LOBBYING DISCLOSURE ACT GUIDANCE

Effective January 1, 2008

(Reviewed December 15, 2010/Last Revised June 15, 2010[1])

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[1] The Secretary and the Clerk have made no changes to the Guidance document issued on June 15, 2010. The Secretary and the Clerk will review the Guidance semiannually. Any questions, comments and suggestions should be directed to the Senate Office of Public Records and the House Legislative Resource Center in sufficient time for evaluation before the next semiannual reporting cycle (by May 5, 2011).

Section 1 – Introduction

Section 6 of the Lobbying Disclosure Act (LDA), 2 U.S.C. § 1605, provides that: The Secretary of the Senate and the Clerk of the House of Representatives shall (1) provide guidance and assistance on the registration and reporting requirements of this Act and develop common standards, rules and procedures for compliance with this Act; [and] (2) review, and, where necessary, verify and inquire to ensure the accuracy, completeness and timeliness of registrations and reports.

The LDA does not provide the Secretary or the Clerk with the authority to write substantive regulations or issue definitive opinions on the interpretation of the law. The Secretary and Clerk have, from time to time, jointly issued written guidance on the registration and reporting requirements. This document is both a compilation of previously issued guidance documents and our interpretation of the changes that were made to the LDA as a result of the Honest Leadership and Open Government Act of 2007 (HLOGA).

This compilation supersedes all previous guidance documents. This combined guidance document does not have the force of law, nor does it have any binding effect on the United States Attorney for the District of Columbia or any other part of the Executive Branch. To the extent that the guidance relates to the accuracy, completeness and timeliness of registration and reports, it will serve to inform the public as to how the Secretary and Clerk intend to carry out their responsibilities under the LDA.

Section 2 – What's New

This revision has been written based upon comments received in the last six months and issues that have arisen as a result of the Secretary's and Clerk's statutory and administrative responsibilities.

Section 6: Quarterly Reporting of Lobbying Activities

This section has been modified to accentuate that filers need to list a new lobbyist's previous covered executive or legislative branch positions held within twenty (20) years of first acting as a lobbyist for a client. Once a filer has met the previously described statutory requirement for listing a new lobbyist's previous covered position(s), then the filer does not have to list those positions again for subsequent reports concerning the same client. If a Registrant lists that lobbyist for the first time on a report/registration regarding a different client, then the Registrant must list that lobbyist's previous covered positions held within twenty (20) years of first acting as a lobbyist for the new client.

Section 7: Semiannual Reporting of Certain Contributions

This section has been modified to stress that **both** registrants and lobbyists must file a semiannual report on Form LD-203 by July 30 and January 30 (or on the next business day should either day occur on a weekend or holiday) for each semiannual period in which a registrant or lobbyist remains active (and regardless of whether they do or do not make reportable contributions).

Section 3 – Definitions

Actively Participates: An organization "actively participates" in the planning, supervision, or control of lobbying activities of a client or registrant when that organization (or an employee of the organization in his or her capacity as an employee) engages directly in planning, supervising, or controlling at least some of the lobbying activities of the client or registrant. Examples of activities constituting active participation would include participating in decisions about selecting or retaining lobbyists, formulating priorities among legislative issues, designing lobbying strategies, performing a leadership role in forming an ad hoc coalition, and other similarly substantive planning or managerial roles, such as serving on a committee with responsibility over lobbying decisions.

Organizations that, though members of or affiliated with a client, have only a passive role in the lobbying activities of the client (or of the registrant on behalf of the client), are not considered active participants in the planning, supervision, or control of such lobbying activities. Examples of activities constituting only a passive role would include merely donating or paying dues to the client or registrant, receiving information or reports on legislative matters, occasionally responding to requests for technical expertise or other information in support of the lobbying activities, attending a general meeting of the association or coalition client, or expressing a position with regard to legislative goals in a manner open to, and on a par with that of, all members of a coalition or association – such as through an annual meeting, a questionnaire, or similar vehicle. Mere occasional participation, such as offering an ad hoc informal comment regarding lobbying strategy to the client or registrant, in the absence of any formal or regular supervision or direction of lobbying activities, does not constitute active participation if neither the organization nor its employee has the authority to direct the client or the registrant on lobbying matters and the participation does not otherwise exceed a de minimis role.

Affiliated Organization: An affiliated organization is any entity other than the client that contributes in excess of $5,000 toward the registrant's lobbying activities in a quarterly period, and actively participates in the planning, supervision, or control of such lobbying activities. The amendments did not change the way in which Pre-HLOGA identified affiliates (i.e., those that in whole or in major part plan, supervise, or control such lobbying activities) are to be disclosed on LD-1 and LD-2.

Reports of Certain Contributions: Form LD-203 is required to be filed semiannually by July 30th and January 30th (or next business day should either of those days fall on a weekend or holiday) covering the first and second calendar halves of the year. Registrants and active lobbyists (who are not terminated for all clients) must file separate reports which detail FECA contributions, honorary contributions, presidential library contributions, and payments for event costs. (See discussion in Section 7 below.)

Client: Any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of the person or entity. An organization employing its own lobbyists is considered its own client for reporting purposes.

Covered Executive Branch Official: The application of coverage of Section 3(3)(F) of the LDA (who is a covered Executive Branch official) was intended for Schedule C employees only. Senior Executive Service employees are not covered Executive Branch officials as defined in the Act unless they fall within one of the categories below. Covered Executive Branch officials are:

- The President
- The Vice President
- Officers and employees of the Executive Office of the President
- Any official serving in an Executive Level I through V position
- Any member of the uniformed services serving at grade 0 7 or above
- Schedule C employees.

Covered Legislative Branch Official: Covered Legislative Branch officials are:

- A Member of Congress
- An elected Officer of either the House or the Senate
- An employee, or any other individual functioning in the capacity of an employee, who works for a Member, committee, leadership staff of either the Senate or House, a joint committee of Congress, a working group or caucus organized to provide services to Members, and any other Legislative Branch employee serving in a position described under section 109(13) of the Ethics in Government Act of 1978.

In whole or major part: The term "in major part" means in substantial part. It is not necessary that an organization or foreign entity exercise majority control or supervision in order to fall within Sections 4(b)(3)(B) and 4(b)(4)(B). In general, 20 percent control or supervision should be considered "substantial" for purposes of these sections.

Lobbying Activities: Lobbying contacts and any efforts in support of such contacts, including preparation or planning activities, research and other background work that is intended, at the time of its preparation, for use in contacts and coordination with the lobbying activities of others.

Lobbying Contact: Any oral, written or electronic communication to a covered official that is made on behalf of a client with regard to the enumerated subjects at 2 U.S.C. §1602(8)(A). Note the exceptions to the definition at 2 U.S.C. § 1602(8)(B). See Discussion at Section 5 below.

Lobbying Firm: A lobbying firm is a person or entity consisting of one or more individuals who meet the definition of a lobbyist with respect to a client other than that person or entity. The definition includes a self-employed lobbyist.

Lobbying Registration: An initial registration on Form LD-1 filed pursuant to Section 4 of the Act (2 U.S.C. §1603).

Lobbying Report: A quarterly report on Form LD-2 filed pursuant to Section 5 of the Act (2 U.S.C. §1604).

Lobbyist: Any individual (1) who is either employed or retained by a client for financial or other compensation (2) whose services include more than one lobbying contact; and (3) whose lobbying activities constitute 20 percent or more of his or her services' time on behalf of that client during any three-month period.

Person or Entity: Any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or state or local government.

Public Official: A public official includes an elected or appointed official, or an employee of a Federal, state or local government in the United States. There are five exceptions to this definition, including a college or university, a government–sponsored enterprise, a public utility, guaranty agency or an agency of any state functioning as a student loan secondary market. The 1998 amendments to the LDA expanded the definition of a public official in Section 3(15)(F) to add a group of governments acting together as an international organization. Its purpose was to ensure those international organizations, such as the World Bank, would be treated in the same manner as the governments that comprise them.

Registrant: A lobbying firm or an organization employing in-house lobbyists that files a registration pursuant to Section 4 of the Act.

Section 4 - Lobbying Registration

Who Must Register and When

Lobbying firms are required to file a separate registration for each client. A lobbying firm is exempt from registration for a particular client if its total income from that client for lobbying activities does not exceed and is not expected to exceed $3,000 during a quarterly period.

Note: A lobbyist is not the registrant unless he/she is self-employed. In that case, the self-employed lobbyist is treated as a lobbying firm.

Organizations employing in-house lobbyists file a single registration. An organization is exempt from registration if its total expenses for lobbying activities do not exceed and are not expected to exceed $11,500 during a quarterly period.

The registration requirement of a potential registrant is triggered either (1) on the date their employee/lobbyist is employed or retained to make more than one lobbying contact on behalf of a client (and meets the 20% of time threshold), or (2) on the date their employee/lobbyist (meets the 20% of time threshold) in fact makes a second lobbying contact, whichever is earlier. In either case, registration is required within 45 days.

Example 1: Lobbying firm "A" is retained on May 1, 2008 by Client "B" to make lobbying contacts and conduct lobbying activities. "A" files an LD-1 on behalf of "B" with an effective date of registration of May 1, 2008.

Example 2: Corporation "C" does not employ an individual who meets the definition of "lobbyist." Employee "X" is told by her supervisor to contact the Congressman representing the district in which Corporation "C" is headquartered. "X" makes a lobbying contact on June 1, 2008. "X" does not anticipate making any further lobbying contacts, but spends 25% of her time on this legislative issue. No registration is required at this point. In August 2008, "X" is instructed to follow up with the Congressman again. "C" registers and discloses August 5, 2008 as the effective date of registration (the date that "X" contacted the Congressman for the second time and thereby meets the definition of a lobbyist).

Preparing to File a Registration - Threshold Requirements

In order to determine the applicability of the LDA, one must first look at the definition of "lobbyist" under Section 3(10). Under this definition, an individual is a "lobbyist" with respect to a particular client if he or she makes more than one lobbying contact **and** his or her "lobbying activities" (as defined in Section 3(7)) constitute at least 20 percent of the individual's time in services for **that** client over any three-month period. Note that a registration would not be required for pro bono clients since the monetary thresholds of Section 4(a)(3)(A)(i) in the case of a lobbying firm, or of Section 4(a)(3)(A)(ii) in the case of an organization employing in-house lobbyists, would not be met. Keep in mind that the obligation to report under the LDA arises from active status as a registrant. Therefore if a registration has been filed for a pro bono client, reports would be expected to be filed until the registration is validly terminated.

More than One Lobbying Contact

"More than one lobbying contact" means more than one communication to a covered official. Note that an individual falls within the definition of "lobbyist" by making more than one lobbying contact over the course of services provided for a particular client (even if the second contact occurs in a later quarterly period).

Example 1: Lobbyist "A" telephones Covered Official "B" in the morning to discuss proposed legislation. In the afternoon she telephones Covered Official "C" to discuss the same legislation. Lobbyist "A" has made more than one lobbying contact.

Example 2: Under some circumstances a series of discussions with a particular official might be considered a single communication, such as when a telephone call is interrupted and continued at a later time. Discussions taking place on more than one day with the same covered official, however, should be presumed to be more than one lobbying contact.

Clarification of an Exception to Lobbying Contact

Section 3(8)(B)(ix) excepts from the definition of "lobbying contact" communications "required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the Congress or an agency." The amendments in 1998 clarified that communications that are compelled by the action of a Federal agency would include communications that are required by a Federal agency contract, grant, loan, permit, or license.

Example: Contractor "A" has a contract to provide technical assistance to Agency "B" on an ongoing basis. Technical communications between Contractor "A's" personnel and covered officials at Agency "B" would be required by the contract and therefore would not constitute "lobbying contacts."

Note, however, that this exception would not encompass an attempt by "A" to influence covered officials regarding either matters of policy, or an award of a new contract, since such communications would not be required by the existing contract.

Do Lobbying Activities Constitute 20% Or More of an Individual's Time?

Lobbying activity is defined in Section 3(7) as "lobbying contacts and efforts in support of such contacts, including . . . background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others." If the intent of the work is to support ongoing and future lobbying, then it would fall within the definition of lobbying activities. Timing of the work performed, as well as the status of the issue, is also pivotal. Generally, if work such as reporting or monitoring occurs at a time when future lobbying contacts are contemplated, such reporting and monitoring should be considered as a part of planning or coordinating of lobbying contacts, and therefore included as "lobbying activity." If, on the other hand, a person reports back to the relevant committee or officer regarding the status of a completed effort, that activity would probably not be included as a lobbying activity, if reports are not being used to prepare a lobbying strategy the next time the issue is considered.

Communications excepted from the definition of "lobbying contact" under Section 3(8)(B) of the LDA may be considered "lobbying activities" under some circumstances. Communications excepted by Section 3(8)(B) will constitute "lobbying activities" if they are in support of other communications which constitute "lobbying contacts."

Example: Under Section 3(8)(B)(v), the term "lobbying contact" does not include "a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a covered Executive Branch official or a covered legislative branch official." However, a status request would constitute "lobbying activity" if it were in support of a subsequent lobbying contact.

Please note that the 20% of time threshold applies to registration and not to the reporting section.

Is it Lobbying Contact/Lobbying Activity?

If a communication is limited to routine information gathering questions and there is not an attempt to influence a covered official, the exception of Section 3(8)(B)(v) for "any other similar administrative request" would normally apply. In determining whether there is an attempt to influence a covered official, the identity of the person asking the questions and her relationship to the covered official obviously will be important factors.

Example 1: Lobbyist "A", a former chief of staff in a congressional office, is now a partner in the law firm retained to lobby for Client "B." After waiting one year to comply with post-employment restrictions on lobbying, Lobbyist "A" telephones the Member on whose staff she served. She asks about the status of legislation affecting Client "B's" interests. Presumably "B" will expect the call to have been part of an effort to influence the Member, even though only routine matters were raised at that particular time.

Example 2: Company "Z" offers temporary employment to recent college graduates. The graduates are hired to conduct surveys of congressional staff by reading prepared questions and recording the answers. The questions seek only information. These communications do not amount to lobbying contacts.

Lobbying Contacts and Activities Using Section 15 Election (Alternate Reporting Methods)

Section 15 of the LDA permits those organizations that are required to file and do file under Sections 6033(b)(8) of the Internal Revenue Code and organizations that are subject to Section 162(e) of the IRC to use the tax law definitions of lobbying in lieu of the LDA definitions for determining "contacts" and "lobbying activities" for Executive Branch lobbying. Registrants should note that the tax definition of lobbying is broader with respect to the type of activities reported, while it is narrower with respect to the universe of Executive Branch officials who qualify as covered Executive Branch employees.

Under the 1998 amendments to the LDA, registrants making a Section 15 election must use the Internal Revenue Code definition for Executive Branch lobbying, and the LDA definition for Legislative Branch lobbying. Because there are fewer Executive Branch officials under the IRC definitions than under the LDA definitions, this may result in fewer individuals being listed as lobbyists and fewer lobbying contacts reflected on the LD-2.

Also note that definitions under the tax code include "grass-roots" and "state" lobbying, while the LDA excludes those types of lobbying from the definition of "lobbying activities." The LDA does not permit modification of the tax code definition to exclude such expenditures when reporting lobbying expenses.

Relationship Between 20% of Time and Monetary Threshold

If the definition of "lobbyist" is satisfied with respect to at least one individual for a particular client, the potential registrant (either a lobbying firm or an organization employing the lobbyist, or a self-employed individual lobbyist) is **not** required to register if it does not meet the monetary thresholds of Section 4(a)(3)(A)(i), in the case of a "lobbying firm," or of Section 4(a)(3)(A)(ii), in the case of an organization employing in-house lobbyists. Note that the monetary exemption is computed based on the lobbying activities of the potential registrant as a whole for the particular client in question, not simply on the lobbying activities of those individuals who are "lobbyists."

Example 1: A law firm has two lawyers who perform services for a particular client. Lawyer "A" spends 15 percent of the time she works for that client on lobbying activities, including some lobbying contacts. Lawyer "B" spends 25 percent of the time he works for the client on lobbying activities, but makes no lobbying contacts. Neither lawyer falls within the definition of "lobbyist," and therefore the law firm is not required to register for that client, even if the income it receives for lobbying activities on behalf of the client exceeds $3,000.

Example 2: Employee "A" of a trade association is a "lobbyist" who spends 25 percent of his time on lobbying activities on behalf of the association. There are $6,000 of expenses related to Employee "A's" lobbying activities. Employee "B" is not a "lobbyist" but engages in lobbying activities in support of lobbying contacts made by Employee "A." There are $6,000 of additional expenses related to the lobbying activities of Employee "B." The trade association is required to register because it employs a "lobbyist" and its total expenses in connection with lobbying activities on its own behalf exceed $11,500.

Example 3: Same as Example 2, except the expenses related to the lobbying activities of Employees "A" and "B" total only $9,000, but the trade association also pays $5,000 to an outside firm for lobbying activities. Registration is still required because payments to outside contractors (including lobbying firms that may be separately registered under the LDA) must be included in the total expenses of an organization employing lobbyists on its own behalf.

Timing

The registration requirement of a potential registrant is triggered either (1) on the date their employee/lobbyist is employed or retained to make more than one lobbying contact on behalf of the client (and meets the 20% of time threshold), or (2) on the date their employee/lobbyist (meets the 20% of time threshold) in fact makes a second lobbying contact, whichever is earlier. In either case, registration is required within 45 days of that date.

Example: Lobbying Firm "A" is retained to monitor an issue, but whether or not lobbying contacts will be made depends on future legislative developments. In another case, Corporation "B," which employs an in-house lobbyist, knows that its lobbyist will make contacts but reasonably expects its lobbying expenditures will not amount to $11,500 in a quarterly period. However, issues of interest to "B" turn out to be more controversial than expected, and the $11,500 threshold is in fact met a month later.

Lobbying firm "A" has no registration requirement at the present time. The requirement to register is triggered if and when the firm makes contacts, or reasonably expects that it will make contacts. Corporation "B's" registration requirement arose as soon as it knew, or reasonably expected, that its lobbying expenditures will exceed $11,500. "B" needs to register immediately.

Listing of Foreign Entities

Each registration must contain the name, address, principal place of business, amount of any contribution greater than $5,000 to the lobbying activities of the registrant, and approximate percentage of ownership in the client of any foreign entity that: holds at least 20% equitable ownership in the client or any affiliate of the client required to be listed on line 13; **or** directly or indirectly, in whole or major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the client or affiliate of the client required to be listed on line 13; **or** is an affiliate of either the client, or an organization affiliated with the client identified on Line 13 or 14 of LD-1 and has a direct interest in the outcome of the lobbying activity. The purpose of the disclosure is to identify the interests of the foreign entity that may be operating behind the registrant.

Example: Lobbying Firm "A" is retained to lobby on behalf of Company "B," which is wholly owned by Foreign Company "C." "C" is wholly owned by Foreign Company "D," and "D" is wholly owned by Foreign Company "E." "C," "D," and "E" must be disclosed on Line 14.

Section 5 - Special Registration Circumstances

Elaboration on the Definition of Client

In some cases a registrant is retained as part of a larger lobbying effort that encompasses more than one lobbying firm on behalf of a third party. Generally, the entity that is paying the registrant is listed as the client. The third party, who is paying the intermediary (client) is listed on Line 13 as an affiliate.

Example: Client "P" retains lobbying firm "F" for general lobbying purposes, but has a new interest in obtaining an outcome in an area new to "P." "F" realizes that a boutique lobbying firm "L" has an excellent track record for obtaining the type of outcome "P" is seeking, and talks to "P" about subcontracting. "P" agrees with "F's" strategy. "F" contacts "L" to retain the latter to do the project. "F" is responsible for paying "L." Within 45 days, "L" registers disclosing "F" as the client, and "P" as the affiliate.

Lobbying Firms Retained Under a Contingent Fee

Law other than the LDA governs whether a firm may be retained on a contingent-fee basis. There is, for example, a general prohibition on the payment of contingent fees in connection with the award of government contracts. Assuming, however, that the agreement is not contrary to law or public policy, an agreement to make lobbying contacts for a contingent fee, like other fee arrangements triggers a registration requirement at inception. The fee is disclosed on LD-2 for the quarterly period that the registrant becomes entitled to it.

Example 1: On January 1, 2008, Lobbying Firm "G" agrees to lobby for Client "H" for a fee contingent on a certain result, ***and the agreement is permitted under other applicable law****. Lobbying activities begin. "G" is required to register by February 14, 2008. The result is not obtained and "G" is not entitled to any fee during the first quarterly period. "G" must report its lobbying activities for the first quarterly period; the income reported is "Less than $5,000." The desired result does occur in the second quarterly period of 2008. In the report for that period, "G" discloses its lobbying activities for that period and the total contingent fee.*

Example 2: Lobbying Firm "J" discusses an arrangement to accept stock options worth $4,500 from Client "M" in lieu of payment of a contingency fee. After determining that acceptance of a success fee is not a violation of another statute, "J" signs a contract with "M," and registers. Late in the first quarter of the lobbying activities, it appeared "J" achieved the result. "J's" initial quarterly lobbying report disclosed lobbying income of less than $5,000. "M's" stock value increased shortly thereafter to be valued at $6,000, so "J" exercised its options. "J" amended the previously filed quarterly report to reflect income of "$5,000 or more," and rounding the amount to $10,000.

Registration for Entities with Subsidiaries or State and Local Affiliates

Assuming a parent entity or national association and its subsidiary or subordinate are separate legal entities, the parent makes a determination whether it meets the registration threshold based upon its own activities, and does not include subordinate units' lobbying activities in its assessment. Each subordinate must make its own assessment as to whether any of its own employees meet the definition of a lobbyist, and then determine if it meets the registration threshold with respect to lobbying expenses.

Example: Lobbyist "Z" is an employee of Company "A," which is a wholly owned subsidiary of Company "B." "Z's" lobbying activities advance the interests of both. Which company is responsible for registering and reporting under the LDA?

The registration and reporting requirements apply to the organization of which Lobbyist "Z" is an employee. Therefore, Company "A" would register and file the quarterly reports.

If Company "B" contributes $5,000 or more to "Z's" lobbying activities during a quarterly period and actively participates in the planning, supervision, or control of the lobbying activities, Company "B" must be listed on Company "A's" Form LD-1, Line 13. A contribution may take any form, and may be direct or indirect. For example, if Company "B" established Company "A" with an initial capital contribution of $1,000,000, which "A" draws upon for employee salaries, including "Z's," and to pay for office space used by "Z," a $5,000 contribution probably has been made.

If Company "B" is a foreign entity, and the facts are otherwise the same as above, "B" would be listed on Line 14 of the Form LD-1 filed by Company "A." "B's" interests in specific lobbying issues would also be disclosed on Line 19 of Form LD-2.

The LDA does not make any express provision for combined or consolidated filings. A single filing by a parent corporation may be appropriate in some cases, especially when there are multiple subsidiaries and the lobbyists address the same issues for all and act under the close control of the parent. In this regard, note that the LDA does not contain any specific definition of "employee" (there is only the general definition of Section 3(5)), and the policy of the LDA is to promote disclosure of real parties in interest.

In circumstances in which multiple subsidiaries each have only a fraction of the lobbyist's time and little control over his work, the parent which in fact exercises actual control can be regarded as the "employer" for LDA purposes. In such cases, the parent may file a single registration, provided that Line 10 of Form LD-1 discloses that the listed lobbyists are employees of subsidiaries and the subsidiaries are identified as affiliated organizations on Line 13.

Effect of Mergers and Acquisitions on Registrations

The following examples serve to illustrate hypothetical situations regarding mergers and acquisitions:

Example 1: Corporation "C" registered under the LDA during 2008. Effective upon close of business on December 31, 2008, "C" merged with Corporation "D." "D," the surviving corporation, had no lobbyist employees before the merger and is not registered. How and when should this information be reported? Assuming that "D" retains at least one of "C's" lobbyist employees and will incur lobbying expenses of at least $11,500 during the January-March quarterly period, Corporation "D" is required to register. The 45-day period in which its initial registration must be filed begins to run on December 31, 2008, the date "D" first had lobbyist employees, and the registration is due by February 14, 2009. On the other hand, if "D" will not be lobbying after the merger, it is not required to register. In pre-merger discussions, Corporation "C" might have agreed to terminate its registration and file its final lobbying report before ceasing its corporate existence. If, however, "C" did not do so, Corporation "D" should terminate the registration and file the outstanding lobbying report in "C's" name. "D" may simply annotate the signature block on Form LD-2 to indicate that it is filing as successor in interest to "C."

Example 2: Lobbying Firm "O" is a registrant under the LDA. It merges with Lobbying Firm "P," which is also a registrant. The new entity will be known as Lobbying Firm "T." How and when should this information be reported? The answer depends on the particular facts. If Lobbying Firm "T" is a newly created legal entity, it should file a new registration within 45 days. The registrations of both "O" and "P" should be terminated by filing separate termination reports for each remaining registrant/client relationship. But if "T" is simply the new name adopted by "O" following the merger with "P," with "P" going out of existence, "O" should report its new name and other updated information (such as the names of lobbyist employees of "P" who are retained or hired by "T") on Form LD-2. "P's" registration should be terminated, and P should file termination reports for each remaining registrant/client relationship, but only after P ceases to exist.

Example 3: Corporation "J," a registrant, acquired Corporation "K," a non-registrant. At the time of the acquisition, "J" changed its name to "J & K." How and when should this information be reported? For LDA purposes, this is simply a change in the name of the registrant. The change should be reported on Line 1 of the next quarterly report (LD-2).

Associations or Coalitions

The LDA provides that "[i]n the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members" (Section 3(2)). A bona fide coalition that employs or retains lobbyists on behalf of the coalition may be the client for LDA purposes, even if the coalition is not a legal entity or has no formal name. A registrant lobbying for an unnamed informal coalition needs to adopt some type of identifier for Line 7 of Form LD-1, and indicate "(Informal Coalition)" or another applicable description. For all coalitions and associations, formal or informal, the LDA requires further disclosures, e.g., of organizations other than the client which contribute more than $5,000 toward the lobbying activities of the registrant in the quarterly period, **and** actively participate in the planning, supervision or control of the lobbying activities (Section 4(b)(3)). Such organizations are identified on Line 13 of Form LD-1.

Example 1: Association "A" has 20 organizational members who each pay $20,000 as a portion of their annual dues to fund "A's" lobbying activities. "E" is an employee of Organization "O", which is a member of "A." "E" serves as a member of "A's" board, as a representative of "O." While "A" carries out various functions, a substantial part of its mission is lobbying on issues of interest to its member organizations. "E's" board membership constitutes active participation by "O" in the lobbying activities of "A," and thus "O" would need to be listed as an affiliated organization of "A.".

Example 2: Another association "A" has 1000 organizational members who each pay $20,000 as a portion of their annual dues to fund A's lobbying activities. "E" is an employee of Organization "O," which is a member of "A." "E" serves as a member of "A's" board, as a representative of "O." "A" performs numerous functions, only a modest portion of which is lobbying. With regard to "A's" lobbying activities, "A's" board is only involved in approving an overall budget for such activities, but otherwise leaves supervision, direction, and control of such matters to a separate committee of member organizations. "E's" board membership in this case does not constitute active participation by "O" in the lobbying activities of "A."

Example 3: Another association "A" has 1000 organizational members who each pay $1,000 a month in annual dues to "A." "E" is an employee of Organization "O," which is a member of "A." "E" serves as a member of "A's" lobbying oversight group as a representative of "O." The lobbying oversight group plans and supervises lobbying strategy for "A." While "E's" activities in "A" would constitute active participation, because "O" does not contribute $5,000 in the reporting quarter to the lobbying activities of "A," "O" would not need to be listed as an affiliate of "A."

Example 4: Another association "A" has 100 organizational members who each pay $30,000 a month as a portion of their annual dues to fund "A's" lobbying activities. "E" is an employee of Organization "O,", and attends "A's" annual meeting/conference, informally provides "O's" list of legislative priorities to "A," and also facilitates responses from "O" to occasional requests for information by "A's" lobbyists. These activities would not make "O" an active participant in the lobbying activities of "A."

Example 5: Organization "O" joins with a group of nine other organizations to form Coalition "C" to lobby on an issue of interest to it. Each contributes $50,000 to"C's" budget. "O's" vice president for government relations is part of the informal group that directs the lobbying strategy for" C". "O" would be considered an active participant in "C's" lobbying activities and would have to be disclosed.

Note that a coalition with a foreign entity as a member must identify the foreign entity on line 14 of LD-1 if the foreign entity meets the test of either Section 4(b)(3) or 4(b)(4).

Churches, Integrated Auxiliaries, Conventions or Association of Churches and Religious Orders - Hiring of Outside Firms

Although the definition of a lobbying contact does not include a communication made by a church, its integrated auxiliary, a convention or association of churches and religious orders (Section 3(8)(B)(xviii)), if a church (its integrated auxiliary, a convention or association of churches, and religious orders) hires an outside firm that conducts lobbying activity on its behalf, the outside firm must register if registration is otherwise required.

Registration of Professional Associations of Elected Officials

The Section 3(15) definition of "public official" includes a professional association of elected officials who are exempt from registration. If the association retains an outside firm to lobby, the lobbying firm must register if otherwise required to do so, i.e., the firm employs a lobbyist as defined in Section 3(10) and lobbying income exceeds $3,000 in a quarterly period.

Section 6 - Quarterly Reporting of Lobbying Activities

When and Why a Report is Needed

Each registrant must file a quarterly report on Form LD-2 no later than 20 days (or on the first business day after such 20th day if the 20th day is not a business day) after the end of the quarterly period beginning on the first day of January, April, July and October **of each year** in which a registrant is registered. Lobbying firms file separate reports for each client for each quarterly reporting period, while organizations employing in-house lobbyists file one report covering their in-house lobbying activities for each quarterly reporting period. All reports must be filed electronically (with exceptions as noted previously). **The Secretary and Clerk do not have the authority under the LDA to grant extensions to registrants.**

The obligation to report under the LDA arises from active status as a registrant (i.e., a registration on file that has not been validly terminated). Section 5(a) of the LDA requires a registrant to file a report for the quarterly period **in which it incurred its registration requirement**, and for each quarterly period thereafter, through and including the reporting period encompassing the date of registration termination. A timely report using Form LD-2 is required even though the registration was in effect for only part of the reporting period. So long as a registration is on file and has not been terminated, a registrant must report its lobbying activities even if those activities during a particular quarterly period would not trigger a registration requirement in the first instance (e.g., a lobbying firm's income from a client amounted to less than $3,000 during a particular quarterly period). A registrant with no lobbying activity during a quarterly period completes and files the first page (only) of Form LD-2.

Example 1: "A" is the only lobbyist of Lobbying Firm "Z" listed in the registration filed for Client "Y" on February 14, 2008. During January-March 2008, "A" lobbied for "Y" nearly full-time. During the April - June period in 2008, however, "A" made only one lobbying contact for "Y" in April, but lobbying fees for the quarter were $10,000. For the April – June quarterly period, even though "A" had minimal lobbying activities, Lobbying Firm "Z" must report "A's" lobbying activities (due to "A's" being listed as a lobbyist) and must report the $10,000 lobbying fees.

Example 2: Lobbying Firm "Z" is retained by Client "X" on June 1, 2008 for thirty days to lobby on a particular issue that is on the legislative calendar and the issue is settled prior to the departure of House and Senate Members for the July 4th recess. Firm "Z" must file its registration by July 15, file its Q2 Report by July 20, and, if it chooses to terminate, file its termination report by October 20.

Disclosing that a Client is a State or Local Government or Instrumentality

If the client is a state or local government or instrumentality, check the box on Line 7 of LD-1 and LD-2.

Mandatory Electronic Filing

Section 5 of the LDA was amended to require the mandatory electronic filing of all documents required by the LDA. The only exception to mandatory electronic filing is for the purpose of amending reports in the format previously filed, or for compliance with the Americans with Disabilities Act. Each electronic lobbying disclosure form provides usability for people with vision impairments who have the appropriate software and hardware. If you have questions regarding additional ADA accommodations, please contact the Senate Office of Public Records at 202-224-0758.

Preparing to File the Quarterly Report - Income or Expense Recording

The LDA does not contain any special record keeping provisions, but requires, in the case of an outside lobbying firm (including self-employed individuals), a good faith estimate of all income received from the client, other than payments for matters unrelated to lobbying activities. In the case of an organization employing in-house lobbyists, the LDA requires a good faith estimate of the total expenses of its lobbying activities. As long as the registrant has a reasonable system in place and complies in good faith with that system, the requirement of reporting expenses or income would be met. Since Section 6(a)(5) requires the Secretary and Clerk to "retain registrations for a period of at least 6 years after they are terminated and reports for a period of at least 6 years after they are filed," we recommend registrants retain copies of their filings and supporting documentation for the same length of time.

Lobbying Firm Income

Lobbying firms report income earned or accrued from lobbying activities during a quarterly period, even though the client may not be billed or make payment until a later time. For a lobbying firm, gross income from the client for lobbying activities is reportable, including reimbursable expenses costs or disbursements that are in addition to fees and separately invoiced. Line 12 of LD-2 provides boxes for a lobbying firm to report income of less than $5,000, or of $5,000 or more. If lobbying income is $5,000 or more, a lobbying firm must provide a good faith estimate of the actual dollar amount **rounded to the nearest $10,000.**

Organization Expenses using LDA Expense Reporting Method

Organizations that employ in-house lobbyists may incur lobbying-related expenses in the form of employee compensation, office overhead, or payments to vendors which may include lobbying firms. Organizations must report expenses as they are incurred, though payment may be made later. Line 13 of LD-2 provides for an organization to report lobbying expenses of less than $5,000, or $5,000 or more. If lobbying expenses are $5,000 or more, the organization must provide a good faith estimate of the actual dollar amount **rounded to the nearest $10,000.** Organizations using the LDA expense reporting method mark the "Method A" box on Line 14.

To ensure complete reporting, the Secretary and Clerk have consistently interpreted Section 5(b)(4) to require such organizations to report all of their expenses incurred in connection with lobbying activities, including all payments to retained lobby firms or outside entities, without considering whether any particular payee has a separate obligation to register and report under the LDA. Logically, if an organization employing in-house lobbyists also retains a lobbying firm, the expense reported by the organization should be greater than the fees reported by the lobbying firm of which the organization is a client. An organization must contact any other organization to which it pays membership dues in order to learn what portion of the dues is used by the latter organization for lobbying activities. It is necessary for the former organization to include the portion of the dues that is designated for lobbying activities in the total of lobbying expenses reported by the former organization. A registrant cannot apportion the lobbying expense part of the dues to avoid disclosure. Dues payments for lobbying activities should be included in the estimate for the quarter in which they are paid.

All employee time spent in lobbying activities must be included in determining the organization's lobbying expenses, even if the employee does not meet the statutory definition of a "lobbyist."

> *Example: The CEO of a registrant, "Defense Contractor," travels to Washington to meet with a covered DOD official regarding the renewal of a government contract. "Defense Contractor" has already determined that its CEO is not a "lobbyist," because he does not spend 20 percent of his time on "lobbying activities" during a quarterly period. Nonetheless, the expenses reasonably allocable to the CEO's lobbying activities (e.g., plane ticket to Washington, salary and benefit costs, etc.) will be reportable.*

Similarly, all expenses of lobbying activities incurred during a quarterly period are reportable. The Section 3(7) definition of lobbying activities is not limited to lobbying contacts. Examples of lobbying expenses to be included are reflected below.

Example 1: A research assistant in the Washington office of the registrant, "Defense Contractor" (described in the example above) researches and prepares the talking points for the CEO's lobbying contact with the covered DOD official. Likewise, the expenses reasonably allocable to the research assistant's lobbying activities will be included in "Defense Contractor's" expense estimate for the quarterly period.

Example 2: Corporation "R" is a registrant that is interested in building a bypass around a city in state "S". "R's governmental affairs team is comprised of lobbyists who are federally-focused, and lobbyists who are state-focused. The entire staff prepares a strategic lobbying plan to support the building of the bypass. This includes both federal and state lobbying. In this example, the time spent by the state level lobbyists preparing the materials would be included in "R's" good faith estimate of lobbying expenses for the quarter because, at the time the materials were prepared, they were to be used for federal lobbying.

Example 3: Same circumstances as Example 2, but in this situation, the aforementioned strategic lobbying plan includes hiring one firm to help with the production of the plan, and another firm to place advertising in media in "S" to encourage citizens in "S" to contact their representatives about the importance of building the bypass. The total cost of producing the plan, but not the cost of the advertising media fees, must be included in "R's" good faith estimate of lobbying expenses for the quarter.

The examples below are intended to be illustrative of the possibilities of LDA expense reporting, and are not intended to require detailed accounting rules.

Example 1: An organization employing in-house lobbyists might choose to estimate lobbying expenses by asking each professional staffer to track his/her percentages of time devoted to lobbying activities. These percentages could be averaged to compute the percentage of the organization's total effort (and budget) that is devoted to lobbying activities. Under this example the organization would include salary costs (including a percentage of support staff salaries), overhead, and expenses, including any third party costs attributable to lobbying.

Example 2: Another organization, which lobbies out of its Washington office, might avoid the need for detailed breakdowns by including the entire budget or expenses (whichever, the organization believes in good faith is closer to the actual amount) of its Washington office.

Organizations Reporting Expenses under Section 15 (Optional IRC Reporting Methods)

Section 15(a) of the LDA allows entities that are required to report and do report lobbying expenditures under section 6033(b)(8) of the Internal Revenue Code ("IRC") to use IRC definitions for purposes of LDA Sections (4)(a)(3) and 5(b)(4). Charitable organizations, as described in IRC Section 501(c)(3), are required to report to the Internal Revenue Service their lobbying expenditures in conformity with Section 6033(b)(8) of the IRC. They may treat as LDA expenses the amounts they treat for "influencing legislation" under the IRC.

Section 15(b) of the LDA allows entities that are subject to section 162(e) of the IRC to use IRC definitions for purposes of LDA Sections (4)(a)(3) and 5(b)(4). The eligible entities include for-profit organizations (other than lobbying firms) and tax-exempt organizations such as trade associations that calculate their lobbying expenses for IRC purposes with reference to Section 162(e) rules. We believe that this reporting option is available to include also a small number of trade association registrants not required by the IRC to report non-deductible lobbying expenses to their members (i.e., those whose members are tax-exempt).

If an eligible organization elects to report under Section 15, it must do so consistently for all reports covering a calendar year. The electing organization also must report **all expenses that fall within the applicable Internal Revenue Code definition.** The total that is ultimately reportable to the Internal Revenue Service is the figure that would be used for Line 13 reporting. Line 13 of LD-2 would require any organization to report if the amount of lobbying expenses were less than $5,000, or $5,000 or more. If the expense amount is $5,000 or more, it should be **rounded to the nearest $10,000.** Line 14 of LD-2 requires the electing organization to mark as applicable, either the "Method B" box (IRC Section 6033(b)(8)) or the "Method C" box (IRC Section 162(e)). The Secretary and Clerk are aware that the IRC and LDA are not harmonized in terms of expense reporting. Registrants are advised that if they elect to report under Section 15, they may not subtract lobbying expenses for lobbying state and local officials and grassroots lobbying from the total expenses reported under the LDA. Doing so alters the IRS reportable total, and is not permitted.

Quarterly Reporting of Lobbying Activities - Contents of Report

The two core disclosures required by Section 5(b) and 5(c) of the LDA and incorporated into Form LD-2 are: (1) lobbying income or expenses; and (2) lobbying issues. LD-2 has been designed to allow registrants the greatest flexibility in terms of document length to correspond with the varying amounts of information relating to the core disclosures. The following examples illustrate how the nature of the core disclosures builds the form.

Example 1: Registrant "A" represents Client "B" to monitor an issue of interest to B and make occasional lobbying contacts as necessary. During the Q1 2008 reporting period, "A" received $3,000 from "B," but had no lobbying activity because "B's" issue was dormant. "A" would complete the top portion of page 1 of LD-2, mark the boxes labeled "No Lobbying Activity" and "Less than $5,000," and file the report.

Example 2: Same circumstances as above, except that "A" has two lobbyists who make lobbying contacts on a single lobbying issue with the Senate and the House. In this case, the second page of LD-2 also would have to be completed, then "A" would file the report.

Example 3: Same circumstances as example 2, but one of the lobbyists retires during the reporting period. In this case, an update page of LD-2 would be required, as well as the first two completed pages, reflecting the removal of the lobbyist's name (his/her retirement) from A's registration and reports.

Section 5(b) requires specific information on the nature of the lobbying activities. Page 2 of Form LD-2 requires the registrant to:

- Disclose the general lobbying issue area code (list 1 code per page).
- Identify the specific issues on which the lobbyist(s) engaged in lobbying activities.
- Identify the Houses of Congress and Federal Agencies contacted.
- Disclose the lobbyists who had any activity in the general issue area.
- Describe the interest of a foreign entity if applicable.

When reporting specific lobbying issues, some registrants have listed only House or Senate bill numbers on the issues page without further indication of their clients' specific lobbying issues. Such disclosures are not adequate, for several reasons. First, Section 5(b)(2)(A) of the LDA requires disclosure of "specific issues upon which a lobbyist employed by the registrant engaged in lobbying activities, including ... bill numbers[.]" As we read the law, a bill number is a required disclosure when the lobbying activities concern a bill, but is not in itself a complete disclosure. Further, in many cases, a bill number standing alone does not inform the public of the client's specific issue. Many bills are lengthy and complex, or may contain various provisions that are not always directly related to the main subject or title. If a registrant's client is interested in only one or a few specific provisions of a much larger bill, a lobbying report containing a mere bill number will not disclose the specific lobbying issue. Even if a bill concerns only one specific subject, a lobbying report disclosing only a bill number is still inadequate, because a member of the public would need access to information outside of the filing to ascertain that subject. In our view, the LDA contemplates disclosures that are adequate to inform the public of the lobbying client's specific issues from a review of the LD-2, without independent familiarity with bill numbers or the client's interest in specific subject matters within larger bills. The disclosures on Line 16 must include bill numbers, where applicable, but must always contain information that is adequate, standing alone, to inform the public of the specific lobbying issues.

Example: Client "A's" general lobbying issue area is "Environment." During the first quarter of 2008, lobbyists for "A" made contacts concerning the Department of Defense appropriations for environmental restoration. For fiscal 2009, the Department of Defense Appropriations Act was part of the Omnibus Consolidated Appropriations Act for 2009, H.R. 3610, a lengthy and complex bill that did not have numbered sections throughout. Title II contained separate but unnumbered provisions making appropriations for "Environmental Restoration, Army," "Environmental Restoration, Navy," "Environmental Restoration, Air Force," "Environmental Restoration, Defense Wide," and "Environmental Restoration, Formerly Used Defense Sites." Lobbying contacts for Client "A" addressed all environmental restoration funding within the Defense Department bill. An appropriate disclosure of the specific lobbying issue would read as follows: H.R. 3610, Department of Defense Appropriations Act for 2009, Title II, all provisions relating to environmental restoration.

The TAR code has been added for tariff bills, including miscellaneous tariff bills. Filers must use this general issue area code to report lobbying activity related to tariff issues, including miscellaneous tariff issues. For any other trade-related issues, filers should continue to use the TRD code. In particular, if a registrant lobbies on miscellaneous tariff issues, the registrant must use the updated form.

Example: Registrant "R" is retained by Client "B" to pursue a bill to provide a temporary tariff suspension for chemical X, and a separate bill to provide a temporary tariff reduction for chemical Y. During the first quarter of 2008, "R" made lobbying contacts concerning both matters on behalf of "B" and a separate bill was introduced for each matter (S.123 for chemical X and S.456 for chemical Y). "R" reports in its filing for Q1 that the general issue area code for these bills is "TAR," and the specific issues lobbied upon were the substance of the bills, citing to the bill number, if a bill has been introduced (e.g., "temporary tariff suspension for chemical X (S.123) and temporary tariff reduction for chemical Y (S.456)"). In the Q3 reporting period, the two chemical tariff provisions are each rolled into an omnibus bill (e.g., S.789, the "Miscellaneous Tariff Bill"). If "R" had lobbying activities during the Q3 reporting period encompassing all three bills, then "R" reports that the general issue area code for these bills is "TAR" and the specific issues lobbied upon were the substance of the bills (e.g., "temporary tariff suspension for chemical X and temporary tariff reduction for chemical Y, included in the original bills (S.123 and S.456) and in the Miscellaneous Tariff Bill (S.789)"). In Q4, "R" had lobbying activities focusing on the omnibus bill which "R" then discloses on its Q4 report, using TAR for the general issue area code as well as reporting the specific issues lobbied upon ("modification focused on tariff suspension for chemical X and tariff reduction for chemical Y, included in Miscellaneous Tariff Bill (S.789)").

The Houses of Congress and Federal agencies contacted **by lobbyists** during the reporting period must be disclosed on Line 17 of Form LD-2, picking from the list of government entities provided on the form. If the list does not display the government entity contacted, then select the department in which the entity is housed. **In the event that no lobbying contacts were made, the registrant must mark the "Check if None" box.**

Previously identified lobbyists and new lobbyists for this reporting period must be listed on Line 18 of LD-2 if they had any lobbying activities during the reporting period, whether or not they made lobbying contacts. The issue page is only intended to reflect lobbying activity by lobbyists, and not activity of those who are not lobbyists. The registrant does not report the names of individuals who may perform some lobbying activities, but who do not and are not expected to meet the LDA definition of a lobbyist.

Example: Lobbying Firm "A" filed its initial registration for Client "B" on February 14, listing Lobbyists "X," "Y" and "Z." From January through March, Lobbyists "W" (hired in February) and "X" and "Y" made contacts for "B," while Lobbyist "Z" was assigned work for other clients. Lobbyist "Z" is expected, however, to be active on behalf of Client "B" after Spring Recess until adjournment. In its Q1 report for Client "B," filed on or before April 20, Lobbying Firm "A" lists "W," "X" and "Y" on Line 18. "W" is also identified as "new," and Firm "A" would disclose if "W" occupied a covered position within the last twenty years. "Z" is not listed on the Form LD-2 filed for Client "B" for the January - March quarterly period, but because of the current expectation that he will lobby during the April – June quarterly period, his name is not deleted as a lobbyist for "B."

New lobbyists should be disclosed on the appropriate issue(s) page(s) for the reporting period in which the individual first meets the definition of lobbyist. Filers need to list a new lobbyist's previous covered executive or legislative branch positions held within twenty (20) years of first acting as a lobbyist for a client. Once a filer has met the previously described statutory requirement for listing a new lobbyist's previous covered position(s), then the filer does not have to list those positions again for subsequent reports concerning the same client. If a Registrant lists that lobbyist for the first time on a report/registration regarding a different client, then the Registrant must list that lobbyist's previous covered positions held within twenty (20) years of first acting as a lobbyist for the new client.

We are aware that there will be situations in which a registrant expects an individual to become a lobbyist and wishes to disclose the name of that individual as a matter of public record. Section 5 of the LDA, however, provides that updated registration information is contained in the registrant's next quarterly report. Therefore, there may be a period of time in which an individual is legitimately making lobbying contacts but is not identified on the public record until the next quarterly report is filed. In such cases, the registrant reports updated information as the LDA requires.

A foreign entity is reported on Line 19 if both of two circumstances apply: 1) the foreign entity must be an entity that is required to be identified on Form LD-1 or on the registration information update page. That, in turn, depends on whether the entity meets one of the three conditions of Section 4(b)(4) of the LDA; and 2) the entity must have an interest in the specific lobbying issues listed on Line 16. If a foreign entity has an interest in the specific issues, Line 19 requires a description of that interest. For the sake of clarity the registrant should indicate whether the foreign entity(s) is/are the same as identified on the registration. The requirement to disclose a foreign interest on Line 19 is not contingent upon the entity making a contribution of $5,000 or more to the registrant during that particular reporting period.

Example: "[Name of foreign entity], identified on LD-1, exports [type of product] to United States and would benefit from [specific desired outcome]."

Section 7 – Semiannual Reporting of Certain Contributions

When and Why a Report is Needed

Registrants and lobbyists must file a semiannual report on Form LD-203 by July 30 and January 30 (or on the next business day should either day occur on a weekend or holiday) for each semiannual period in which a registrant or lobbyist remains active (and regardless of whether they do or do not make reportable contributions). An "active" registrant is one that has not filed a valid termination report for all clients. An "active" lobbyist is an individual who has been listed on any registrant's LD-1 or LD-2 and who has not been terminated by the registrant on Line 23 of a LD-2. If a lobbyist is listed as active for all or any part of a semi-annual period, he or she must file a LD-203 report for that period (see Section 8). Section 5 of the LDA states that "each person or organization who is registered or is required to register…and each employee who is or is required to be listed as a lobbyist… shall file a report." Thus, the requirement to file an LD-203 report falls upon all lobbyists who were listed on an LD-1 or LD-2 report, regardless of whether they were required to be listed (as in the case in which a registrant listed an individual as a lobbyist in an abundance of caution). Any lobbyist who is reported on line 10 of a LD-1 or line 18 of a LD-2 must file a LD-203 report, unless that lobbyist has been listed on line 23 as removed for all clients of the registrant prior to the beginning of the relevant LD-203 filing period. The Secretary and the Clerk view lines 10 (LD-1), 18 and 23 (LD-2) as determinative for an individual lobbyist's obligation to file a LD-203 Report, rather than the mechanics of the contributions electronic filing system, which is not relevant in the determination of a filer's legal obligations.

Sole proprietors and small lobbying firms are reminded that two reports are required: one filed by the registrant and one filed by the listed lobbyist (even if the lobbyist is the registrant and vice versa).

Filers are expected to use reasonable care when filling out and submitting LD-1, LD-2 and LD-203 forms.

The coverage periods for the semiannual reports are January 1 through June 30, and July 1 through December 31. **The Secretary and the Clerk do not have the authority under the LDA to grant extensions for filing LDA documents.**

Mandatory Electronic Filing

Section 5 of the LDA was amended to require the mandatory electronic filing of all documents required by the LDA. The only exception to mandatory electronic filing is for the purpose of amending reports in the format previously filed, or for compliance with the Americans with Disabilities Act. Each electronic lobbying disclosure form provides usability for people with vision impairments who have the appropriate software and hardware. If you have questions regarding additional ADA accommodations, please contact the Senate Office of Public Records at 202-224-0758.

It is necessary for each active lobbyist to obtain his/her individual user identification number and password in order to file semiannual LD-203 reports electronically with the Secretary and Clerk. Each and every registrant and lobbyist is responsible for maintaining the confidentiality and use of the user password and for all filings made using their assigned user ID and password. Filers should notify the Secretary and Clerk immediately upon learning of any unauthorized use of a user ID and/or password, as it is presumed that filings are made by the filer.

Semiannual Reporting of Certain Contributions – Contents of Report

The core information required by Section 5(d) of the LDA and incorporated into Form LD-203 is: (1) certain contributions that are not disclosed in the LD-2; and (2) a certification that the filer has read and understands the gift and travel provisions in the Rules of both the House and the Senate, and that the filer has not knowingly violated the aforementioned Rules.

The beginning part of Form LD-203 contains identifying information. Section 5(d) requires specific information regarding certain contributions and payments made by the filer (i.e., each active registrant and active lobbyist), as well as any political committee established or controlled by the filer. In determining contributions and or payments to report, it is important to note that, in some cases, a leadership PAC (as defined by the Federal Election Campaign Act, "FECA") or a former leadership PAC (for example, in the case of a lobbyist who was previously a covered official) may be a political committee established, financed, maintained, or controlled by a lobbyist. Also, a political committee that has changed from a principal campaign committee into a multicandidate committee (defined in the FECA) could be considered to have been established by a covered official or federal candidate. Finally, the FECA defines those organizations that may establish separate segregated funds (SSFs).

The middle part of Form LD-203 requires the filer to disclose for itself, and for any political committee the filer establishes or controls:

- The date, recipient, and amount of funds contributed (including in-kind contributions) to any Federal candidate or officeholder, leadership PAC, or political party committee (registered with the Federal Election Commission), if the aggregate during the period to that recipient equals or exceeds $200. Please note that contributions to state and/or local candidates and committees not required to be registered with the Federal Election Commission need not be disclosed.
- The date, the name of honoree and or honorees, the payee(s) and amount of funds paid for an event to honor or recognize a covered Legislative Branch or covered Executive Branch official (except for information required to be disclosed by another entity under 2 U.S.C §434).
- The date, the name of honoree and or honorees, the payee(s) and amount of funds paid to an entity or person that is named for a covered Legislative Branch official, or to an entity or person in recognition of such official (except for information required to be disclosed by another entity under 2 U.S.C §434).
- The date, recipient, the name of the covered official, the payee(s) and amount of funds paid to an entity established, financed, maintained, or controlled by a covered Legislative or Executive Branch official or to an entity designated by such official (except for information required to be disclosed by another entity under 2 U.S.C §434).

  A non-voting board member (e.g. honorary or ex-officio) does not control an organization for these purposes. For purposes of the LDA, the term "designated," for instance, includes a covered legislative branch official's or covered executive branch official's directing a charitable contribution in lieu of an honoraria pursuant to House, Senate or executive Ethics rules. It also includes a payment that is directed to an entity by a covered official who is also on the board of the entity. In contrast, a contribution following a mere statement of support or solicitation does not necessarily constitute a reportable event under Section 203 without some further role by a covered official.

  Please note that a charitable organization established by a person before that person became a covered official and where that covered official has no relationship to the organization after becoming a covered official, is not considered to be one established by a covered official.

  Please also note that a covered official's de minimis contribution to a charity (in proportion to the charity's overall receipts of contributions) is not an indication of financing, maintaining or controlling the charity (although supplemental facts might require reporting the contribution).
- The date, the name of honoree and or honorees, the payee(s) and amount of funds paid for a meeting, retreat, conference, or other similar event held by, or in the name of, one or more covered Legislative Branch or covered Executive Branch officials (except for information required to be disclosed by another entity under 2 U.S.C §434). Costs related to non-preferential sponsorship of a multi-candidate primary/general election debate for a particular office do not have to be disclosed on a LD-203.

- The date, the name of honoree, the payee(s) and amount of funds equal to or exceeding $200 paid to each Presidential library foundation and each Presidential inaugural committee. Please note that contributions to the official Presidential Transition Organization ("PTO") of the President-elect and Vice President-elect are reportable under the Presidential Transition Act.

In the case of numbers 2-6, if a lobbyist makes a reportable payment but is reimbursed by a registrant, the Registrant reports the payment as its own, rather than the lobbyist reporting the payment.

This section of the LDA has been written broadly, and, in light of other provisions in P.L. 110-81, it would be prudent to consult with the appropriate Ethics Committee, as well as the Office of Government Ethics, in order to determine if any event listed above is otherwise prohibited under law, Senate or House Rules, or Executive Branch regulations. For some events, it may be prudent to consult with the Federal Election Commission as well. Please note that HLOGA and the Federal Election Campaign Act are not harmonized to contributions of exactly $200.

Example 1: In State "A," a group of constituents involved in widget manufacturing decide to honor Senator "Y" and Representative "T" with the "Widget Manufacturing Legislative Leaders of 2008" plaques. Registrant "B" is aware that "Y" has checked with the Senate Select Committee on Ethics regarding her ability to accept the award and attend the coffee, and "T" has checked with the House Committee on Standards of Official Conduct. "B" pays caterer "Z" $500 and Hotel "H" $200 to partially fund the event. "B" would report that it paid $500 to "Z" and $200 to "H" on November 20, 2008 for the purpose of an event to honor or recognize "Y" and "T" with the plaques.

Example 2: After checking to discover if the activity is permissible, Lobbyist "C" contributes $300 on June 1, 2008 to Any State University toward the endowment of a chair named for Senator "Y." "C" would report the information above noting that the payment was made to Any State for the endowment of "Y's" chair.

Example 3: Senator "Y" has been asked to speak at a conference held in Washington, DC, sponsored by a professional association of which Registrant "B" is a member. "B" makes a donation of $100 to Charity "X" in lieu of the association paying a speaking fee (i.e., a contribution in lieu of honoraria). "B" would disclose a contribution of $100 on the date of the payment, with the notation the payment was made as a contribution in lieu of honoraria to an entity designated by "Y."

Example 4: There is a large regional conference on "Saving Our River," sponsored by three 501(c)(3) organizations. Senator "Y" and Representative "T" are given "Champions of Our River" awards at a dinner event that is part of the conference. Registrant "B" contributes $3,000 specifically for the costs of the dinner event, paying one of the sponsors directly. At the time of the specific or restricted contribution, "B" was aware that "Y" and "T" would be honorees. Regardless of whether "B" is a sponsor under House or Senate gift rules and although B is not listed on the invitation as a sponsor (or the like) nor is publicly held out as a sponsor (or the like), since "B" partially paid for the cost of the event, "B" would disclose a payment of $3,000 on the relevant date payable to the sponsor with the notation that "Y" and "T" were honored.

Example 5: Registrant "B," an industry organization, hosts its annual gala dinner and gives a "Legislator of the Year" award to Representative "T." Revenues from the gala dinner help fund Registrant "B's" activities throughout the year. Registrant "B" must report: 1) the cost of the event (hotel, food, flowers, etc., but not indirect costs such as host staff salaries and host office overhead; 2), the payee(s) (as a convenience to filers, separate vendors may be aggregated by using the term "various vendors"); and 3) that the event honored Representative "T." Please note that "B" must still separately report the cost of any item that "B" gave "T." The fact that the event helped raise funds for the organization does not change the reporting requirement, though it could be noted in the filing.

Example 6: Registrant "B," an industry organization, has an annual two-day "Washington fly-in" for its members. Among the events for its members is an event on "The Importance of Industry G to the U.S. Economy." Senator "T" is listed on the invitation as a speaker at the event. Based on these facts alone, Registrant "B" would not need to report the event under this section. For a covered official to speak at such an event would not, in and of itself, form the basis for concluding that the official is to be honored or recognized. Supplemental facts might require reporting the cost of the event. For example, if Senator "T" were given a special award, recognition, or honor (which may not necessarily be through the receipt of a physical object) by the organization at the event, the cost of the event would have to be reported, even if the invitation did not indicate that such would be given. Simply designating a covered official as a "speaker" at an event at which the covered official receives a special award, recognition or honor, will not permit the filer to avoid or evade reporting the expenses of the event.

Example 7: Senator "Y" and Representative "T" are "honorary co-hosts" of an event sponsored by Registrant "R" to raise funds for a charity, which is not established, financed, maintained, or controlled by either legislator. "Y" and "T's" passive allowance of their names to be used as "co-hosts," in and of itself, is not sufficient to be considered "honored or recognized." The purpose of the event is to raise funds for Charity V, not to honor or recognize "Y" or "T." Nor are these facts (i.e. being passive honorary co-hosts), in and of themselves, sufficient to treat the event as being held "by or in the name" of "Y" or "T." Supplemental facts might require reporting the cost of the event.

Example 8: Registrant "R" sponsors an event to promote "Widget Awareness." "The Honorable Cabinet Secretary Z" is listed on the invitation as an "attendee" or "special invitee" but will not receive an honor or award at the event. Based on these facts alone, "R" would not need to include the costs of this event on "R's" disclosure under this section. Mere listing of "Z's" anticipated attendance at an event the purpose of which is to promote Widget Awareness, in and of itself, is not sufficient to be considered "honored or recognized". Use of the phrase "The Honorable" in this context is consistent with widely accepted notions of protocol applicable to referencing certain very senior government officials. Supplemental facts might require reporting the cost of the event. For instance, if "Z" received a special, award, honor, or recognition by "R" at the event, "R" would have to report the costs of the event noting that "Z" was being honored or recognized.

Example 9: Registrant "B" buys a table at a dinner event sponsored by a 501(c) organization to honor Representative "T" but Registrant "B" is not considered a sponsor of the event under House and Senate gift rules. Lobbyist "C" pays the $150 individual ticket cost to attend the dinner, but is not considered a sponsor of the event under House and Senate gift rules. The purchase of a table or ticket to another entity's event, in and of itself, is not sufficient to be considered paying the "cost of an event." Supplemental facts might require reporting the cost of the event. For example, if (1) "B" or "C" undertake activities such that "B" or "C" becomes a sponsor of the event for House and/or Senate gift rule purposes; or (2) "B" or " C" purchase enough tickets/tables so that it would appear that they are paying the costs of the event and/or would not appear to be just ticket or table-buyers (regardless of whether "B" or "C" is a sponsor under House or Senate gift rules), then "B" or "C" would need to report the costs incurred by "B" or "C" (as the case may be) for the event, noting that Representative "T" was the honoree. In the case of filers purchasing multiple tickets and/or tables to an event, a case-by-case analysis will be needed to determine if the quantity is such that it would appear that the filer is paying the costs of the event.

Example 10: Lobbyists "C" and "D" serve on the board of a PAC as member and treasurer respectively. As board members, they are in positions that control direction of the PAC's contributions. Since both are controlling to whom the PAC's contributions are given, they must disclose applicable contributions of the PAC on their semi-annual reports. If "C" and "D" serve on the board of a Separate Segregated Fund (SSF), they may report that they are board members of an SSF in lieu of reporting the SSF's applicable contributions as long as the SSF's contributions are reported in the connected organization's LD-203.

Example 11: Registrant "L" holds an annual fundraising event that honors one person from each of the 50 states whom "L" deems to have played a significant role for the cause "L" supports. In 2009, four of the honorees were covered legislative and executive officials. "L" must disclose the total amount that it paid for the event, disclosing in the payee section "various vendors," and disclosing the names of the four covered officials. Although not required, and thus at its option , "L" could note in the comments section that 4 of the 50 honorees were covered officials. Section 203 of HLOGA does not contemplate a breakdown, delineation or separation of expenses

Example 12: Registrant "O" is a university. In June 2009, in conjunction with its commencement event, "O" conferred an honorary degree upon Senator "P." "O" would report all payments relating to the commencement event (chair rental, lunch for honorees, etc.) on its LD-203, listing "various vendors" as the payee, and Senator "P" as the honoree. Although not required, and thus at its option, "O" could comment that "P" received an honorary degree.

The final part of the form is a certification that the filer has read and is familiar with those provisions of the Standing Rules of the Senate and the Rules of the House of Representatives relating to the provisions of gifts and travel and has not provided, requested or directed a gift, including travel, with knowledge that receipt of the gift would violate either Chamber's Rules. The form contains a check box for the certification, and the user ID and password process will verify the filer identity. Each and every registrant and lobbyist is responsible for maintaining the confidentiality and use of the user password and for all filings made using their assigned user ID and password. Filers should notify the Secretary and Clerk immediately upon learning of any unauthorized use of a user ID and/or password, as it is presumed that filings are made by the filer.

Please note that in the case of a registrant, a signatory is an individual who is responsible for the accuracy of the information contained in the filing. In all cases an individual lobbyist is responsible for all information contained in his or her report. Under section 6 of the LDA, the Secretary and Clerk refer the names of registrants and lobbyists who fail to provide an appropriate response within sixty (60) days to either officer's written communication rather than the name of the signatory. Both signatories and any third-party preparers should retain appropriate documentation to verify report contents. Third-party preparers should also retain appropriate documentation to demonstrate that they have authorization to make such filings on behalf of all filers (including lobbyist-employees of registrants) using their services.

Each registrant and active lobbyist, regardless of any contribution activity or any lack thereof, must file Form LD-203 semiannually due to the certification provision.

Section 8 -– Termination of a Lobbyist/Termination of a Registrant

Termination of a Lobbyist

The LDA is not specific as to how far into the future the registrant should project an expectation that an individual will act as a lobbyist. It seems neither realistic nor necessary to expect registrants to make such projections beyond the next succeeding quarterly reporting period. Accordingly, if a registrant reasonably expects an individual to meet the definition of lobbyist in either the current or next quarterly period, the lobbyist should remain in an "active" status. If a registrant does not believe this to be the case, the lobbyist can be removed from the list of lobbyists for the registrant. A registrant may remove a lobbyist only when (i) that individual's lobbying activities on behalf of that client did not constitute at the end of the current quarter, and are not reasonably expected in the upcoming quarter to constitute, 20 percent of the time that such employee is engaged in total activities for that client; or (ii) that individual does not reasonably expect to make further lobbying contacts. In order to properly terminate a lobbyist, the registrant must complete Line 23 of LD-2, which is used to remove names of employees who are no longer expected to act as lobbyists for the client due to changed job duties, assignments, or employment status. Amending the LD-1 or LD-2 to erase a lobbyist listed on lines 10 or 18, respectively, is not a proper termination.

Example 1: Lobbying Firm "Y" registers for Client "Z" on March 15, 2008, listing employees "A," "B," "C," and "D" on line 10 of Form LD-1. For the first quarterly reporting period in 2008, "Y" will list "A," "B" and "C" on Line 18 of LD-2. "D" has no lobbying activities for that quarterly period, so he would not be listed. During the second quarter of 2008, "D" leaves firm "Y" to start his own lobbying business. For the second quarterly period, "Y" will report that "D" no longer meets the definition of "lobbyist" for Client "Z" on Line 23 of LD-2.

Example 2: Lobbying Firm "Y" registers for Client "Z" as above listing the aforementioned "A," "B," "C," and "D" as lobbyists on March 15, 2008. One month after registration, "C" and "D," who engaged in lobbying activities for "Z" as partners of "Y," decide to leave the partnership effective June 1, 2008. On the Q2 Report for 2008, "Y" would report any lobbying activity for "C" and "D" on Line 18 of LD-2. "Y" would also reflect "C" and "D's" departure by listing them on Line 23 of LD-2 in the same filing.

An individual who no longer meets the definition of lobbyist under 2 U.S.C. § 1602(10) can be relieved from having to file an LD-203 for future semiannual periods by proper removal from the registrant's active lobbyists list. This is accomplished by the registrant listing such an individual on line 23 of the LD-2 quarterly report for each client for which the individual was previously listed. The obligation to file a LD-203 arises from being listed as a lobbyist and not being terminated by the registrant/employer. Thus, if a lobbyist has not been properly terminated by being listed on Line 23 of the LD-2 for every client for which the lobbyist was listed, the Secretary and Clerk will expect to receive a semi-annual report from him/her.

Example: Registrant "A" employs Lobbyist "C" who has lobbying activity on behalf of Client "R" in January and February 2008. In March Lobbyist "C" no longer expects to engage in lobbying activities for "R" or any other client in the firm, although "C" will continue to do non-lobbying consultation for numerous clients. "A" removes Lobbyist "C" as an active lobbyist by listing "C" on line 23 of the LD-2 form for the Q1 reporting period and not listed on subsequent quarterly LD-2 reports. However in July, Lobbyist "C" is required to file an LD-203 report due July 30 disclosing his activity from January 1 through the date of his termination.

Termination of a registrant/client relationship

Under Section 4(d) of the LDA, a lobbying firm may terminate a registration for a particular client when it is no longer employed or retained by that client to conduct lobbying activities and anticipates no further lobbying activities for that client. An organization employing in-house lobbyists may terminate its registration when in-house lobbying activities have ceased and are not expected to resume. Similarly, in situations in which a registration is filed in anticipation of meeting the registration threshold that subsequently is not met, a registrant also has the option of termination. Just as we have been interpreting that the obligation to report quarterly under the LDA arises from active status as a registrant, we believe that a report disclosing the final lobbying activity of a registrant is mandatory. In order to terminate the registration, the registrant must file Form LD-2 by the next quarterly filing date, checking the "Termination Report" box, and supplying the date that the lobbying activity terminated. A valid termination report discloses lobbying income or expenses **and** any lobbying activity by lobbyists during the period up to and including the termination date.

Example 1: Lobbying Firm "A" accepted a contract with Client "B" on January 1, 2008, began lobbying activities, and timely registered on or before February 14. On March 31, the contract with "B" ended. Lobbying Firm "A" must file Form LD-2 by April 20, 2008, disclosing the lobbying income from and lobbying activity for Client "B" that took place during the period January 1 through March 31. The firm will check the "Q1" box on Line 8, the "Termination Report" box on Line 10, and fill in "3/31/2008" in the Termination Date space (also on Line 10).

Example 2: Corporation "C" filed its registration on February 14, 2008, listing employee "E" as its only lobbyist. Through March 31, "E" spends less than 20 percent of her total time in lobbying activities. "C" would not have filed a registration if it had foreseen that its lobbying activities would be so limited, and there is no expectation that "E" or any other employee of "C" will meet the Section 3(10) definition of "lobbyist" for the April – June quarterly period nor that lobbying expenses will exceed $11,500. While Corporation "C" as a registrant must file a report for January - March 2008, "C" will check the "Termination Report" box on Form LD-2, write in 3/31/08, disclose the amount of expenses for the reporting period, and "E's" lobbying activity for the reporting period.

Section 9 - Relationship of LDA to Other Statutes

LDA and FARA

The technical amendments to the LDA made in 1998 reflected a determination that the Foreign Agents Registration Act (FARA) standards are appropriate for lobbying on behalf of foreign governments and political parties, but that LDA disclosure standards should apply to other foreign lobbying. An agent of a foreign commercial entity is exempt under FARA if the agent has engaged in lobbying activities and registers under the LDA. An agent of a foreign commercial entity not required to register under the LDA (such as those not meeting the de minimis registration thresholds) may voluntarily register under the LDA. The amendments reaffirm the bright line distinction between governmental and non-governmental representations, and are not meant to shroud foreign government enterprises. Questions relating to the Foreign Agents Registration Act must be directed to the Department of Justice Foreign Agent Registration Unit at (202) 514-1231.

LDA and IRC

Restrictions on lobbying by tax-exempt organizations are governed by the definitions in the IRC, not those of the LDA. The LDA and the IRC intersect in three different ways.

First, Section 15 of the LDA defines which registrants are eligible for the "safe harbor." Section 15 allows entities that are required to report and do report lobbying expenditures under section 6033(b)(8) of the IRC to use IRC definitions for purposes of LDA Sections 4(a)(3) and 5(b)(4). Section 15(b) of the LDA allows entities that are subject to section 162(e) of the IRC to use IRC definitions for purposes of LDA Sections 4(a)(3) and 5(b)(4).

Second, Section 15 advises registrants regarding how they should use IRC definitions. Prior to the technical amendments, the statute was not clear as to the extent to which eligible organizations could use IRC definitions for other (i.e., non-expense) reporting and disclosure requirements of the LDA. As a result of the amendments, registrants who make the Section 15 expense election must use for other reporting the IRC definitions (including the IRC definition of a covered Executive Branch official) for Executive Branch lobbying, and the LDA definitions for Legislative Branch lobbying.

Third, Section 15 allows electing registrants to insert the amount that is ultimately reportable to the Internal Revenue Service for LDA quarterly reports.

LDA and False Statements Accountability Act of 1996

The False Statements Accountability Act of 1996, amending 18 U.S.C. § 1001, makes it a crime knowingly and willfully: (1) to falsify, conceal or cover up a material fact by trick, scheme or device; (2) to make any materially false, fictitious, or fraudulent statement or representation; or (3) to make or use any false writing or document knowing it to contain any materially false, fictitious, or fraudulent statement or entry; with respect to matters within the jurisdiction of the Legislative, Executive, or Judicial branch. The False Statements Accountability Act does not assign any responsibilities to the Clerk and Secretary.

LDA and Prohibitions on the Use of Federal Funds for Lobbying

The LDA does not itself regulate lobbying by federal grantees, or contractors, though other laws, as well as contractual prohibitions, may apply. Questions concerning lobbying activities of federal grantees or contractors should be directed to the appropriate agency or office administrating the contract or grant.

Note, however, that Section 18 of the LDA prohibits 501(c)(4) organizations who engage in lobbying activities from receiving federal funds through an award, grant or loan.

Section 10 - Public Availability

The Act requires the Secretary of the Senate and the Clerk of the House of Representatives to make all registrations and reports available for public inspection over the Internet as soon as technically practicable after the report is filed.

Section 11 - Review and Compliance

The Secretary of the Senate (Office of Public Records) and the Clerk of the House (Legislative Resource Center) must review, verify, and request corrections in writing to ensure the accuracy, completeness, and timeliness of registrations and reports filed under the Act.

Section 12 - Penalties

Whoever knowingly fails: (1) to correct a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House; or (2) to comply with any other provision of the Act, may be subject to a civil fine of not more than $200,000, and whoever knowingly and corruptly fails to comply with any provision of this Act may be imprisoned for not more than 5 years or fined under title 18, United States Code, or both.

For Further Information

Senate Office of Public Records
232 Hart Senate Office Building
Washington, DC 20510
(202) 224-0758

Legislative Resource Center
B-106 Cannon House Office Building
Washington, DC 20515
(202) 226-5200