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Lobbying Registration and Disclosure: The Role of the Clerk of the House and the Secretary of the Senate

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Summary

On September 14, 2007, President George W. Bush signed S. 1, the Honest Leadership and Open Government Act of 2007 (P.L. 110-81), into law. The Honest Leadership and Open Government Act (HLOGA) amended the Lobbying Disclosure Act (LDA) of 1995 (P.L. 104-65, as amended) to provide, among other changes to federal law and House and Senate rules, additional and more frequent disclosures of lobbying contacts and activities. This report explains the role of the Clerk of the House of Representatives and the Secretary of the Senate in implementing lobbying registration and disclosure requirements and summarizes the guidance documents they have jointly issued.

Under the HLOGA and predecessor lobbying laws, the Clerk of the House and the Secretary of the Senate manage the registration, filing, and the collection of documents submitted by the lobbyists and lobbying firms. Prior to the HLOGA, lobbyists were required to file paper documents with both the Clerk and the Secretary. These forms are now filed electronically and jointly with the Clerk and the Secretary. In addition, the Clerk and the Secretary are responsible for making documents publicly available and reporting incorrect or false filings to the U.S. Attorney for the District of Columbia.

Beginning in December 2007, the Clerk of the House and the Secretary of the Senate issued joint guidance documents for HLOGA implementation. The guidance document identified eight substantive changes to the 1995 Lobbying Disclosure Act, and discussed how the Clerk and Secretary interpret and implement the HLOGA's provisions. In addition, the guidance document provided direction on successful completion of quarterly registration and disclosure documents, the new semi-annual reporting requirement, and interpretation of the Clerk and Secretary's role in referring non-compliance to the U.S. attorney.

Since issuing an initial guidance document in 2007, the Clerk of the House and Secretary of the Senate, pursuant to 2 U.S.C. §1605, have conducted periodic reviews of existing guidance and have issued multiple updates. Most recently, the document was updated on January 31, 2017, to update registration thresholds pursuant to changes in the Consumer Price Index; provide additional clarifications on identifying clients and covered officials; provide additional examples for filing by outside lobbyists; clarify that all income and expenditure reporting should be rounded to the nearest $10,000; clarify that all "sole proprietors" are required to file two LD-203 disclosure forms—one for the registrant [firm] and one for the individual lobbyist; and encourage filers to use the online public database for compliance purposes.

For further analysis on the Honest Leadership and Open Government Act and the Lobbying Disclosure Act, see CRS Report R40245, *Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007*, by Jacob R. Straus; and CRS Report R44292, *The Lobbying Disclosure Act at 20: Analysis and Issues for Congress*, by Jacob R. Straus.

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Background

During the past six decades, Congress on four occasions has approved legislation designed to regulate lobbyist contact with Members of Congress. The initial provisions, which were contained in the Legislative Reorganization Act of 1946, required that lobbyists register with the House of Representatives and the Senate and disclose certain receipts and expenditures.[1] In 1995, Congress passed, and the President signed into law, the Lobbying Disclosure Act, which repealed the 1946 act and created a detailed system of reporting thresholds. In 1998, technical amendments to the 1995 law were passed. Finally, in 2007, Congress amended the 1995 act to further enhance disclosure and reporting requirements for lobbyists and lobbying firms.

The Lobbying Disclosure Act (LDA) of 1995 provided specific thresholds and definitions of lobbyists, lobbying activities, and lobbying contacts, compared to the 1946 act.[2] In reporting the LDA, the House Judiciary Committee summarized the need for new lobbying provisions:

> The Act is designed to strengthen public confidence in government by replacing the existing patchwork of lobbying disclosure laws with a single, uniform statute which covers the activities of all professional lobbyists. The Act streamlines disclosure requirements to ensure that meaningful information is provided and requires all professional lobbyists to register and file regular, semiannual reports identifying their clients, the issues on which they lobby, and the amount of their compensation. It also creates a more effective and equitable system for administering and enforcing the disclosure requirements.[3]

The technical amendments made to the LDA in 1998 clarified the definition of covered executive branch officials, more clearly defined what constitutes a lobbying contact, and provided that organizations, whose lobbying activities are limited by their Internal Revenue Code (IRC) non-profit status,[4] could use their tax estimates to report lobbying activities. In reporting the 1998 technical amendments, the Senate Committee on Governmental Affairs explained the need for change:

> Once the LDA was implemented by the Clerk of the House and the Secretary of the Senate, several minor problems with the language of the statute materialized. The offices of the Clerk and the Secretary have sought to interpret the LDA with respect to these problems in accordance with the original intent of the law, but it is necessary and appropriate to conform

[1] P.L. 79-601, 60 Stat. 839-842, August 2, 1946. Title III of the Legislative Reorganization Act of 1946 was the "Federal Regulation of Lobbying Act." It was the first law that required persons who lobbied Congress to register with the House of Representatives and the Senate.

[2] P.L. 104-65, 109 Stat. 691, December 19, 1995, as amended by P.L. 105-166, 112 Stat. 38, April 8, 1998; 2 U.S.C. §1601, *et seq*.

[3] U.S. Congress, House Committee on the Judiciary, *Lobbying Disclosure Act of 1995*, report to accompany H.R. 2564, 104th Cong., 1st sess., H.Rept. 104-339 (Washington: GPO, 1995), p. 2.

[4] 26 U.S.C. §501(c)(3). 501(c)(3) organizations are "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition ..., or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Lobbying disclosure laws also limit these organizations in their lobbying. See 2 U.S.C. §1603(a)(3), 2 U.S.C. §1604(b)(4), and 2 U.S.C. §1610(a). For further information on tax-exempt organizations, see CRS Report 96-264, *Frequently Asked Questions About Tax-Exempt Organizations*, by Erika K. Lunder; and CRS Report RL33377, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, by Erika K. Lunder.

> the language of the law to intent, and that is the motivation behind the introduction of S. 758.[5]

The most recent amendments to the LDA, the Honest Leadership and Open Government Act of 2007 (HLOGA), mandated additional and more frequent disclosures.[6]

Pursuant to the 1946 act, the 1995 LDA, as amended by the 1998 act, and the HLOGA, the Clerk of the House and the Secretary of the Senate have had joint responsibility for implementing systems to register lobbyists. Under the 1946 act, individuals, groups, and organizations involved in lobbying activities were required to keep detailed financial records and to file financial statements with the Clerk. Lobbyists also were required to register before engaging in lobbying activities and file quarterly reports with the Clerk and the Secretary. The Clerk was then required to maintain these records for two years.[7]

The 1995 act, as amended, modified the responsibilities of the Clerk and the Secretary in registering lobbyists and collecting disclosure documents. In addition to collecting registration and disclosure documents from lobbyists the Clerk and the Secretary are required to

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;
2. review, and, where necessary, verify and inquire to ensure the accuracy, completeness, and timeliness of registration and reports;
3. develop filing, coding, and cross-indexing systems to carry out the purpose of this Act, including—

   a. a publicly available list of all registered lobbyists, lobbying firms, and their clients; and

   b. computerized systems designed to minimize the burden of filing and maximize public access to materials filed under this Act;
4. make available for public inspection and copying at reasonable times the registrations and reports filed under this Act;
5. retain registrations for a period of at least 6 years after they are terminated and reports for a period of at least 6 years after they are filed;
6. compile and summarize, with respect to each semi-annual period, the information contained in registrations and reports filed with respect to such period in a clear and complete manner;
7. notify any lobbyist or lobbying firm in writing that may be in noncompliance with this Act; and
8. notify the United States Attorney for the District of Columbia that a lobbyist or lobbying firm may be in noncompliance with this Act, if the registrant has been notified in writing and has failed to provide an appropriate response within 60 days after notice was given under paragraph (7).[8]

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[5] U.S. Congress, Senate Committee on Governmental Affairs, *Lobbying Disclosure Technical Amendments Act of 1997*, report to accompany S. 758, 105th Cong., 1st sess., S.Rept. 105-147 (Washington: GPO, 1997), p. 2.

[6] P.L. 110-81, 121 Stat. 739, September 14, 2007.

[7] P.L. 79-601, 60 Stat. 839-842, August 2, 1946.

[8] 2 U.S.C. §1605(a)(8).

The 2007 HLOGA further refined the role of the Clerk and the Secretary in collecting and reporting information on lobbyists under the LDA. The Clerk and the Secretary are required to electronically register lobbyists and collect quarterly and semi-annual reports; make registrations and filings available on the Internet; and review each registration and filing for accuracy, notify lobbyists of a misfiling, and refer appropriate cases to the U.S. attorney's office for the District of Columbia.[9] Pursuant to these responsibilities, the Clerk and the Secretary have chosen to use a single electronic filing system, whereby lobbyists and lobbying firms register once and documents are automatically transmitted to both the Clerk and the Secretary.[10]

Role of Clerk of the House and Secretary of the Senate

The Clerk of the House and the Secretary of the Senate are responsible for implementing lobbyist registration and disclosure provisions of the LDA, as amended by the HLOGA, for the House of Representatives and the Senate, respectively. As neither the Clerk nor the Secretary have rule-writing or regulatory authority under the LDA or its amendments, but are directed in law to provide guidance and assistance, they issue a joint guidance document to inform lobbyists and the public of how they intend to carry out their registration and disclosure duties. Under the HLOGA amendments, the first quarterly reports were required by April 21, 2008, and new registrations continued to be required no later than 45 days after the first lobbying contact is made or an individual is employed to make a lobbying contact.[11] All lobbyists and lobbying firms filing registration and disclosure statements are required to file with the Clerk and the Secretary through a joint portal maintained at http://lobbyingdisclosure.house.gov, or http://www.senate.gov/lobby.

Electronic Filing

Prior to the HLOGA amendments, the LDA did not require electronic submission of registration and reporting documents. Under the 1995 act, as amended, the Secretary of the Senate provided lobbyists and lobbying firms the means to file electronically or to use paper forms. The Clerk of the House did not provide a method of electronic filing.[12] The HLOGA amended Section 5 of the LDA to make electronic filing mandatory, except when an individual is amending documents filed under the previous system, or in instances where electronic filing is not possible for an individual with a condition covered by the Americans with Disabilities Act.[13]

Pursuant to Section 5, as amended, the Clerk and Secretary created a single electronic registration system, using the previous Senate system's user ID and password protocols,[14] and have developed

[9] 2 U.S.C. §1606.

[10] U.S. Congress, Clerk of the House of Representatives, "Lobbying Disclosure FAQ," http://lobbyingdisclosure.house.gov/FAQ.html; and U.S. Congress, Secretary of the Senate, "Lobbying Disclosure FAQ," http://www.senate.gov/legislative/Public_Disclosure/FAQs.htm.

[11] 2 U.S.C. §1603.

[12] U.S. Congress, Secretary of the Senate, *Historic Lobbying Disclosure Act Guidance (not valid for post January 1, 2008 filings)*, http://www.senate.gov/legislative/common/briefing/lobby_disc_briefing.htm.

[13] P.L. 110-81, §205, 121 Stat. 746, September 14, 2007.

[14] The Secretary of the Senate maintains a website http://soprweb.senate.gov/ for lobbyists and lobbying firms to obtain user IDs and passwords online. When requesting a password, lobbyist information is simultaneously transmitted to both the Clerk of the House and Secretary of the Senate for immediate use.

a website that provides the necessary software applications to make all filings.[15] The website has features for use on Microsoft Windows and Macintosh operating systems. Detailed instructions on the registration and disclosure process and a summary of filing requirements are available on both the House and Senate lobbying disclosure websites.[16] The Clerk and the Secretary are responsible for maintaining the electronic filing system website and for providing updated information in response to lobbyist questions and congressional amendments.

Civil and Criminal Penalties

2 U.S.C. §1605(a)(7) and (8), as amended by HLOGA Section 210, requires the Clerk and the Secretary to notify lobbyists of noncompliance and to notify the U.S. attorney for the District of Columbia of a lobbyist's or lobbying firm's noncompliance, after giving 60 days' notice.[17]

The Clerk of the House's Legislative Resource Center and the Secretary of the Senate's Office of Public Records have been given responsibility for reviewing each filing to ensure accuracy and for issuing notices to those who have not complied. If a notice is issued to a registrant, the registrant has 60 days to respond, after which the Clerk and the Secretary may forward instances of noncompliance to the U.S. attorney's office for the District of Columbia.[18]

Publicly Available Registration and Disclosure Data

2 U.S.C. §1605(a) (3), (4), and (5), as amended by HLOGA Section 209, instructs the Clerk and the Secretary to make registration and disclosure information publicly available for at least six years.

> (3) develop filing, coding, and cross-indexing systems to carry out the purpose of this Act, including—(A) a publicly available list of all registered lobbyists, lobbying firms, and their clients; and (B) computerized systems designed to minimize the burden of filing and maximize public access to materials filed under this Act; (4) make available for public inspection and copying at reasonable times the registrations and reports filed under this Act; (5) retain registrations for a period of at least 6 years after they are terminated and reports for a period of at least 6 years after they are filed.[19]

To satisfy the requirements of Section 6 of the LDA, as amended by the HLOGA, the Clerk and the Secretary established websites for the public to inspect registration and disclosure documents

[15] U.S. Congress, Clerk of the House of Representatives, "Lobbying Disclosure Forms and Software," http://lobbyingdisclosure.house.gov/software.html.

[16] U.S. Congress, Clerk of the House of Representatives, "Lobbying Disclosure, Office of the Clerk," http://lobbyingdisclosure.house.gov, U.S. Congress, Secretary of the Senate, "Public Disclosure," http://www.senate.gov/lobby.

[17] 2 U.S.C. §1605(a)(7). The LDA states that the Clerk of the House and the Secretary of the Senate must "(7) notify any lobbyist or lobbying firm in writing that may be in noncompliance with this Act; and (8) notify the United States Attorney for the District of Columbia that a lobbyist or lobbying firm may be in noncompliance with this Act, if the registrant has been notified in writing and has failed to provide an appropriate response within 60 days after notice was given under paragraph (7)."

[18] For more information on the role of the U.S. Attorney's Office for the District of Columbia prosecution of HLOGA related violations see, U.S. Government Accountability Office, *Lobbying Disclosure: Observations on Lobbyists' Compliance with New Disclosure Requirements*, GAO-08-1099, September 30, 2008, pp. 15-18.

[19] 2 U.S.C. §1605(a)(3)-(5).

on the Internet.[20] The Lobbying Disclosure Act Guidance (in Section 10) states that the Clerk and the Secretary will use the Internet to deliver the content of the reports.[21]

Lobbying Disclosure Guidance Document

The HLOGA lobbying provisions were effective as of January 1, 2008. As required by Section 6 of the LDA,[22] the Clerk and the Secretary on December 10, 2007, issued a joint guidance document.[23] The guidance document is updated, as needed, to reflect changes in guidance from the Clerk and the Secretary. **Table 1** lists when the guidance document has been updated since it was first issued. The guidance document was most recently updated on January 31, 2017. The guidance document is posted on both the Clerk's and Secretary's lobbying websites.[24]

Table 1. Guidance Document Updates

Since December 10, 2007

Date	Updates
May 29, 2008	Provided additional guidance on semi-annual reporting requirements under the HLOGA Section 203 (related to political and other contributions and activities).[a]
July 16, 2008	Clarified the types of disclosures required under the HLOGA Section 203.[a]
January 6, 2009	Revised requirements for special registration circumstances, quarterly reporting of lobbying activities, and semiannual reporting of political and other contributions.
February 3, 2009	Raised registration thresholds to $3,000 in total income from a client for individuals or $11,500 in total income from a client for an organization, in any given quarterly period.[b]
June 9, 2009	Revised requirements for registration, removed provision requiring lobbyists to disclose activities regardless of quarterly activity, clarified the definition of active registrants and lobbyists required to file LD-203 forms, and clarified appropriate registrant termination policies and requirements to file LD-203 forms following termination.[c]
December 23, 2009	Revised language on registration for foreign entities to require reporting of foreign affiliates, added codes to report tariff related lobbying, refined definitions on reporting estimated lobbying expenses, added "in-kind" contributions to required semi-annual campaign contribution disclosures, and incorporated previous notices on lobbyist termination.[d]

[20] The Secretary of the Senate's searchable LDA reports is accessible through http://senate.gov/legislative/Public_Disclosure/LDA_reports.htm. The Clerk of the House's searchable reports are accessible through http://ldsearch.house.gov.

[21] U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, *Lobbying Disclosure Guidance*, 110th Cong., 2nd sess., July 16, 2008. (Hereinafter, *LDA Guidance July 2008*.)

[22] Pursuant to Section 6 of the LDA, "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[.]" (2 U.S.C. §1605).

[23] U.S. Congress, Clerk of the House of Representatives, "Statement regarding the issuance of revised guidance concerning the Lobbying Disclosure Act," press release, December 10, 2007, http://clerk.house.gov/about/press/12102007_01.html.

[24] The Lobbying Disclosure Act Guidance document can be found on the Clerk of the House's website at http://lobbyingdisclosure.house.gov/ldaguidance.pdf. The Secretary of the Senate's website links to the guidance document on the Clerk of the House's web page.

Date	Updates
June 10, 2010	Modified requirements that lobbyists list previous covered executive or legislative branch positions held within 20 years of first acting as a lobbyist for each client, and updated language to "stress" that lobbyists and registrants must file a semi-annual report for each semi-annual period they remain active.
December 15, 2011[e]	Reorganized definitions to alphabetize section on contribution reports, incorporated previous verbal guidance on "listing of the client name when work is performed on behalf of a third party," and clarified the requirement of reporting on LD-2 forms "when a client is a state and local government."
February 15, 2013	Updated registration thresholds "to reflect changes in the Consumer Price Index ... during the preceding 4-year period," and raised the registration exemption for organizations employing in-house lobbyists "... if total expenses for lobbying activities does not exceed and is not expected to exceed $12,500 during a quarterly period." The income threshold for lobbying firms remains unchanged at $3,000.[f]
June 15, 2016	Revised to make nonsubstantive technical changes, and to clarify the requirement that lobbyists identify "their client and interest of foreign entities when making lobbying contacts, and the requirement of covered officials or their employing authority to identify whether the individual is a covered official." Further, additional examples are provided of reporting for outside retained lobbyists, of income and expense rounding and reporting, and of reporting of agencies contacted. Clarification is provided that all lobbyists, including sole proprietors, must file both disclosure (LD-2) and contribution (LD-203) forms; and guidance is provided encouraging filers to use the online public database to verify registration and disclosure reporting.
January 31, 2017	Updated registration thresholds to reflect changes in the Consumer Price Index, as established by the Secretary of Labor. Further, the updated guidance document included several clarifications and new examples. These include a clarification on the identification of clients and covered officials in filings; additional examples of filings by outside lobbyists; a new example clarifying that income or expenditures are required to be rounded to the nearest $10,000; an example to clarify that "sole proprietors, including those who register with their lobbyist name as the registrant name, are required to file two contribution reports [LD-203] each filing period—one report for the registrant and one report for the individual lobbyist"; and encouragement to filers to use the online public database for compliance purposes.

Source: U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, *Lobbying Disclosure Guidance*, 115th Cong., 1st sess., January 31, 2017, at http://lobbyingdisclosure.house.gov/ldaguidance.pdf.

Notes:

a. For more information, see 2 U.S.C. §1604.

b. Changes to the registration thresholds, which are indexed to inflation and adjusted quarterly, were effective as of January 1, 2009. For more information about the registration thresholds see, http://www.senate.gov/legislative/Public_Disclosure/new_thresholds.htm

c. Further clarification of the guidance document on the termination of lobbyists was issued on June 16, 2009. The guidance was amended to permit termination if a registered lobbyist "does not reasonably expect to make further lobbying contacts."

d. U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, *Clarification of Recent Notice and Revised Guidance Regarding Conditions for Lobbyist Termination*, 111th Cong., 1st sess., June 16, 2009, http://lobbyingdisclosure.house.gov/0615_Notice_Lobbyist_Clarification.pdf.

e. Pursuant to 2 U.S.C. §1605, the Clerk of the House and the Secretary of the Senate reviewed the lobbying disclosure guidance on June 12, 2012. No changes were made at that time.

f. Changes were effective January 1, 2013.

The guidance document is divided into 12 sections. The LDA does not provide the Clerk and the Secretary with the authority to write regulations or issue opinions on the law. The guidance

document is only meant as an interpretation of the law, and is not enforceable as law.[25] A brief summary of the 12 sections of the guidance document follows:

- **Section 1—Introduction**. Provides background information on the LDA and the responsibilities of the Clerk of the House and the Secretary of the Senate in providing guidance to the lobbying community.
- **Section 2—What's New?** Identifies changes made to the guidance since the last update.
- **Section 3—Definitions**. Repeats terms defined in the LDA. These terms include affiliated organizations, reports of certain contributions, client, covered executive and legislative branch officials, lobbying activities, lobbying contact, lobbying firm, lobbying registration, lobbying report, lobbying, and public official, among others. Section 3 also adds the definition of "actively participates" from Section 207 of HLOGA.
- **Section 4—Lobbying Registration**. Explains the lobbying registration process, including who must register and when registrations are necessary.[26] This section also clarifies the preparations for filing registrations, exceptions to lobbying contacts, the 20% activity threshold,[27] the difference between a lobbying contact and lobbying activity, alternative reporting methods, and the relationship between the 20% activity and monetary thresholds. The monetary thresholds are updated periodically to reflect changes in the Consumer Price Index (CPI). For each area, the guidance document provides examples to illustrate the operation of the section for the lobbying community. In addition, this section provides guidance on when and how to report foreign entity contributions to lobbying activity.[28]
- **Section 5—Special Registration Circumstances**. Outlines conditions that could affect the registration of lobbyists or lobbying firms under the LDA. These special circumstances include lobbying firms retained by contingent fees; registration by entities with subsidiaries or state and local affiliates; the effect of mergers and acquisitions; registration for associations, coalitions, churches, and associations of churches; registration for firms hired by churches or church associations; and the registration of professional associations of elected officials.
- **Section 6—Quarterly Reporting of Lobbying Activities**. Explains when and why quarterly reports are needed, and provides instructions on how to complete

[25] *LDA Guidance July 2008*, p. 2.

[26] The LDA Guidance Document issued on June 9, 2009 provided a test for triggering registration requirements. "The registration requirement of potential registrant is triggered either (1) on the date their employee/lobbyist is employed or retained to make more than one lobbying contact on behalf of a client (and meets the 20% of time threshold), or (2) on the date their employee/lobbyist in fact makes a second lobbying contact (and meets the 20% of time threshold), whichever is earlier." See, U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, *Lobbying Disclosure Guidance*, 111th Cong., 1st sess., June 9, 2009. (Hereinafter, *LDA Guidance June 2009*.)

[27] 2 U.S.C. §1602 (7) defines "lobbying activities." A "lobbyist" is someone who makes more than one "lobbying contact" and spends at least 20% of his or her time engaged in "lobbying activities" for his or her client or employer. Additionally, as a requirement to register, the lobbyist must have received at least $2,500 in a quarterly reporting period from a client, or, if an in-house lobbyist, the organization had to spend at least $10,000 on "lobbying activities."

[28] U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, *Lobbying Disclosure Guidance*, 111th Cong., 1st sess., December 23, 2009. (Hereinafter, *LDA Guidance December 2009*.)

lobbying disclosure forms LD-1[29] and LD-2.[30] In addition, Section 6 defines how to report firm income, indicates when it is appropriate to report income or expenses, provides examples on the type of material that should be included in a quarterly report, indicates that organizations that pay dues to other organizations must report the portion of their dues used for lobbying activities,[31] removes previous guidance that registrants who previously filed LD-2 forms could be required to file again in the future, even if they did not meet reporting thresholds in a given quarter,[32] reminds filers that "all expenses of lobbing activities incurred during a quarterly period are reportable,"[33] provides for a specific reporting code for lobbying on tariff bills,[34] reminds filers that all new lobbyists must list "previous covered executive or legislative branch positions held within twenty (20) years of first acting as a lobbyist for a client,"[35] and reiterates that the "requirement to disclose a foreign interest ... is not contingent upon the entity making a contribution ... to the registrant during that particular reporting period."[36]

- **Section 7—Semiannual Reporting of Certain Contributions**. Discusses when and why semiannual reports are needed, the basics of form LD-203;[37] who is

[29] Form LD-1 is the lobbying registration form used for initial registration by a lobbyist or lobbying firm. Updated copies of Form LD-1 can be found on the House of Representatives lobbying website http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/downloadforms.htm. Pursuant to the HLOGA amendments, form LD-1 is filed only online through the House of Representatives lobbying website. Registrants no longer file separate copies of LD-1 with the Secretary of the Senate. A detailed guide to filing reports is available through the House website: http://lobbyingdisclosure.house.gov/ld_user_guide.pdf.

[30] Form LD-2 is the lobbying report form used by lobbyists and lobbying firms to fulfill their quarterly reporting requirements. Updated copies of form LD-2 can be found on the House of Representatives lobbying website at http://lobbyingdisclosure.house.gov/help/default.htm?url=WordDocuments/downloadforms.htm. Pursuant to the HLOGA amendments, form LD-2 is filed only online through the House of Representatives lobbying website. Registrants no longer file separate copies of LD-2 with the Secretary of the Senate. A detailed guide to filing reports is available through the House website: http://lobbyingdisclosure.house.gov/ld_user_guide.pdf.

[31] U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, *Lobbying Disclosure Act Guidance*, 111th Cong., 1st sess., January 16, 2008. (Hereinafter, *Lobbying Guidance January 2009*.)

[32] *LDA Guidance June 2009*, p. 17. Previous guidance documents stated: "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 the required disclosure of his or her lobbying activities." This guidance has been removed in the June 9, 2009, release.

[33] *LDA Guidance December 2009*, p. 14.

[34] *LDA Guidance December 2009*, p. 17.

[35] U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, *Lobbying Disclosure Guidance*, 111th Cong., 2nd sess., June 10, 2010, http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf, p. 18, and http://lobbyingdisclosure.house.gov/amended_lda_guide.html. (Hereinafter, *LDA Guidance June 2010*.)

[36] *LDA Guidance December 2009*, p. 18.

[37] Form LD-203 is the lobbying report form used by lobbyists and lobbying firms to fulfill their semi-annual reporting requirement of political and other contributions and activities. On June 30, 2008, the Clerk and the Secretary released the LD-203 Contribution Reporting System. To access the system, registrants use the same ID and password required for other lobbying disclosure forms. The LD-203 form can only be viewed through the LD-203 Contribution Reporting System on the lobbying disclosure website https://lda.congress.gov/LC.

required to file LD-203;[38] the required contents of the semiannual report[39] (regardless of whether they make a reportable contribution),[40] including examples; that third-party preparers should "retain appropriate documentation to demonstrate that they have authorization to make such filing on behalf of all filers (including lobbyist-employees of registrants) using their services,[41] and that in-kind contributions should be reported.[42]

- **Section 8—Termination**. Explains the procedure for the termination, for recording purposes, of a lobbyist from a lobbying firm or of a registrant's relationship with a client, including when removing a registrant is appropriate.[43]
- **Section 9—Relationship of LDA to Other Statutes**. Briefly explains the relationship between LDA and three other statutes. These statutes are the Foreign Agents Registration Act (FARA),[44] the Internal Revenue Code (IRC),[45] and the False Statements Accountability Act of 1996.[46]
- **Section 10—Public Availability**. States that the LDA requires the Clerk of the House and the Secretary of the Senate "to make all registrations and reports available for public inspection over the Internet as soon as technically practicable after the report is filed."[47]
- **Section 11—Review and Compliance**. States that the Clerk of the House's Legislative Resource Center and the Secretary of the Senate's Office of Public Records "must review, verify, and request corrections in writing to ensure the accuracy, completeness, and timeliness of registrations and reports filed under the Act."[48]

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[38] All "active" registrants and individuals who are listed as active lobbyists by their employer on forms LD-1 and LD-2 are required to file form LD-203 by July 30 and January 30 (or the next business day should either occur on a weekend or holiday). A registrant or individual is "active" if the registrant has not submitted a termination form pursuant to section 8 of the guidance document. *LDA Guidance June 2009*, p. 18, provides additional clarification by reminding sole proprietors and small lobbying firms of their requirement to file two reports: one by the registrant and one by the listed lobbyist, even if those individuals are the same.

[39] *Lobbying Guidance January 2009*, p. 21. The guidance document also contains a reminder that each registrant is responsible for maintaining the integrity and use of their password. If a password is used without authorization, the registrant should immediately contact the Clerk or the Secretary.

[40] *LDA Guidance June 2010*, p. 19.

[41] *Lobbying Guidance January 2009*, p. 24.

[42] *LDA Guidance December 2009*, p. 20.

[43] *LDA Guidance June 2009*, p. 23. Further clarification on termination of a registered lobbyist was issued on June 16, 2009. See http://lobbyingdisclosure.house.gov/amended_lda_guide.html; and U.S. Congress, Clerk of the House of Representatives and Secretary of the Senate, *Clarification of Recent Notice and Revised Guidance Regarding Conditions for Lobbyist Termination*, 111th Cong., 1st sess., June 16, 2009, http://lobbyingdisclosure.house.gov/0615_Notice_Lobbyist_Clarification.pdf.

[44] 22 U.S.C. §611 *et seq*. The Department of Justice maintains the Foreign Agents Registration Unit. More information is located at http://www.usdoj.gov/criminal/fara/. Both the LDA Section 9 and the HLOGA Section 212 amended the Foreign Agents Registration Act.

[45] 26 U.S.C. *et seq*., as amended. The Internal Revenue Code can also be found on the Internal Revenue Service website http://www.irs.gov/taxpros/article/0,,id=98137,00.html.

[46] 18 U.S.C. §1001.

[47] *LDA Guidance July 2008*, p. 26.

[48] Ibid.

- **Section 12—Penalties**. Restates the civil and criminal penalties for filing incorrect or false information.[49]

Semiannual Report of Certain Contributions

Pursuant to 2 U.S.C. §1604(e), the Clerk and the Secretary created a contributions reporting system and website that allows lobbying organizations and individual lobbyists to register electronically using their existing ID and password.[50] The website contains a help feature to assist lobbying organizations and lobbyists navigate the new form.[51]

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[49] 2 U.S.C. §1606, as amended. The HLOGA amended the LDA to establish the following penalties: "(a) Civil Penalty—Whoever knowingly fails to—(1) remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives; or (2) comply with any other provision of this chapter; shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than $200,000, depending on the extent and gravity of the violation. (b) Criminal Penalty—Whoever knowingly and corruptly fails to comply with any provision of this Act shall be imprisoned for not more than 5 years or fined under title 18, United States Code, or both."

[50] The LD-203 form can be completed by logging into the Contributions Reporting System website: https://lda.congress.gov/LC. The LD-203 form cannot be viewed without logging into the system.

[51] U.S. Congress, Clerk of the House and Secretary of the Senate, *LCUserManualV1*, https://lda.congress.gov/LC/help/default.htm?turl=WordDocuments%2Faccessingthesystem.htm. The user manual is also available as a PDF file at http://www.senate.gov/legislative/resources/pdf/LCUserManualV1.pdf.