

Congress Issues New Lobbying Disclosure Act Guidance

The Clerk of the U.S. House of Representatives and the Secretary of the U.S. Senate continue to refine and clarify lobbying disclosure rules that went into effect on January 1, 2008. In advance of the January 30, 2009 LD-203 Contribution Report filing deadline, the Clerk and Secretary released additional guidance to LD-203 filers. This amends previous guidance issued in July 2008. The LD-203, which is named after Section 203 of the Honest Leadership and Open Government Act of 2007 (HLOGA), requires lobbyists and their employers to disclose certain contributions on a semiannual basis. This guidance clarifies some of those reporting requirements. The guidance also clarifies the information required to be disclosed on the LD-2 form on which registrants are required to disclose their lobbying activities on a quarterly basis.

New Guidance Regarding Semiannual LD-203 Contribution Reports

Presidential Transition Organization Contributions Must Be Disclosed. HLOGA requires registered lobbyists and their employers to disclose contributions to Presidential library foundations and Presidential inaugural committees. The new guidance clarifies that contributions to Presidential transition organizations also must be disclosed.

Clarification Regarding Reporting of PAC Contributions. HLOGA requires registered lobbyists and their employers to disclose contributions to entities established, financed, maintained, or controlled by a covered official. The new guidance clarifies that such contributions include those to political action committees (PACs) that were originally established by a covered official, but are no longer financed, maintained, or controlled by a covered official. This includes PACs that were established by an individual who was a covered official at the time, but no longer is (e.g., a former leadership PAC), and PACs that were established as an individual candidate's campaign committee that have converted to a multi-candidate committee.

Contributions to Events to Honor Legislative or Executive Branch Officials. HLOGA requires registered lobbyists and their employers to disclose contributions to events to honor a legislative or executive branch official. The guidance clarifies that payments for an event held in honor of a legislative or executive branch official must be disclosed even if the registered entity or lobbyist is not identified on an official invitation as a sponsor of an event, nor is held out to the public as a sponsor. The purchase of an individual ticket to attend such an event is not required to be reported; however, a registrant who purchases multiple tickets and/or a table to an event should apply a facts-and-circumstances test to determine whether the payments amount to sponsorship of an event.

Registrants Are Responsible for Filing LD-203 Reports. The new guidance stipulates that each registered lobbyist and registered employer must maintain the confidentiality of the user ID and passwords required to file their LD-203 reports. Registrants may utilize third-party preparers as long as these third parties retain appropriate documentation to evidence their authority to make the filings. The guidance cautions, however, that regardless of who prepares and files the reports, registrants are individually responsible for all information contained in their LD-203 reports.

Registrants Must Maintain Records Verifying Report Contents. The guidance advises registrants to retain all appropriate documentation to verify the disclosures made in their LD-203 reports. Retention of such documentation is critical to demonstrating compliance with the filing requirements.

Guidance for Sole Proprietors. Registered lobbyists and their employers each must file a semiannual LD-203 report by July 30 and January 30 for each semiannual period in which a lobbyist remains active. The new guidance clarifies that sole proprietors must file two reports—one on behalf of the individual lobbyist and one on behalf of the sole proprietorship.

Calculation of Lobbying Expenses on Quarterly LD-2 Lobbying Reports

The LDA requires that organizations employing in-house lobbyists must report any third-party lobbying expenditures, in addition to reporting their own in-house lobbyist expenditures. This includes dues paid to a membership organization, such as a trade association, that lobbies on behalf of the registered organization. The guidance clarifies that it is the responsibility of the filer to obtain from the membership organization the portion of its membership dues that is designated for lobbying activities. The registrant must disclose this amount in addition to its in-house lobbying expenses on Line 13 of the LD-2.

The new Lobbying Disclosure Act guidance is available at <http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf>.

If you have any questions about the new guidance or about compliance with the Lobbying Disclosure Act, please contact your usual Ropes & Gray legal advisor.

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