



MEMORANDUM

TO: Citizen's Ethics Advisory Board

FROM: T.J. Jones
Ethics Enforcement Officer

DATE: December 9, 2009

RE: Report on the Status of the Audit Program

I. INTRODUCTION

On October 22, 2009 – almost exactly three years from the date that the first drawing of audit drawing was held - the Enforcement Division presented to the Citizen's Ethics Advisory Board the last remaining audit from the registrants who were selected for audit in 2008. This audit concluded the third full audit period. All told, eighty audits of client lobbyists were performed during these three years. In addition, thirty six audits were performed of the communicator lobbyists associated with their audited clients.

This report attempts to summarize and quantify the results of those audits. In addition, the report seeks to analyze the results of these audits in the hope that meaningful trends can be demonstrated.

II. EXECUTIVE SUMMARY

Over three audit periods, the majority of lobbyists who were audited received adverse findings. For both client lobbyists and communicators, the percentage who received such findings was approximately 60%. The vast majority of these findings, however, consisted of late filings of required forms and/or errors in reporting lobbying expenditures.

No major violation of the Code (e.g., contingency fee arrangements; bribes; quid pro quo arrangements, etc.) was discovered in any of the audits to date. In addition, very few lobbyists – approximately 8% - had adverse findings that were of a significant enough degree to warrant the imposition of a corrective action program. The most common adverse finding that gave rise to the imposition of corrective action was a failure of the lobbyist to keep and maintain records in a manner that could be verified. Each lobbyist

who was subject to corrective action completed the corrective action program successfully.

Gleaning trends from the data will remain difficult until data is received at least three years after the original drawing (which concluded in December 2006). Meaningful change in behavior can only be measured after the lobbyist community has been subject to, educated by, and deterred by, the audit program. And such education and deterrence began only after the first audits were in progress. Thus, measuring the impact of the program at this point presents challenges.

Preliminarily, there are positive indications that the audit function may have an impact at present and in the future. These indications are:

1. The number and percentage of communicators who have findings has decreased since the audit program was implemented.
2. The number and percentage of corrective action programs has decreased since the audit program was implemented.
3. In terms of specific deterrence, no entity that has gone through an audit has yet to be fined due to any filing issue that occurred after the lobbyist completed its audit.

These are all positive indicia. However, other factors may have influenced these positive indicators, and only future tracking of the data will determine the extent to which the audit function has a long-term positive impact. In addition, because the number of selections for the audit program expanded during the last audit period – from 20 to 40 selections – there will be more data available in future analyses.

It is recommended that, prior to seeking legislative or regulatory change to enhance the effectiveness of the audit program, the Office of State Ethics complete at least one more cycle of audits (due to be completed in summer 2010) and analyze the data from this cycle along with the current, collected data. If, at that time, the Board determines that the audit program needs to be reconfigured, several proposals to increase effectiveness are discussed herein.

III. BACKGROUND

a. Legal Authority

The General Statutes and the Regulations of Connecticut Agencies provide authority for the Office of State Ethics audit program. All registrants – whether they are client lobbyists or communicator lobbyists - are required to preserve “all accounts, bills, receipts and other documents” that are “necessary to substantiate” the information that is filed with their financial reports. General Statutes § 1-96a(a). Such records must be kept for a period of three years following the date that the relevant report is filed. *Id.* The

purpose of the audit program is to “determine whether information reported to the Office of State Ethics is timely, accurate and complete.” Conn. Reg. § 1-92-57.

These records may be inspected and copied by the Office of State Ethics “for the purpose of verifying such financial reports.” General Statutes § 1-96a(b). However, in the absence of any pending enforcement action, the Office of State Ethics may require a registrant to make supporting records available only “on a random basis” and not more than once in any consecutive three year period. *Id.*

Registrants are not required to disclose any documents or information that are solely related to non-lobbying activity. However, if a lobbyist “chooses to keep records which ordinarily and customarily integrate both regulated and unregulated activities, all such integrated records shall be made available for audit.” Conn. Reg. § 1-92-55(a).

b. Audit Performance

i. Drawing of Names

The “random” selection of client lobbyists to be audited must be “by lot in periodic ceremonies which shall be open to the public.” Conn. Reg. § 1-92-56. The drawing is to be done by the Chairperson of the Board, or his or her designee. *Id.* Over the past three years, this drawing has typically been conducted at a regularly scheduled Board meeting. On one occasion the drawing was held at the Legislative Office Building.

Selected lobbyists are audited in the order selected, and no more than forty registrants may be selected for audit in any given year.¹ *Id.* By law, no registrant shall be subject to audit more than one time during any three consecutive years. Gen. Stat. § 1-96a(a).

ii. Notification

Although there is no statutory or regulatory provision regarding the issue, all lobbyists who are selected in the audit drawing are notified immediately of their selection. The results of the drawing are publicized within twenty four hours on the Office of State Ethics web site. In addition, each selected lobbyist – and, if applicable, each of their communicator lobbyists – are notified by letter from the Enforcement Division. The notice apprises the selectee of the drawing and the order in which the audit will be conducted. The notice also provides a list of documents for the lobbyist to gather in advance of the audit, and a date by which the records are to be provided to the Office of State Ethics.

The Enforcement Division also publishes an audit procedures manual that is made available to all lobbyists. The manual includes, among other things, “checklists to be used in connection with the preliminary review of reports, lists of possible errors and omissions, and answers to common questions which the registrant may have regarding the reporting requirements.” See Conn. Reg. § 1-92-60.

¹ Prior to 2008, the maximum number of registrants selected for audit per year was limited to twenty.

iii. Scope of the audit

According to the regulations of the Office of State Ethics, the audit of any lobbyist includes: (1) a preliminary review of the registrant's reports filed within the three-year period prior to the date of selection for audit; (2) a preliminary conference with the registrant, including establishing where the audit is to take place and a tentative time frame for completion of the audit; (3) a detailed field examination of the registrant's financial records concerning lobbying activities; (4) independent verification of some or all of the information reported; (5) a post-audit conference with the registrant; (6) post-audit preparation of a report describing the results of the audit; (7) corrective action by the registrant, if necessary; and, (8) verification and review of the corrective action, if necessary. Conn. Reg. § 1-92-57. The records that are reviewed are those from the three calendar years previous to the selection. § 1-92-56.

By regulation, only client lobbyists are selected to be audited. *Id.* However, when a client lobbyist is selected, the Office of State Ethics may also audit the records of any associated communicator lobbyist that relate to the selected client registrant, and also may audit the records of the communicator that relate to its expenditures for the benefit of public officials. *Id.*

Significantly, the audit of associated communicator lobbyists only includes review of records associated with the selected client lobbyist. Thus, if the associated communicator has failed to timely file financial reports with respect to clients other than the one selected for audit, such failures would not be the subject of the audit report. As with client lobbyists, each communicator may only be audited once every three years. If, within three years of being audited, a communicator has another client selected for audit, the communicator is not re-audited, but the communicator's records are reviewed in the course of the client's audit, solely to determine whether the client was compliant.

iv. Audit Report

In the course of each audit, the Enforcement Division drafts a written audit report, which details the findings of the audit. Separate audits are undertaken, and separate reports are drafted, for each client and its associated communicator.

By regulation, the audit report "shall indicate the audit findings and may include: a summary of any material omissions or errors, a recommendation regarding the need for corrective action and a discussion of any corrective action taken by the registrant during the course of the audit." Conn. Reg. § 1-92-59.

Prior to the submission of the audit report to the Board for its approval, the draft report is furnished to the registrant who is the subject of the report. The registrant then has at least one week to submit a statement in response to the audit report, which statement must be included in the final report.

v. Board Action

Although no section of the General Statutes or regulations specifically states the requirement, all audit reports to date have been submitted to the Board for approval. The Board has typically voiced its approval through a vote of a majority of Board members present and voting. See Gen. Stat. § 1-80(d); Conn. Reg. § 1-92-9. To date, the Board has not voted against approval of any audit report.

vi. Corrective Action

Regulations contemplate the imposition of a corrective action program in appropriate circumstances. See Conn. Reg. § 1-92-59. “If corrective action is necessary, the enforcement division of the Office of State Ethics will indicate what action is required and will set a time frame for corrections to be made.” *Id.*

Over the past three years, the Division has imposed corrective action plans in nine audits. All of these corrective action plans have been completed by the registrant. Typically, the Division has imposed such corrective action programs when the Division believes that the registrant has failed to maintain its records in a manner sufficient to substantiate its financial reports as required by statute. See Gen. Stat. § 1-96a(a).

vii. Other Enforcement Action

By regulation, the Office of State Ethics may not take any “formal action, as a result of an audit, against a registrant for negligent failure to comply with the law, provided that the registrant takes the necessary corrective action.” Conn. Reg. § 1-92-61(a). Thus, negligent mistakes that are found in the course of an audit may not be penalized through an enforcement action. However, “when a review of a registrant’s records reveals an intentional or grossly negligent failure to comply with the law . . . or when a registrant fails to take the corrective action required as a result of the audit, the Office of State Ethics may file a complaint pursuant to Section 1-93 of the general statutes.” *Id.* If such action is taken, the action is separate from the audit, and is protected by the confidentiality provisions of General Statutes section 1-93a. *Id.*

To date, the Division has not filed a complaint under Section 1-93 for any conduct discovered in the course of an audit – there has yet to be a violation unearthed that has risen to the level of “intentional or grossly negligent.” The Division initiated one matter under the Uniform Administrative Procedure Act against one communicator when it was discovered, in the course of an audit, that the communicator had failed to register to lobby for a particular client.

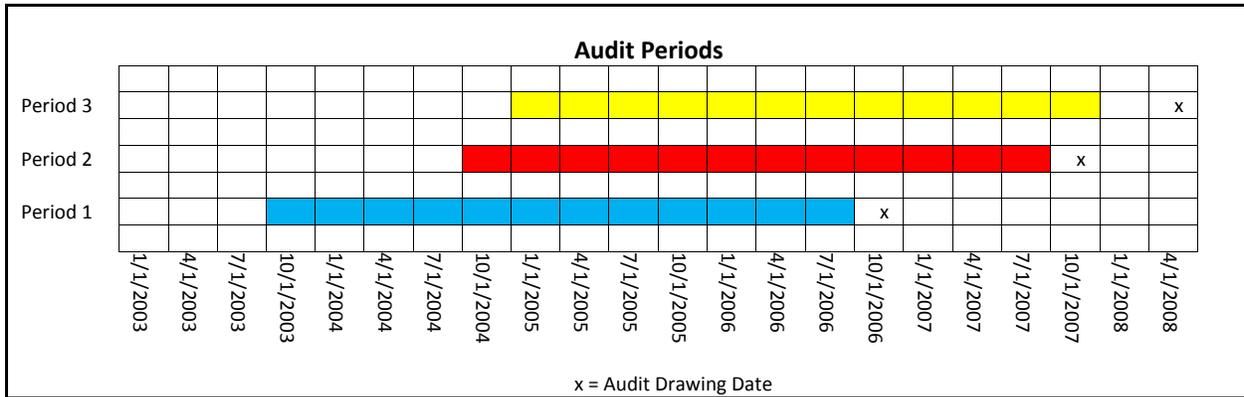
IV. SUMMARY OF ANALYZED DATA

a. Lobbyist Data

i. Period Covered

This report includes data collected from three separate audit periods. The first audit period includes the period from October 1, 2003 through September 30, 2006. The twenty client lobbyists selected to be audited for this period were drawn in two separate drawings in late 2006. On October 25, 2007, the Chairperson selected the names of twenty client lobbyists to be audited for the period of October 1, 2004 through September 25, 2007. Finally, on June 26, 2008, the Chairperson drew the names of forty client lobbyists to be audited for the period of January 1, 2005 through December 31, 2007.

Table 1 – Overlap of Audit Periods



ii. Identity of Lobbyists

The selection of lobbyists is made from a pool consisting of any client registrant who was registered to lobby at any point during the audit period. For example, Weber Johnson Public Relations, LLC was registered to lobby in the state from April to December of 2005 – just 9 months – but was nonetheless selected for audit in the first audit period.

In total, over the three audit periods, the names of eighty client lobbyists were drawn. Although a number of clients hired no outside communicators, the vast majority did. A total of thirty five different communicators were hired by the selected clients during the audit period (several client lobbyists retained more than one outside communicator during the audit period; and many communicators were hired by multiple clients).²

² Due to the fact that lobbyists may only be audited once during a three year period, there were multiple communicators who – although they were hired by a number of different clients over more than one audit period – were only audited once. In addition, the audit of communicator lobbyist Nelson Brown was not completed due to the untimely death of Mr. Nelson.

iii. Lobbying Contracts

Contracts for lobbying – the contracted amount that a client pays annually to its communicator lobbyist – ranged widely among the data sample, ranging from \$1,000 to over \$100,000 per annum. The median contract amount over the three audit periods was approximately \$20,500. During odd-numbered years, the median contract amount rises slightly, largely due to the fact that odd-numbered years feature longer, budgetary legislative sessions. Of the ten highest spending client lobbyists, only one (CT Hospital Association) was audited. Of the ten highest earning communicators, all ten were audited during the three audit periods. (See Table 7).

iv. Findings

A “finding,” for audit purposes, is a written recognition that the registrant failed to adequately comply with the filing requirements set forth in the statutes and regulations.

Among the data set, the most typical “findings,” in terms of numbers, fall into several categories: (1) failure to timely register (Gen. Stat. § 1-95(a)); (2) failure to timely file financial disclosures (Gen. Stat. § 1-96(a) and (b)); (3) failure to accurately report amounts on financial disclosures (Gen. Stat. § 1-96(a) and (b)); (4) failure to provide notice within ten days of making an expenditure for the benefit of a public official (Gen. Stat. § 1-97(d)); (5) failure to maintain records in a manner necessary to substantiate entries in financial reports (Gen. Stat. § 1-96a(a) and Conn. Reg. § 1-92-55(a)); and, exceeding the limitations on gifts to public officials (Gen. Stat. § 1-96(e)).

V. ANALYSIS

a. A Note on Interpreting Progress

Ideally, this report would share with the Board a definitive conclusion to the question of “is the audit program having an impact on the lobbying community?”. Despite the limited data set, the report attempts to make some headway in that regard. However, the conclusions are confined by the limitations in the data set (most significantly from the limited amount of data that exists from reports that were filed after the date of the first drawing – the earliest date from which any meaningful change could be measured).

The first audit drawings were performed in October and December of 2006. Prior to these drawings, and the beginning of the audits, there was little reason for lobbyists to have changed behavior based on the results – or the threat – of an audit. Thus, the period in which meaningful change could have begun to occur coincides with the filings that were due on January 10, 2007.³ As such, the second audit period included only six months in which lobbyists could have engaged in behavioral change. The third audit period extended to December 31, 2007, and thus contained a maximum of twelve months within which lobbyists could have engaged in changed behavior as a result of the audit

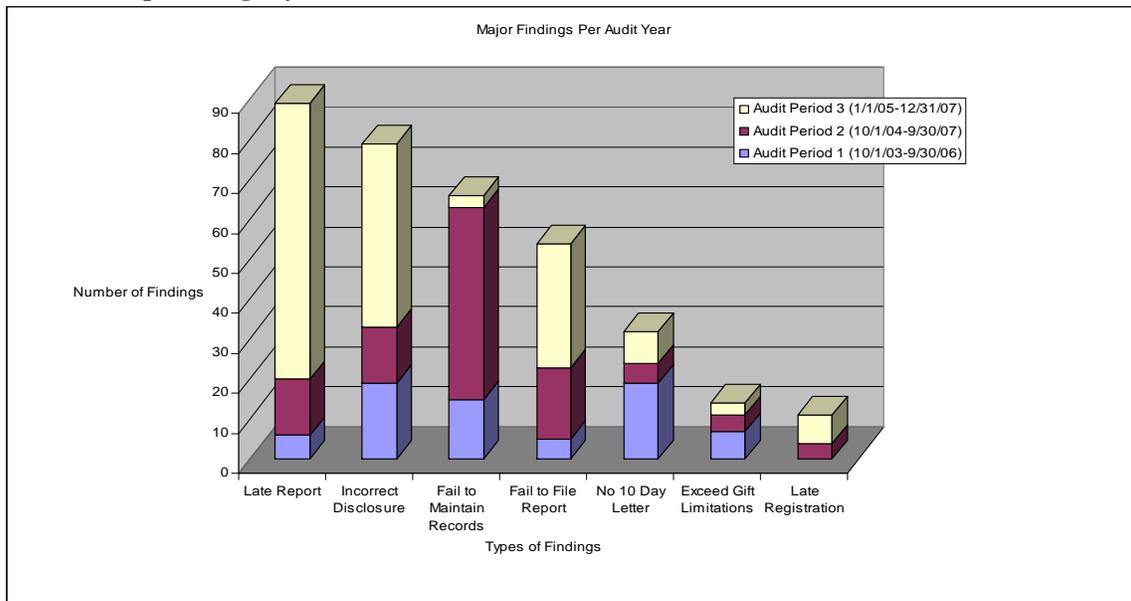
³ There were no filings due from October 2006, when the first drawing was made, through January 10, 2007.

program. Therefore, of the little over four years that constitute the periods during which data were collected (October 1, 2003 through December 31, 2007), there were only approximately twelve months (January 2007 through December 2007) during which lobbyists could have engaged in meaningful change as a result of the audit program.

b. Analysis of Findings Data

Over the three audit periods, the three most frequent findings – in terms of total numbers – consisted of (1) failure to timely file reports (89); (2) failure to accurately report amounts in financial disclosures (79); and (3) failure to maintain records necessary to substantiate entries in financial disclosures (66). (See Chart below).⁴

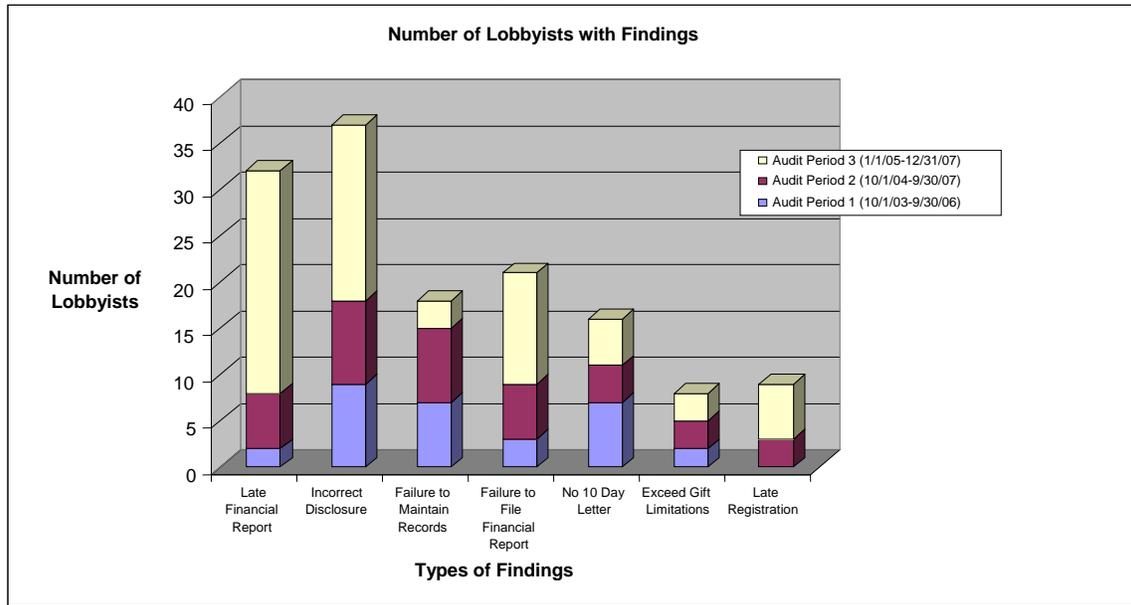
Table 2 – Top Findings by Audit Year



In each of the audit periods, however, particular lobbyists were responsible for an inordinate number of the total findings. For example, in the second audit period, communicator lobbyist M. P. Guinan received twenty four individual findings of “failure to maintain records necessary to substantiate entries in financial disclosures – a full 36% of the total number, thus skewing the overall numbers for the “failure to maintain records” finding category. In terms of the total number of lobbyists per year that had a particular type of finding against them, the breakdown fluctuates, with the highest numbers in the areas of: (1) failure to accurately report amounts in financial disclosures (37 separate lobbyists); (2) failure to timely file reports (32); and, (3) failure to file a mandatory report (21).

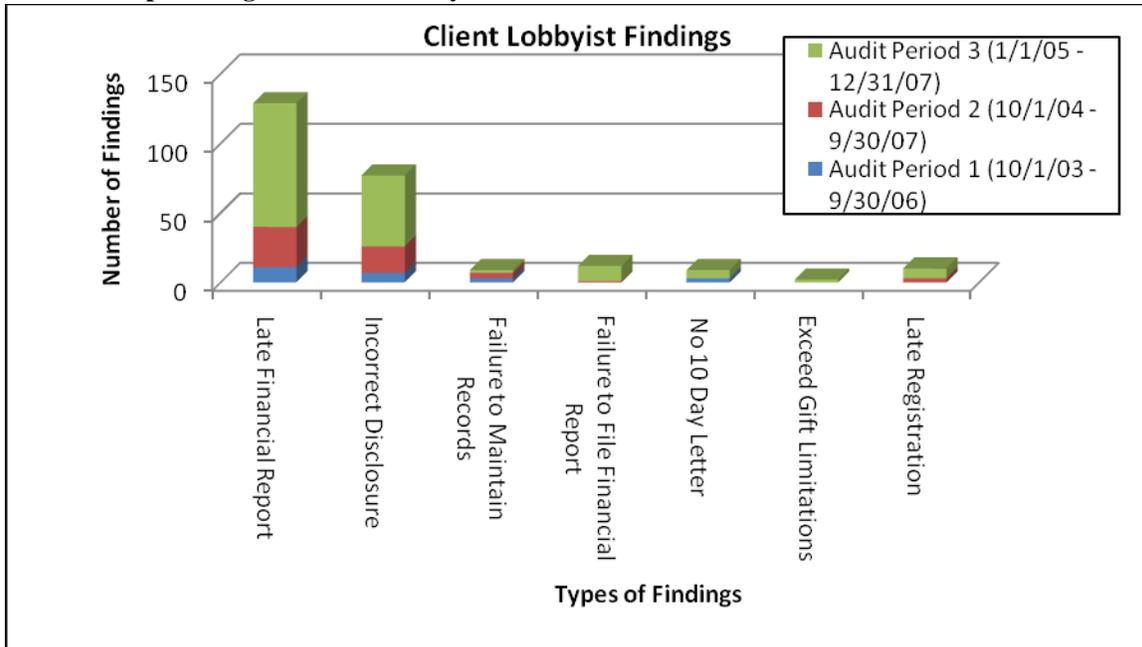
⁴ In Tables 2 through 4 please note that the number of audits performed increased from 20 to 40 for audit period 3. Because the number of audits increased, the number of findings for audit period 3 typically increased correspondingly.

Table 3 – Number of Lobbyists with Findings by Audit Period



These findings vary when analyzed in the context of whether the lobbyist was a client lobbyist or a communicator lobbyist. Because client lobbyists are responsible for filing a substantially greater number of financial reports (i.e., quarterly reports, as well as a monthly report for every month the client pays \$100 during a month that the legislature is in session – up to nine reports per year) than communicator lobbyists (i.e., communicators have only one mandatory financial report – an annual “2A” disclosure), the number of late and incorrect forms among client lobbyists can be expected to be larger than those among communicators.

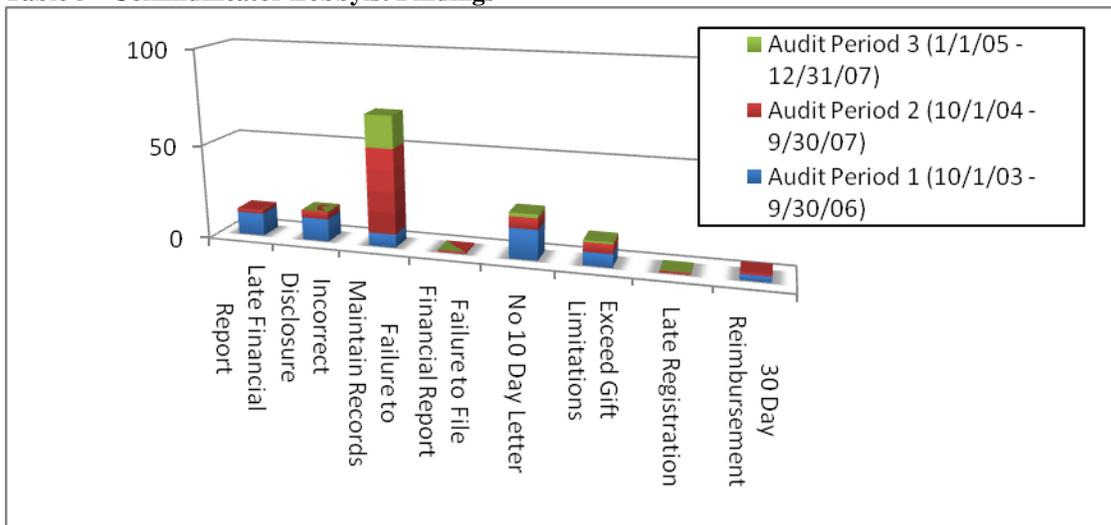
Table 4 – Top Findings for Client Lobbyists



As can be seen from Table 4, the vast majority of findings within the client lobbying community relate to late or inaccurate financial disclosures. In contrast, the largest number of findings in the communicator sphere relate to the failure to maintain financial records sufficient to demonstrate the accuracy of a financial disclosure. All told, nine of the thirty four communicators who were audited were found to have failed to maintain records in a manner that could substantiate their filings – approximately 26% of all audited communicators.

Among the findings that can be made under the audit program, the finding of “failure to maintain records” is among the most significant, because the auditor is unable to verify the information in the financial reports. A finding that a lobbyist has failed to maintain records sufficient to verify its financial reports is almost a guarantee that the lobbyist will be placed under a corrective action program and, in fact, all nine communicator lobbyists who received such finding were placed under corrective action programs.

Table 5 - Communicator Lobbyist Findings



The above chart displays the breakdown of major findings for communicator lobbyists during the three audit periods. As is apparent, among communicator lobbyists, the chart demonstrates that a “failure to maintain records” finding is vastly more frequent among communicator lobbyists. The second most frequent finding (albeit substantially less than the first, in terms of total numbers) was the failure to send a “10 day letter.” Under the Code of Ethics, any registrant who makes an expenditure for the benefit of a public official must send a letter to the public official within ten days, notifying the public official that the expenditure was subject to the Code, and affording the public official the opportunity to reimburse the registrant within thirty days. Gen. Stat. § 1-97(d).

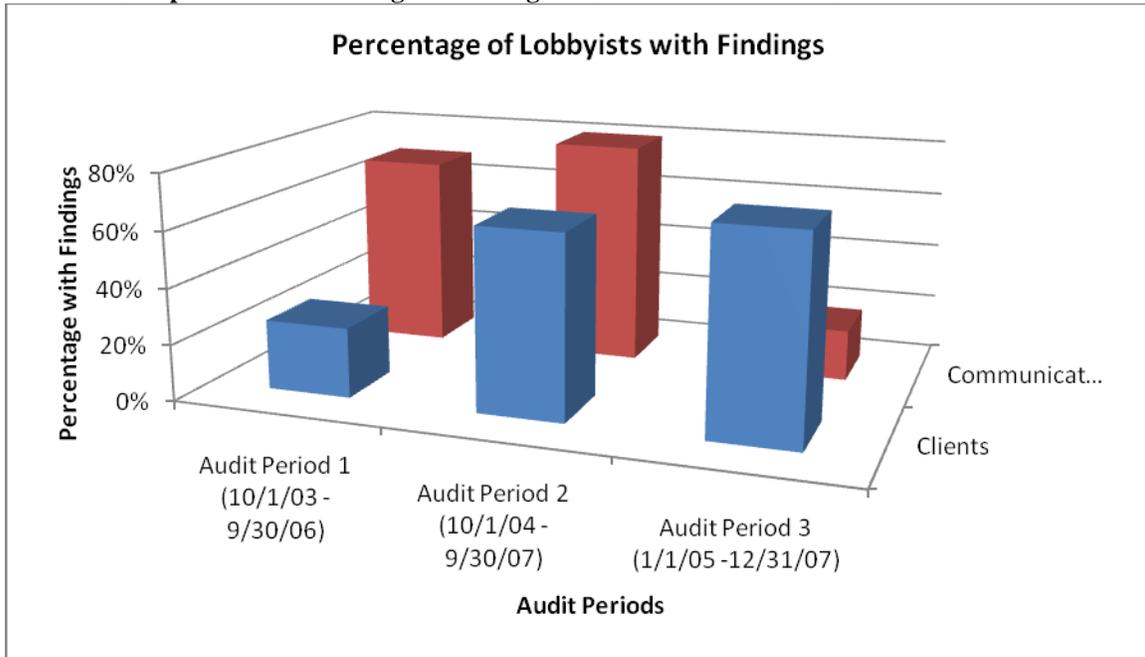
A close look at the chart suggests reason for hope. With respect to all communicator findings, there is a downward trend from the first and second audit periods to the third audit period. Significantly, the “gift” findings (exceeding the gift limitation and the

failure to send “ten day letters”) decreased significantly in the third audit period, suggesting an industry improvement as a result of increased enforcement and education. This is particularly notable, in light of the increase in the number of audits – from 20 to 40 – in the third audit period.

c. Comparison of Client and Communicator Data

The chart below shows the progression of data through the three audit periods, and compares the progression of the percentage of communicators and client lobbyists who received findings in their audits.

Table 6 – Comparison of Percentage of Findings of Communicators and Clients



At first blush, Table 6 would seem to suggest that, while communicators are progressively improving their filing compliance, client lobbyists are progressing in the opposite direction. However, several factors may deflect from this conclusion. As background, prior to the inception of the audit program, numerous communicators prepared and submitted financial reports on behalf of their clients. However, since the inception of the Office of State Ethics and, in particular, since the inception of quarterly enforcement initiatives (beginning in April 2007), the trend in the industry has been for communicators to not file required forms on behalf of their clients, leaving clients responsible for their own filings. Thus, with the passage of time, more client lobbyists are filing their own forms and, more importantly, filing them with no prior experience in doing so.

In addition, the seeming decrease in communicator findings is at least partially explained by the manner in which drawings occur. Only clients are selected in the audit drawing. In addition, however, the client’s communicator is also audited. But the audit of the

communicator can occur no more than once every three years. The odds then favor that communicators with the most clients will have a greater number of clients selected for audit in each audit period. Thus, there is a direct relationship between size of a communicator (in terms of the number of clients it has) and the likelihood that the communicator will have been selected earlier. It is thus highly likely that a majority of the largest communicators will have clients that are selected in the next audit drawing – particularly because the number of selections has increased from 20 to 40.

By way of example, in each of the years 2004 through 2007, the largest communicators (in terms of dollar amounts received for lobbying) were:

Table 7 – Top Ten Communicators by Annual Receipts

2004	2005	2006	2007
Gaffney, Bennett & Associates	Gaffney, Bennett	Gaffney, Bennett	Gaffney, Bennett
Robinson & Cole	Robinson & Cole	Levin, Powers	Robinson & Cole
Sullivan & LeShane	Sullivan & LeShane	Robinson & Cole	Sullivan & LeShane
Levin, Powers, Brennan & Shea, LLC	Levin, Powers	Sullivan & LeShane	Levin, Powers
Roy & LeRoy	Halloran & Sage	Roy & LeRoy	Capitol Strategies
Murtha Cullina	Roy & LeRoy	Murtha Cullina	Roy & LeRoy
Hughes & Cronin	Brown Rudnick	Brown Rudnick	Murtha Cullina
Updike, Kelly & Spellacy, PC	Hughes & Cronin	Rome Smith	Rome Smith
Brown Rudnick Berlack Israels, LLP	Murtha Cullina	Halloran & Sage	Hughes & Cronin
Kowalski Group	Rome Smith	Hughes & Cronin	Brown Rudnick

Even a brief examination of the above reveals that there is a consistency in the list of highest earning communicators in the state. Over the three full years that have been subject to audit, only thirteen communicators have been in the top ten in any given year. Because each of these communicators has a significant number of clients, the odds of each of their selection for audit are increased and, indeed, all of the thirteen communicators listed above have been selected and audited. Twelve of these were selected within the first two audit periods. With the increased amount of paperwork, recordkeeping, and reporting that the larger communicators are required to perform, there is an increased likelihood for mistake. And indeed, the data bear this out. Although none of the top thirteen communicators had the highest number of findings against it, roughly 77% of the top thirteen communicators had at least one finding against them (compared with roughly 36% of all others that had at least one finding).⁵

Communicators who were audited in the first audit period are now outside the three year limitation and, if clients of theirs are selected in the next drawing, they will be subject to audit again.

⁵ Again, as with client lobbyists, a communicator may only be audited once every three years. After being audited, if another of the communicator’s clients is selected within the three year period, the communicator is not audited again. The communicator’s books are reviewed only to the extent necessary to perform the client’s audit and determine whether the client has been compliant.

d. Subsequent Violations

As part of the audit process, if an audit report contains adverse findings, the Enforcement Division continues to monitor the filings of the lobbyist after the close of the audit. To date, no lobbyist has been found to have late or inaccurate filings following the close of its audit.

VI. CONCLUSIONS

Even before looking at the data, the audit program has provided tangible and intangible benefits for the Office. Significantly, over the course of three audit periods, there has been no evidence discovered of any major violations of other Code provisions (e.g., no evidence of contingency payments; quid pro quo gifts, etc.). In addition, the audit process has afforded an opportunity to improve relationships with the lobbyist community. Many lobbyists have commented positively about the educational aspects of the audit, and have found the non-adversarial nature of the proceedings conducive to creating an environment where lobbyists are more open and trusting. This atmosphere has had a positive “spill-over” effect into enforcement matters conducted by the Division, with lobbyists more willing to provide information and assistance.

In terms of direct conclusions that can be drawn from the data, many positive indicia exist, but the limited nature of the data set at this time warns against drawing of too many firm conclusions. The positive indicia include an apparent decrease in the number and percentage of findings in the communicator lobbyist realm. This suggests that communicator lobbyists are taking more effort to ensure the accuracy of their filings. Second, the number and percentage of corrective action programs has seen a general decline that can likely be attributed to the running of the audit program. Again, this trend should continue to decline.

The most significant negative indicia is that which is exhibited in Table 6 – the percentage of client lobbyists with adverse findings has actually increased since the initial filing period. As stated above, a likely contributor to this is that more client lobbyists are beginning to file their own forms (rather than having their communicators file for them).⁶ As such, the increase in findings demonstrated by Table 6 may be a short-term anomaly that will begin to trend downward as more client lobbyists familiarize themselves with the filing process.

VII. RECOMMENDATIONS

Analysis of the data will become more meaningful the longer the audit program is in place. For this reason, beginning in 2010, the Board should consider a bi-annual report

⁶ Several of the largest communicators inform that they no longer file forms on behalf of their clients except in rare circumstances.

analyzing the audit data. This report would be assistive in setting policy and in allowing the Board to take a more global perspective of the audit function.

Until such time as more data become available, the Board should consider refraining from taking any steps to change the current legislative and regulatory scheme that underpins the audit function.⁷

⁷ Nevertheless, if future data demonstrate that the audit function needs expansion and/or more enforcement action (e.g., if the trends outlined in Table 6 go unabated), there are options that the Board may wish to consider:

1. To expand the scope of data available, the Board may wish to consider amending the regulations to expand the scope of audits of communicator lobbyists. Right now, the scope of these audits is limited to an examination of the communicator's files only insofar as they relate to a client that has been selected in the same audit drawing (except that the division may audit all records that relate to expenditures for public officials, irrespective of the client on whose behalf the expenditures were made). This limited scope allows only a narrow snapshot of communicator activity, and even then, only allows a snapshot no more than every three years (even if a communicator's client is selected within the three year period, the communicator's books are reviewed only insofar as they relate to their client's compliance). A full picture of communicator activity can only be attained if the scope of communicator audits was expanded to include all records of the communicator, irrespective of the client on whose behalf the activity was undertaken.
2. To expand the enforcement action that may take place upon an adverse finding, the Board may wish to consider amending the regulations to expand the scope of findings that may give rise to an enforcement action. Right now, if a violation of the ethics code is uncovered in the course of an audit, an enforcement action may be initiated only if the violation is willful or grossly negligent – a high standard to prove. A negligence standard would permit enforcement actions for an expanded arena of conduct. In the alternative, the Board may wish to consider amending the regulations to state that, if a lobbyist has received findings in previous audit(s), an adverse finding in a subsequent audit would carry a presumption that it was willful or grossly negligent. Thus, for second or third audits, a lobbyist would not be able to claim that a violation of the ethics code was merely negligent if the lobbyist had received a previous related adverse finding.