



Q&A on the LD-203 & HLOGA Update -- Revised July 17, 2008

(Based on New Congressional Guidance Issued on July 16, 2008)

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Revision and Cautionary Note: The original version of this Q&A was released on July 10, 2008 and reflected our initial interpretations of the filing requirements for the LD-203 based on the forms and guidance issued by the Secretary of the Senate and Clerk of the House as of July 9, 2008. Some areas of the new form and guidance prompted serious questions about the information required, and ASAE and McKenna Long & Aldridge noted these areas throughout the original Q&A document. On July 16, 2008, the Secretary and the Clerk released a revision of their official guidance document that addressed most of these questions and substantially limited the information that must be reported on the LD-203. The introduction to Section 3 of this Q&A document and the answer to the question -- "Is there any more guidance?" -- have been substantially rewritten to reflect the new examples in the July 16 Guidance issued by the Secretary and the Clerk. We will keep the community apprised in the event additional clarification or guidance is issued for the LD-203, which has been suggested. Please note that this Q&A is for informational purposes only and does not constitute specific legal advice or opinions by McKenna Long & Aldridge LLP. Such advice and opinions are provided only upon engagement with respect to specific factual situations.

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On June 30, 2008, the offices of the Secretary of the Senate and Clerk of the House of Representatives announced the release of their new web-based "LD-203 Reporting System" that applies to all registered lobbying organizations and each of the individuals listed as lobbyists in their LD-1 and LD-2 filings. The purpose of the new LD-203 is for registered organizations and their listed lobbyists to report certain contributions and payments linked to officials as well as to certify their understanding and compliance with Congressional gift and travel rules. This new form is named after Section 203 of the Honest Leadership and Open Government Act of 2007 ("HLOGA"), which added a new Section 5(d) to the Lobbying Disclosure Act ("LDA"). Initial filings are required by July 30, 2008 and within 30 days after the end of future semiannual reporting periods.

The Secretary of the Senate and the Clerk of the House have spent a great deal of time developing technical instructions and substantive guidance documents that can be found at http://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm and <http://lobbyingdisclosure.house.gov/>. These include a detailed User Manual and step-by-step audio-visual tutorials for the new web-based electronic filing system (also available on DVD). On May 29, a revised version of the Lobbying Disclose Act Guidance document was issued, which provides a substantive explanation of the new law and a number of specific examples (at pages 20-22).

It is recommended that every registrant and lobbyist carefully review these materials. This Q&A document is designed to provide an overview and also to highlight certain technical and substantive issues regarding the new LD-203. An update is also provided regarding other LDA compliance issues that have arisen over the first six months under the new law, including LD-2 filing requirements, GAO audits, Congressional ethics rules, HLOGA convention requirements, and FEC bundling rules. Additional Q&A and other resource documents on the LDA can be found at <http://www.asaecenter.org/GeneralDetail.cfm?ItemNumber=16409>

As always, if you have any questions about lobbying and ethics reform, please contact ASAE at (202) 626-2703 or publicpolicy@asaenet.org. You can also contact individual members of the Political Law Practice Group of McKenna Long & Aldridge LLP as follows: Jeff Altman at (202) 496-7520 or jaltman@mckennalong.com; Randy Nuckolls at (202) 496-7176 or muckolls@mckennalong.com; Stefan Passantino at (202) 496-7138 or spassantino@mckennalong.com; and Ted Van Der Meid at (202) 496-7713 or tvandermeid@mckennalong.com.

Section 1: Overview of the New LD-203 Form

What is the new LD-203 and how is it different from the LD-1 and LD-2?

The LD-1 is the form that must be filed within 45 days after an organization determines that it must register under the LDA. Among other things, the LD-1 identifies the individuals who must be listed as lobbyists.

The LD-2 is the quarterly reporting form that registered organizations must file to disclose lobbying activities and the expenses incurred to conduct those activities (including salaries, direct expenses, and overhead for listed lobbyists and others in the organization who support their efforts as well as payments to outside lobbyists and the share of dues payments to organizations that conduct lobbying activities). Among other things, the LD-2 is used to list new lobbyists and to terminate the listing of individuals who no longer are lobbyists. The LD-2 must be filed within 20 days after the end of each calendar quarter.

The new LD-203 serves two new purposes:

- To disclose certain additional contributions and payments linked to officials that are not included in the LD-2 filings of registered organizations, or by any political committees established or controlled by such organizations or their listed lobbyists; and
- For the registered organization and each of its listed lobbyists to separately certify that they have read, are familiar with, and have not violated Congressional ethics rules relating to gifts and travel.

Who must file the LD-203?

A separate LD-203 must be filed by every registered organization and by each of its active listed lobbyists “**who were active for all or part of the semiannual reporting period.**” This is different than the LD-1 and LD-2, which must only be filed by the registered organization. According to the Secretary and Clerk, a registered organization remains active until it has filed a termination report for itself and any other organization that it may have listed as a client. Likewise, any individual who was listed by a registrant as a lobbyist for any part of the semi-annual period remains active until they are listed as terminated on Line 23 in a LD-2 filing. A LD-203 must be filed even if there are no contributions or payments to be reported, because the certificate of compliance with Congressional ethics rules must be completed.

When is the LD-203 due?

The LD-203 must be filed semiannually within thirty days after the end of each six month period. The initial LD-203 is due no later than July 30, 2008.

Section 2: Technical Filing Instructions

How do we get started?

Electronic notices regarding the new LD-203 electronic reporting system were sent to each active registered organization on June 30, with links to the Senate and House website. Registrants can access the new electronic reporting system by using their existing identification numbers and passwords. The first thing to do is take a few minutes to watch and listen to the audio-visual tutorials and review the User Manual and other instructional materials available on the House and Senate websites, which are excellent.

The new electronic filing system is built around the premise that registered organizations are responsible for providing basic information and keeping current the names of individuals that they list as their lobbyists. When you initially log in, you will be provided with a “pre-populated form” for your organization with contact information that you should verify. Among other things, each registered organization must review the list of its active lobbyists and verify their telephone numbers and current email addresses. Each registered organization must then initiate a process whereby an activation email will be sent to each of its listed lobbyists so they can obtain their own user identification numbers and passwords. Each listed lobbyist is responsible for completing the lobbyist’s own LD-203 in addition to the LD-203 filed by the registered organization.

What are the other features of the LD-203 Contribution Reporting system?

In addition to pre-populated forms, the new electronic reporting system allows for automated retrieval of ID numbers and passwords (once assigned); filings that can be saved on the system and amended; a “streamlined” process to allow filing with both the House and Senate “with a single button”; the ability to import data maintained on spreadsheets (this feature is only for registered organizations at this time); an online help manual; and step-by-step tutorials and demonstrations accessible for each screen.

What about new lobbyists not named in a previous LD-1 or LD-2 filing?

A registrant can not change who is listed as a lobbyist for overall LDA purposes using the LD-203 Reporting System. Rather, such changes must be made by adding a new lobbyist on the LD-2 for the quarter in which they first meet the qualifications of a lobbyist. Although you can indicate new lobbyists by adding their names to the LD-203, they will not be able to obtain their own passwords and access the LD-203 Reporting System until after they are named in a LD-2 filing.

What should be the role of the registrant after each of its listed lobbyists are activated for LD-203 purposes?

Each registered organization will be able to monitor the progress of its listed lobbyists as they are notified and take steps to obtain their own identification numbers and passwords. After that process is completed, the registered organization has no legal responsibility for helping its listed lobbyists to complete their own LD-203 filings. Prudence, however, suggests that the listing organization has an interest in making sure its employees who are listed as lobbyists understand and comply with the law. Many organizations may therefore wish to provide assistance if not assume responsibility for helping their listed lobbyists make accurate and timely filings. If filing assistance is provided, it will be important to have the listed lobbyist review and verify a printed copy of the LD-203 before it is filed.

Section 3. Substantive Reporting Requirements for Contributions and Expenses -- Revised July 17, 2008 (Based on New Congressional Guidance Issued on July 16, 2008)

Although most of the reporting requirements are simple and straightforward, some of the statutory language was initially interpreted by the Secretary of the Senate and Clerk of the House in a manner that seemed much broader than and at times inconsistent with the statutory language. Among other things, serious questions were raised about whether contributions or payments must be reported for a meeting or event at which a covered official is merely listed as a speaker or attendee, and is not specifically honored or recognized. In our initial Q&A

document, we advised that registered organizations and lobbyists should take a reasonable approach in filing the LD-203, and should exercise good faith and follow the limited written guidance provided by the Secretary of the Senate and Clerk of the House on this and other points we questioned until additional guidance might be provided. We recommended that registered organizations and their listed lobbyists not delay activating passwords and starting to complete their LD-203 filings, but indicated that it might be wise to wait until closer to the July 30 filing deadline to see if any different or additional guidance was provided.

On July 16, 2008, the Secretary and Clerk issued their revision to the official Lobbying Disclose Act Guidance document. Our response to the question -- "Is there any more guidance?" -- has been revised and rewritten to reflect this new official guidance and the substantial narrowing of the information that must be reported. Any registered organizations and lobbyists that have already filed their LD-203 may wish to file an amended report to eliminate information that is no longer required.

What information does HLOGA require to be reported?

Section 203 of HLOGA requires registrants and lobbyists (and any political committees they establish or control) to report contributions and payments in six broad categories. As paraphrased in the May 29 revision to the Lobbying Disclosure Act Guidance, registered organizations, individual lobbyists, and any political committee they establish or control, must report:

1. The date, recipient, and amount of funds contributed to any Federal candidate or officeholder, leadership PAC, or political party committee equal to or exceeding \$200 for the semiannual period
2. The date, the name of honoree(s), the payee(s) and amount of funds paid for an event to "honor or recognize" a covered Legislative or Executive Branch official (if not otherwise required to be disclosed to the FEC)
3. The date, the name of honoree(s), 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 (if not otherwise required to be disclosed to the FEC)
4. 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 (if not otherwise required to be disclosed to the FEC)
5. The date, the name of honoree(s), 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 or Executive branch officials (if not otherwise required to be disclosed to the FEC)
6. The date, the name of honoree, the payee(s) and amounts of funds paid to any Presidential library foundation or Presidential inaugural committee equal to or exceeding \$200 for the semiannual period

The July 16 revised Guidance continues to caution registered organizations and lobbyists to make sure that all such contributions and expenses are in compliance with Congressional gift and travel rules as well as any Federal Election Commission (FEC) requirements. Also, certain campaign contributions must be reported to Congress even if they already are being reported to the FEC by the recipients.

What does the LD-203 say I need to report?

The LD-203 form itself, the tutorials and User Manual do not exactly track the language of Section 203 or the May 29 revision to the Lobbying Disclosure Act Guidance. Instead, registered organizations and individual

lobbyists are directed to report their contributions and payments under four broad categories: FECA (presumably meaning campaign contributions); Honorary Expenses; Meeting Expenses; and Presidential Library Expenses. Although these broad categories do not exactly match the descriptions in the statute, all of the statutory items should be included under one category or another, to ensure that no relevant expenditures are omitted. Further guidance on the relationship between the four listed categories and the statutory items still would be useful.

Is there any more guidance?

The July 16 revision to the official Lobbying Disclosure Act Guidance now provides ten examples that should be carefully reviewed. Although several examples were repeated from the May 29 revision, a few examples were changed or dropped altogether, and others were added. In essence, the May 29 examples have been replaced by the July 16 examples, which are now the official Guidance. A few questions remain, but these new examples go a long way in helping the lobbying community to understand and reasonably comply with the new reporting requirements.

Example 1 says that a registrant must report the amounts paid to partially fund an event to “honor” Members of Congress with “plaques” as the “Widget Manufacturing Legislative Leaders of 2008” (after confirming that the award is in compliance with Congressional ethics rules).

Example 2 provides that a contribution made by a lobbyist to help endow a university chair named after a Member of Congress needs to be reported.

Example 3 describes a situation where a Member of Congress is asked to “speak at a conference” sponsored by a “professional association” and states that a member of the association who is a registrant must report a charitable contribution it makes “in lieu of the association paying a speaking fee.”

Example 4 describes a “large regional conference” sponsored by several Section 501(c)(3) organizations where Members of Congress are given awards at a dinner event that is part of the conference. A registrant that “contributes \$3,000” to one of the sponsors “specifically for the costs of the dinner event” and who was aware that the Members of Congress would be honored “at the time of the specific or restricted contribution” was made, must report the payment. Although not expressly stated, this example would seem to illustrate that only the costs of a dinner event are reportable when the event is part of a larger conference. Some reasonable allocation made in good faith for similar “honoring” functions embedded in day long or multi-day conferences would also seem appropriate.

Example 5 describes an industry organization that gives a “Legislator of the Year” award to a member of Congress at its annual gala dinner. According to the example, the industry organization must report the “cost of the event” even if the event generates revenues to help fund the registrant’s activities throughout the year. The example states that this additional fact “could be noted in the filing.”

Example 6 replaces one of the most controversial examples in the May 29, 2008 revision of the official Lobbying Disclosure Act Guidance. This example now states that the mere listing of a Member of Congress on the invitation as a speaker during an industry organization’s annual two-day Washington fly-in “would not, in and of itself, form the basis for concluding that the official is to be honored or recognized.” However, the event would still need to be reported by the industry organization if there is a “special award, honor, or recognition by the organization at the event” -- “even if the invitation did not indicate that such [an award, honor, or recognition] would be given.”

Example 7 replaces another controversial example in the prior revision. It describes a situation where Members of Congress serve as “honorary co-hosts” of an event sponsored by a registrant to raise funds for a charity, “which is not established, financed, maintained, or controlled by either legislator.” The example states that the

“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 example notes that the “purpose of the event is to raise funds for the charity, not to honor or recognize” the legislators. These facts, in and of themselves, are not sufficient to treat the event as being held “by or in the name” in the officials. Once again, supplemental facts might require the event to be reported by the sponsor of the event.

Example 8 describes a situation where “The Honorable Cabinet Secretary Z” is listed on the invitation for an event “to promote Widget Awareness” as an “attendee” or “special invitee” -- but “Z” will not receive any honor or award at the event. The mere listing of “Z’s” anticipated attendance at an event, in and of itself, is not sufficient to be considered “honored or recognized.” Also, the 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.” Once again, if “Z” were to actually receive a special award, honor, or recognition, the “costs of the event” would need to be reported by the sponsor of the event.

Example 9 replaces yet another controversial example from the prior guidance that dealt with whether attendees at an event being put on by a third party must report their costs to attend if a covered official is honored. This new example states that 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.” According to the example, the cost would only need to be reported by an individual lobbyist or a registrant if: (1) they undertake activities such that they become “a sponsor of the event for House and/or Senate gift rule purposes”; or (2) they “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.” It should be noted that the House and Senate gift rules take a very narrow view of who is the sponsor for an event. The House Ethics Manual discusses the definition of this term in connection with the requirement that only the “sponsor of the event” can be the source of an invitation for widely attended and charity events. The House rules indicate that the “sponsor of the event” refers to the “person, entity, or entities that are primarily responsible for organizing the event” -- not someone who “simply contributes money.” According to the House Ethics Manual, “under the gift rule, the term ‘sponsor’ has a definition that is narrower than the manner in which it is commonly used. Often the large financial supporters of an event are termed as ‘sponsors’ of the event. However, such entities are **not** sponsors of an event for purposes of the gift rule unless they also have a substantial role in organizing the event.” The Senate gift rules similarly state that “those who only purchase tables or blocks of tickets to an event do not become event sponsors.” This new example would also exclude any reporting requirement for attendees who pay a registration fee for a conference or meeting where a covered official is honored. Although the new example is not completely free from ambiguity, it should eliminate the vast majority of expenses that would have been required to be reported under the previous example.

Example 10 is different than the others in that it deals with political campaign contributions. It says that individual lobbyists that “serve on the board of a non-connected [previously ‘unaffiliated’] PAC as [a] member and treasurer” thereby are “in positions that control the direction of the PAC’s contributions” and must therefore report them on their individual LD-203 filings. The July 16 revision creates an exception, however, so that lobbyists need not make duplicate reports of contributions made by a “Separate Segregated Fund (SSF) (i.e., a connected PAC).” In such case, a lobbyist may instead “report that he or she is [an officer or] board member of an SSF in lieu of reporting the SSF’s applicable contributions, so long as the SSF’s contributions are reported” in a LD-203 that is filed by the connected organization (usually the employer of the lobbyist). By using these terms of art from the Federal election laws, the Clerk and Secretary are presumably referring to the connected PACs that are established by for-profit companies, trade associations and other nonprofit organizations that are allowed to engage in political activities. Although this example is not entirely clear, individuals who serve as an officer or sit on the board of their employer’s PAC, or who serve as an officer or sit on the board of the PAC of an association to which the lobbyist or his/her employer may belong, would not need to report that PAC’s contributions on their individual LD-203 filing. However, this exception would only apply if the contributions are reported in a LD-203 filed by the association or for-profit company with which the PAC is connected and the

lobbyist discloses his or her position with respect to the PAC on his or her individual LD-203. If the connected organization is not registered and does not file a LD-203, then presumably this exception would not apply.

Additional Guidance. Although not part of the ten examples discussed above, two additional points are made in the July 16 revision to the official Lobbying Disclosure Act Guidance.

- If a lobbyist makes a reportable payment but is reimbursed by the registered organization, the registrant should report the payment as its own, rather than the lobbyists reporting the payment.
- When covered officials help assist with fundraising activities, “a mere statement of support or solicitation [by a covered official] does not necessarily constitute a reportable event under Section 203 without some further role by a covered official.” One such role that would require reporting is if the covered official is “also on the board of the entity.” Another would be if an official directs that a contribution be made in lieu of receiving a speaking fee or honorarium.

IMPORTANT NOTE: For registrants who use Method B or Method C and tax definitions for purposes of determining their lobbying expenses and activities for their LD-2 reports, a literal reading of the LDA requires the use of the broader definition of covered executive branch officials for LD-203 reporting purposes. This interpretation has been confirmed in discussions with Congressional representatives but was not addressed in the July 16 revision to the official Lobbying Disclosure Act Guidance. This is an area that may be extremely problematic for some registered organizations to achieve compliance and seems contrary to the overall intent of the LDA to simplify record keeping requirements and allow for consistency between LDA and IRS reporting requirements.

Section 4. HLOGA Certification

What is the new HLOGA Certification Requirement?

One of the key changes made by HLOGA was to make registered organizations and individual lobbyists responsible for compliance with Congressional ethics rules. Accordingly, the LD-203 includes a certification that the filer has “read and is familiar” with the House and Senate ethics rules “relating to the provision of gifts and travel” and “has not provided, requested, or directed a gift, including travel . . . with knowledge that receipt of the gift would violate” these rules.

Which employees are covered by Congressional ethics rules?

The ethics rules apply to every employee of an organization that is registered or that has an outside lobbyist who registers and lists the organization as its client. Nothing of value can be given by any employee to Members of Congress or their staff unless one of the exceptions apply (e.g., a widely attended event, nominal food not part of a meal, one-day travel planned without lobbyist involvement, personal friendship, etc.).

What are the penalties for noncompliance and who can be held liable?

HLOGA authorizes civil fines up to \$200,000 and possible criminal jail terms up to five years for any willful or knowing violation. This includes the LD-203 certification and other LDA reporting requirements such as the LD-2. According to the May 29 revision to the Lobbying Disclosure Act Guidance, the Secretary and Clerk may refer the names of registrants and lobbyists to the Department of Justice who fail to provide an appropriate response within 60 days to a notice of noncompliance from either the Senate or House, rather than the name of the signatory who signs on behalf of the organization. Of course, individual lobbyists who falsely sign their own LD-203 certification may be held liable. False statement penalties under other statutes may also apply.

What actions or compliance program should I have in place in order to be able to make this certification in good faith and avoid any fines or penalties?

HLOGA requires a registrant to certify that the organization has reviewed the new House and Senate rules relating to gifts and travel, and that the employees of the organization have not offered anything in violation of these gift and travel restrictions. Any knowing or willful violation of this certification is subject to potential civil fines and criminal penalties. Each registered organization should ensure that it understands the new rules and has provided information about the new rules to its key employees that might interact in any way with Members of Congress and their staff. The information can be posted on an intranet page, sent via email or in written form to all employees. It is also a best practice to conduct some type of training program for staff, particularly those in Washington D.C. and those who come in contact with Congressional employees. Many organizations are conducting workshops or training sessions on HLOGA and then asking all employees to certify via email or by signing a form twice yearly stating that the employee understands and is in compliance with HLOGA.

Each registered organization and its lobbyists must also make sure that they have appropriate record keeping procedures in place to keep track of their lobbying time and expenses that must be reported on LD-2, and the contributions that must be reported on LD-203. As discussed below, this is one of the areas that the GAO is examining in its random audits and it continues to be one of the major areas of difficulty that many organizations still face in complying with the new law.

What happens if we discover someone made an improper gift while compiling information for the LD-203?

This is a difficult question to answer. An inadvertent mistake should always be addressed as soon as it is discovered and corrected to the extent possible by obtaining repayment or reimbursement for any improper gifts or travel. Depending upon the severity of the rule violation, the filer should also discuss this situation with their legal counsel.

Section 5. HLOGA Update: LD-2 Filings; GAO Audits; Congressional Gift & Travel Rules; HLOGA Convention Rules; FEC Bundling Rules

What lessons have we learned and what common mistakes have we seen with the first quarterly LD-2 filings?

We have seen that there is still considerable confusion about the differences in calculating lobbying costs depending on the method of reporting selected.

Method A is available to any registrant and requires the registered organization to calculate the costs for federal lobbying activities (but not state or local) in some "good faith" manner using LDA definitions. Method B, used by most 501(c)(3) organizations, and Method C, used by most Section 501(c)(4) and 501(c)(6) organizations, allows an organization to calculate its lobbying expenses using tax definitions and then to plug the number into its LD-2 report. There are important differences in Method A, B and C definitions and calculations (e.g., Method A doesn't include state and local lobbying; Method B only applies to attempts to influence legislation; Methods A and C also include attempts to influence federal regulatory actions in differing degrees; and all three methods define covered executive branch officials differently).

Each registered organization needs to ensure that its employees are provided with appropriate definitions and understand these differences when recording their time and expenses. The organization must also ensure that

the numbers it reports on its LD-2 are consistent with the numbers that will be reported on its IRS Form 990 if Method B or C is selected.

Another common mistake is the failure of organizations to capture all of the lobbying costs that need to be reported in the following categories:

The Value of all employee time attributed to lobbying activities -- this includes not just the time of in house lobbyists but also the time of support staff, researchers, the CEO or other employees who spend some time on lobbying activities. Calculating the value of each person's lobbying time requires some tracking method, although the Congressional guidance does not dictate how detailed the timekeeping must be. The value of the lobbying time should be a fully loaded cost that includes overhead for office space, employee benefits, etc. Certain IRS safe harbor rules may be followed by organizations that elect Method C. The key here is to establish some appropriate process and then document the calculations so that the process can be explained if an audit ever occurs.

Hard costs --Travel, meals, mailing or printing costs directly associated with lobbying activities must be counted.

Payments to outside lobbying firms -- These amounts must be included even though they may also be reported by your outside lobbying firm. For organizations that use Method B or C, it is important to ask your outside lobbying firm to provide sufficient detail so that you can determine if the expenses need to be counted for tax purposes. For example, if a Section 501(c)(3) or 501(c)(6) organization hires an outside lobbyist to meet with Members of Congress or staff on regulatory and policy matters other than legislation, the outside lobbyist might need to register and report its fees to Congress using Method A. However, such expenses would not constitute lobbying under the tax rules since it does not involve any specific legislative matter (if the organization has elected to use Method B or C). Note, however, that this issue would need to be reported by the organization on their LD-2 even though the expenses are not included, since the tax definitions do not apply in determining what Congressional lobbying activities must be reported as issues on the LD-2.

Payments to other organizations -- The registrants share of dues and other payments to other organizations attributable to lobbying activities must be counted in most cases.

Other common mistakes we have seen include:

--- Failure to terminate employees on Line 23 of the LD-2 report once the employee no longer qualifies as a lobbyist or leaves the employment of the registered organization.

--- Failure to provide specific information on topics being lobbied including bill numbers, section of bills, and descriptions of the issues sufficient for the public to review the report and understand the focus of the registrant's effort.

--- Failure to add the names of corporate members or donors as "affiliated" entities or to provide a website address where their names can be found on Line 25 of a registrant's LD-2, if the member or donor pays at least \$5,000 per quarter toward the registered organization's lobbying activities and "actively participates" in the planning or control of the registrant's lobbying activities. The constitutionality of this reporting provision is still being challenged in the courts.

Who is the GAO auditing and why?

HLOGA requires that the GAO conduct audits of LDA filings and submit periodic reports to Congress about

compliance with the new law. This spring the GAO randomly selected 100 LD-2 filings for the first quarter of 2008 to be audited. The GAO contacted the registrants who submitted these 100 filings and asked to meet to discuss the LDA process, to review the registrant's records supporting the disclosures made, and to ask about changes that the registrants had implemented to ensure full compliance with HLOGA. The GAO intends to issue its first report to Congress in September describing its findings and to make recommendations for ways that future filings can be improved. In 2009, the GAO intends to audit an even larger sampling of filings, including presumably both LD-2 and LD-203 reports.

What should we do if we get a GAO audit notice?

The GAO is not an enforcement agency but rather an entity that makes recommendations and issues reports to Congress. Nonetheless, we recommend full cooperation with the GAO. The reports that the GAO intends to submit to Congress will include aggregate information about LDA filing practices, and not individualized information about any particular registrant. The GAO's practice thus far has been to visit with those selected to be audited, to review at the registrant's offices copies of backup materials, and to discuss with representatives of the audited entity their practices and procedures for compliance. The GAO has not been requesting that copies of backup documents be forwarded to the GAO.

If the GAO should find a serious lack of compliance or failure to cooperate during the audit process, it could make a recommendation to Congress to take follow up action regarding the registrant. The House and Senate at that time might ask the registrant to provide more information or submit an amended filing. In extreme circumstances, the House and Senate may make a referral to the Department of Justice.

What new developments have there been to the gift and ethics rules?

The House Ethics Committee issued a new Ethics Manual for the first time since 1994. The volume incorporates the House rules changes made at the beginning of the 110th Congress as well as the statutory changes made by HLOGA. Additional guidance documents have also been issued on particular topics.

What ethics rules have been particularly challenging?

The biggest day-to-day challenges have involved meals and entertainment, but most organizations and lobbyists have learned to restructure their activities to take advantage of the several exceptions that remain available for such activities. The travel rules are very complex and still somewhat undefined. The degree to which a lobbyist can be involved in participating or attending events during the trip need more clarity.

Some people think that the personal friendship exemption means that they can carry on as before. Personal friendship means just that, however, and the House and Senate Ethics Committees have been clear that there must be a history to that friendship, including a history of reciprocal gift giving, and that gifts are not given to other staff or Members on a similar basis. A "friendship" based on contacts made while lobbying, with only one way giving, will not be accepted by the Committees as a personal friendship.

What new developments have there been to the convention rules?

The House and Senate Ethics Committees have issued additional guidance on the convention rules but the advice given is not always the same. It is important to check with both the House and Senate Ethics Committees to ensure compliance since their rules may differ.

Both Committees say that the new restrictions apply only to the dates of the actual convention. While the House

advises that events honoring a delegation or caucus, without naming any specific Member of the delegation or caucus, would be permissible, the Senate has said such events would not be permissible if only Members of Congress are included.

An important factor to remember about the national political conventions is that the gift rules still apply. For any Member or covered official to accept free attendance, the event must still fall within one of the exceptions to the House or Senate gift rules. Also, indirect payments by registered organizations and lobbyists that are earmarked to fund convention events that would otherwise violate the new rules must be avoided.

Both the House and Senate Ethics rules should be carefully considered in structuring any convention events.

So what can we do as the organizer or contributor to a convention event?

Registered lobbyists can still participate in convention events, but they must be very careful. Events can be hosted that honor state delegations that would include Members but are not exclusively for Members. A salute to a particular industry or union would be appropriate as long as it is not in honor of a particular Member.

The Host Committees for the conventions or other political committees are another avenue for contributions, but the lobbyist cannot direct that contributions go for a specific event to honor a Member that they otherwise could not do themselves.

Are there any tax considerations for convention activities?

Don't forget that nonprofit organizations must consider their tax-exempt status in connection with their convention activities. Communications with various officials at these events may constitute lobbying. Also, Section 501(c)(3) organizations may run afoul of the prohibition against political activities by participating at one convention and not the other, or if their activities are political in nature.

What ever happened to the provision of HLOGA that requires recipients to report "bundled" contributions from lobbyists?

The proposed rules that were issued last fall by the FEC were never finalized, because there were insufficient commissioners to adopt same. Now that a quorum has been reestablished at the FEC, it is expected that these rules will be finalized and adopted. A major open question is how bundling will be reported when several organizations or lobbyists jointly sponsor a fund raising event. No matter what the final rules may say, it will be critical for recipients to properly characterize the source of any bundled contributions (e.g., a trade association's connected PAC and not the trade association itself -- which would be an illegal corporate contribution; and individual directors of a Section 501(c)(3) organization and not the organization itself -- which would violate its tax status).