New Joint Congressional Guidance Applies to Upcoming July 2009 Lobbying Disclosures

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When preparing to file their LD-2 quarterly lobbying disclosure reports (due July 20, 2009) and LD-203 semi-annual lobbying contribution reports (due July 30, 2009), filers should review recent changes to official Lobbying Disclosure Act ("LDA") guidance to ensure proper compliance.

On June 9, 2009, the Clerk of the House of Representatives and the Secretary of the Senate issued revised joint guidance for lobbyist compliance with the LDA, as amended by the Honest Leadership and Open Government Act of 2007 ("HLOGA"). The new guidance document[1] supersedes all previous guidance documents. Four sections of the guidance were revised: Lobbying Registration (Section 4), Quarterly Reporting of Lobbying Activities (Section 6), Semiannual Reporting of Certain Contributions (Section 7), and Termination of a Lobbyist/Termination of a Registrant (Section 8). Additionally, on June 16, 2009, further guidance was issued to clarify changes to lobbyist termination requirements outlined in Section 8 of the revised guidance.

Changes to Section 4: Lobbying Registration

The revised guidance clarifies that the 45-day time period for filing an initial LD-1 lobbying registration form begins to run from the earliest time that the potential registrant employs an individual who meets the definition of a lobbyist (subject to the monetary thresholds discussed below). The registration requirement is triggered either (1) on the date the registrant's employee/lobbyist is assigned or retained to make more than one lobbying contact on behalf of the client (provided the employee spends 20 percent or more of his or her time on lobbying activities for the client), or (2) on the date the employee/lobbyist makes a second lobbying contact (and meets the 20 percent threshold).

If the LDA registration requirement is triggered for a particular client, a lobbying firm is required to register for that client, provided that total income from the client for lobbying activities exceeds or is expected to exceed $3,000 during a quarterly period. If the LDA registration requirement is triggered for an organization employing in-house lobbyists, the organization is required to register if it expects to spend more than $11,500 on lobbying activities during a quarterly period.[2] If the lobbying firm or organization was exempt because it did not meet or expect to meet the monetary threshold, but subsequently meets or expects to meet the threshold, registration is required immediately.

Changes to Section 6: Quarterly Reporting of Lobbying Activities

Under Section 15 of the LDA, certain entities can elect to report, on their LD-2 (quarterly periodic

disclosure) forms, total lobbying expenditures as reported to the IRS.[3] Entities must report all expenses that fall within the applicable Internal Revenue Code definition and must report consistently for all reports in a given calendar year. The revised guidance clarifies that, if registrants elect to report under Section 15, they may not subtract expenses for state, local, and grassroots lobbying activities from their total reported expenses on their LD-2 forms. In contrast, the Lobbying Disclosure Act does not require the reporting of expenses for state, local, and grassroots lobbying activities for filers that do not employ the IRS standards.

Changes to Section 7: Semiannual Reporting of Certain Contributions

Twice annually, each lobbyist listed or required to be listed on the LD-1 or LD-2 is required to file form LD-203. Among other things, the LD-203 requires disclosure of certain political contributions by registered lobbyists. The revised guidance better clarifies several exceptions to those contributions that are required to be disclosed on the LD-203[4]:

- Contributions to state and local candidates and to party committees not required to be registered with the FEC need not be disclosed.
- Broadly, contributions to an entity established, financed, maintained, or controlled by a covered offical or to an entity designated by a covered official must be disclosed; however, the revised guidance stipulates that:
    - a charitable organization established by a person before that person became a covered official, and where the covered official has no relationship to the organization after becoming a covered official, is not considered to be an organization established by a covered official; and
    - 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 the covered official's financing of the charity.
- Costs relating to sponsorship of a non-preferential multi-candidate primary/general election debate for a particular office need not be disclosed.

Changes to Section 8: Termination of a Lobbyist/Termination of a Registrant

The revised guidance provides additional details regarding the removal of an individual from a registrant's active lobbyist list.[5] Further clarification was issued on June 16. If an individual is reasonably expected to meet the definition of lobbyist in the current and next reporting period, the lobbyist should remain active. If, on the other hand, it is expected that an individual will not meet the definition during the current and next reporting period, he or she may be removed from the registrant's list of active lobbyists. The lobbyist may be removed 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.

Notably, in order to be relieved from the LD-203 filing requirement in future semiannual reporting periods, the registrant employing the "terminated" lobbyist must remove that lobbyist from the electronic system by completing Line 23 of the LD-2 for all clients for whom the individual acted as a lobbyist.

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[1]The revised guidance document can be found at http://lobbyingdisclosure.house.gov/amended_lda_guide.html or http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf.

[2]After January 1, 2009, the Consumer Price Index (CPI) was used to adjust the financial threshold for registration from $2,500 to $3,000 for lobbying firms and from $10,000 to $11,500 for organizations that employ in-house lobbyists.

[3]Under Section 15, entities who are subject to sections 6033(b) and 162(e) of the Internal Revenue Code (including non-profit organizations and businesses required to keep records of lobbying expenses for tax purposes) may choose to report expenditures on the basis of the Internal Revenue Code's definition of "influencing legislation" rather than the LDA's definition of "lobbying activities." Additional information is available in the guidance document at Section 6.

[4]Specific examples are provided in the guidance document at Section 7.

[5]With respect to a registrant generally, once a registration is on file, a registrant must report its lobbying actvities (or lack thereof) every reporting period.