LOBBY DISCLOSURE ACT GUIDANCE – effective January 1, 2008
(Revised December 20, 2007)

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Lobbying Disclosure Act Guidance

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 is new?

Honest Leadership and Open Government Act of 2007

The HLOGA, enacted on September 14, 2007 (P.L. 110-81), amends the Lobbying Disclosure Act of 1995 in the following eight areas.

Quarterly Filing of Lobbying Reports

The HLOGA changed the filing schedule of reports from semiannual to quarterly. The filing dates for quarterly reports are April 20th, July 20th, October 20th, and January 20th, or the next business day should the filing date occur on a weekend or holiday. The coverage periods are January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 for the April Quarterly (Q1), July Quarterly (Q2), October Quarterly (Q3), and January Quarterly (Q4) reports respectively.

Reduction in the Registration and Reporting Thresholds

Section 4 of the LDA was amended to reduce the financial threshold for registration to $2,500 in lobbying income for a lobbying firm. In addition, the financial threshold for registration was reduced to $10,000 in lobbying expenses for organizations that employ in-house lobbyists. The quarterly reporting financial threshold was also reduced to require amounts in excess of $5,000 to be rounded to the nearest $10,000. Amounts less than $5,000 do not have to be rounded; and the checkbox for reporting this information on Form LD-2 has been retained. The threshold as of January 1, 2008 will be as stated above. The Consumer Price Index (CPI) will be used to adjust these figures after January 1, 2009, according to the previous LDA adjustment schedule.

Additional Disclosure of a Client as a State or Local Government or Instrumentality

Section 5 of the LDA was amended to require additional disclosure regarding whether the client is a state or

local government or department, agency, special purpose district, or other instrumentality controlled by one or more state or local governments. A checkbox has been added to Line 7 of LD-2 to accomplish this disclosure.

Semiannual Reports of Certain Contributions

Section 5 of the LDA was amended by mandating an additional filing requirement. 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 listed lobbyists must file separate reports which detail FECA contributions, honorary contributions, presidential library contributions, and payments for event costs. In addition, the filer must certify that the filer has read and understands the Rules of the House and Senate relating to gifts and travel. (See discussion in Section 7 below.)

Revised Definition of Affiliation

Section 4 of the LDA was amended to expand disclosure of previously undisclosed affiliated entities that contribute more than $5,000 toward the registrant's lobbying activities (either directly to the registrant or indirectly through the client) in a quarterly period **and** actively participate in the planning, supervision, or control of such lobbying activities. The revised section includes exceptions to narrow the scope of additional disclosure to make clear that an individual member or donor who only is a member or only contributes to the client or other affiliate does not have to be disclosed.

Additional Disclosure of Past Governmental Employment

Section 4 of the LDA was amended to provide for additional disclosure of previous government service. The law now requires disclosure regarding whether a lobbyist served as a covered executive branch official or a covered legislative branch official in the 20 years before the date on which the individual first acted as a lobbyist.

Mandatory Electronic Filing of LDA Documents

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.

Increased Civil and Criminal 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. Whoever knowingly and corruptly fails to comply with any provision of this Act may be imprisoned for not more than five years or fined under title 18, United States Code, or both.

Revised Forms, Instructions and Format

LD-1, the registration form, and LD-2, the reporting form, have been revised. Previous editions of these forms are obsolete. Additionally, all LDA documents must be filed electronically (with the exceptions noted previously). Instructions for both LD-1 and LD-2 have been updated to correspond with the new forms.

LD-1 Changes

The revised LD-1 (11/07) closely resembles the obsolete LD-1. The changed content is discussed below.

●……..The disclosure of previous governmental service has been changed from 2 to 20 years on Line 10.

●……...The definition of an affiliate has been expanded on Line 13. Please note that Line 13 may only accommodate sixty (60) total listings. Those affiliates that "in whole or major part" participate in the planning, control, or supervision of the lobbying activities of the client or affiliate must be listed first, as it is mandated that they be disclosed in the filing and not through other means. The remaining active participants must be listed following the ones described above. For disclosure of more than 60 organizations, it is strongly recommended that you also either (i) complete the Internet Address field instead and list the additional affiliated organizations on your web site (as the electronic form only accommodates up to 60 listings) or (ii) file an amendment(s) to your filing disclosing the other additional affiliated organizations.

LD-2 Changes

The revised LD-2 (11/07) closely resembles the obsolete LD-2. Specific refinements to LD-2 are discussed below.

●.....Line 7 has a checkbox for disclosing whether the client is a state or local government or instrumentality.

●.....The reporting thresholds on Lines 12 and 13 have been reduced.

● …….The disclosure of previous governmental service has been changed from 2 to 20 years on Line 18.

●.....The definition of an affiliate has been expanded on Line 25. Please note that Line 25 may only accommodate forty (40) total listings. Those affiliates that "in whole or major part" participate in the planning, control, or supervision of the lobbying activities of the client or affiliate must be listed first, as it is mandated that they be disclosed in the filing and not through other means. The remaining active participants must be listed following the ones described above. For disclosure of more than 40 organizations, it is strongly recommended that you also either (i) complete the Internet Address field instead and list the additional affiliated organizations on your web site (as the electronic form only accommodates up to 40 listings) or (ii) file an amendment(s) to your filing disclosing the other additional affiliated organizations.

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 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 listed 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:

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

Covered Legislative Branch Official: Covered legislative branch official are:

1. a Member of Congress

2. an elected officer of either the House or the Senate
3. 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 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 is 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 "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 $2,500 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 $10,000 during a quarterly period.

The registration requirement is triggered at the earlier of the date a lobbyist is employed or retained to make one lobbying contact on behalf of a client, or the date a lobbyist in fact makes a second lobbying contact. In either case, registration is required within 45 days.

Example 1: Lobbying firm "A" is retained by Client "B" to make a lobbying contact on May 1, 2008. Assuming that "B" continues to want "A" representing them, "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).

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 "A" in the morning to discuss proposed legislation. In the afternoon she telephones Covered Official "B" 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, regulations, 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 was 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, internal 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 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 or 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 LD-2.

Also note that definitions under the tax code include "grass-roots," "state" and "local" 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 $2,500.

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 $10,000.

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 is triggered at the earlier of the date a lobbyist is employed or retained to make more than one lobbying contact on behalf of the client, or the date a lobbyist in fact makes a second lobbying contact. In either case, registration is required within 45 days.

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 $10,000 in a quarterly period. However, issues of interest to "B" turn out to be more controversial than expected, and the $10,000 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 with and if the form 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 $10,000. "B" needs to register immediately.

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, on whose behalf the client has expanded its activities and who is paying the intermediary, 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 $10,000 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, and separate final lobbying reports filed for each. 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, with a cover note explaining the nature of the change. "P's" registration should be terminated, and a final report for "P" only should be filed.

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) with a cover memo noting the name change.

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 bonafide 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 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, convention or association of churches and religious orders (Section 3(8)(B)(xviii)), if a church hires an outside firm that conducts lobbying activity on their 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 $2,500 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 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 for which it terminates its registration. 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 $2,500 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 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.

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 bottom line expenses or income would be met. Since Section 6(5) requires the Secretary and Clerk to "retain the information contained in a registration or report filed under this act for a period of 6 years after the registration or report (as the case may be) is 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 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. 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.

Example: 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.

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 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 their lobbying expenditures under 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 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 IRC and LDA are not harmonized in terms of expense reporting, and registrants are advised that backing out grass roots and state and local lobbying expenses altering the IRS reportable total 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 varying amounts of information relating to the core disclosures. The following examples illustrate how the nature of the core disclosures build 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 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:

1. Disclose the general lobbying issue area code (list 1 code per page).
2. Identify the specific issues in which the lobbyist(s) engaged in lobbying activities.
3. Identify the Houses of Congress and Federal Agencies contacted.
4. Disclose the lobbyists who had any activity in the general issue area.
5. 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 Houses of Congress and Federal agencies contacted **by lobbyists** during the reporting period must be disclosed on Line 17 of Form LD-2 containing a dropdown box to select the government entities contacted. If the box 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. **Once an individual has met the definition of a lobbyist and has been disclosed or identified as such, he or she does not need to meet that standard every reporting period in order to trigger disclosure of his or her lobbying activities.** 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 must also disclose whether a new lobbyist has served as "covered executive or legislative branch official" within twenty (20) years of first acting as a lobbyist for the client and state the executive and/or legislative position in which the person served. 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 for 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.

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

Active registrants and individuals who have been listed as active lobbyists on Forms LD-1 and LD-2, 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. The coverage periods for the semiannual reports are January 1 through June 30, and July 1 through December 31. In the case of a registrant, "active" means not having filed a valid termination report for all clients. In the case of a lobbyist, "active" is a person listed on any registrant's LD-1 or LD-2 and who has not been terminated on Line 23 of LD-2 or on Form LD-203 (Termination box). **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 except for those needing accommodation under the Americans with Disabilities Act. It will be necessary for each active lobbyist to obtain his/her individual user identification number and password in order to file semiannual reports electronically with the Secretary and Clerk. An active lobbyist may obtain both by going to www.disclosure.senate.gov and completing the ID and Password form on line. The Secretary will issue a user ID and password within 2 working days of receipt of the application. As soon as an email containing the user ID and password has been sent to the filer, the computer systems of the Clerk and the Secretary are simultaneously updated to include this information. **Lobbyists should plan to obtain them well in advance of a filing deadline; it will not be possible to activate a password the day before or the due date of a filing.**

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 are: (1) certain contributions that are not disclosed in 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 (either the registrant or the individual lobbyist), as well as any political committee established or controlled by the filing entity. In many cases, a political committee established or controlled by a registrant would be a separate segregated fund. In some cases, a political committee established or controlled by a lobbyist would be a leadership PAC.

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

1. The date, recipient, and amount of funds equal to or exceeding $200 contributed to any Federal candidate or officeholder, leadership PAC, or political party committee.
2. The date, the name of honoree and or honorees, and amount of funds paid for an event to honor or recognize a covered legislative branch or covered executive branch official.
3. The date, the name of honoree and or honorees, 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.
4. The date, recipient, the name of the covered official, and amount of funds paid to an entity established, maintained, or controlled by a covered legislative or executive branch official or to an entity designated by such official.
5. The date, the name of honoree and or honorees , 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 already disclosed by another entity required to report under 2 U.S.C §434).
6. The date, the name of honoree, and amount of funds equal to or exceeding $200 paid to each Presidential library foundation and each Presidential inaugural committee.

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. 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 $500 to partially fund the event. "B" would report that it paid $500 on November 20, 2008 for the purpose of honoring "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 AnyState University towards the endowment of a chair named for "Y" in the example above. "C" would report the information above noting that the payment was 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 "B" is a member. Registrant "B" makes a donation of $100 to Charity "X" in lieu of honoraria. "B" would disclose a contribution of $100 on July 15, 2008, with the notation that "Y" was the speaker and the contribution was made in lieu of honoraria."

Example 4: In State "A," there is a large regional conference on "Saving Our River," sponsored by three 501c(3) organizations. Senator "Y" and Representatives "T" and "R" are invited to appear as honored guests. Registrant "B" contributes $3,000 to the event, paying one of the sponsors. "B" would disclose a payment of $3,000 on August 1, 2008 payable to the sponsor with the notation that "Y," "T," and "R" are honored guests.

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 knowingly provided gifts and or travel in violation of either Chamber's Rules. The form contains a check box for the certification, and the user ID and Password process has provided the signature on file with the Clerk and the Secretary for each 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. Under section 6 of the LDA, the Secretary and Clerk refer registrants and lobbyists who fail to provide an appropriate response within sixty (60) days to either officer's written communication rather than the signatory.

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

Section 8 - Termination

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. Line 23 of LD-2 is used to delete names of employees who are no longer expected to act as lobbyists for the client, due to changed job duties, assignments, or employment status.

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.

Terminated lobbyists are not required to file Form LD-203.

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 is never 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 (Sections 5(a), 5(b)(2), 5(b)(3), 5(b)(4)), 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 ended. A valid termination report discloses lobbying income or expenses **and** any lobbying activity by lobbyists during the termination period.

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 between January 1 and 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 $10,000. 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

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

- First, Section 15 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 reporting and disclosure requirements of the LDA. As a result of the amendments, registrants who make the Section 15 election must use IRC definitions (including the IRC definition of a covered executive branch official) for executive branch lobbying, and LDA definitions for legislative branch lobbying.

- Third, Section 15 allows electing registrants to plug in 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 contract.

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

Contact the Senate Office of Public Records, 232 Hart Senate Office Building, Washington, DC 20510, (202) 224-0758, or the House Legislative Resource Center, B-106 Cannon House Office Building, Washington, DC 20515, (202) 226-5200.