[OECD Principles for Managing Post-Public Employment Conflict of Interest in the Public Service \(2010\)](#)

These Principles provide a point of reference against which policy makers and managers in public sector organisations can assess the strengths and deficiencies of current post-public employment systems in light of their existing and anticipated needs.

OECD Toolkit for Managing Conflict of Interests in the Public Service (2005)

This toolkit based on examples of sound conflict-of-interest policy and practice drawn from OECD member and non-member countries supports government efforts to effectively identify and resolve conflict-of-interest situations. The toolkit provides non-technical, practical help to enable officials to recognise problematic situations and help them to ensure that integrity and reputation are not compromised.

REVIEWS AND CASE STUDIES

Lobbyists, Government and Public Trust, Volume 2: Promoting Integrity through Self-regulation (forthcoming)

This publication reviews experience of measures applied by lobbyist associations and the private sector for promoting integrity and transparency in lobbying.

Post-Public Employment: Good Practices for Preventing Conflict of Interest (2010)

This publication reviews the measures taken in OECD countries for avoiding conflict of interest when officials leave public office. It also introduces the OECD Principles for Managing Post-Public Employment Conflict of Interest in the Public Service which serve as a point of reference for policy makers and managers to review and modernise post-public employment policies. The publication also includes a detailed case study of Norway's experience in developing and implementing post-public employment guidelines for politicians and the public service.

Lobbyists, Government and Public Trust, Volume 1: Increasing Transparency through Legislation (2009)

This publication examines current approaches, models, trends and state-of-the-art solutions to support a deeper understanding of the potential and limitations of existing legislation and government regulations.

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