

December 12, 2007

New Guidance Issued by Congress Regarding the Lobbying Disclosure Act and Political Party Convention Events

The Secretary of the Senate and Clerk of the House this week jointly issued new guidance regarding the federal Lobbying Disclosure Act (“LDA”), as amended by the recently enacted Honest Leadership and Open Government Act (“HLOGA”). In addition, also this week, the House Ethics Committee issued its first guidance regarding the 2008 national political party conventions. In this e-alert, we provide our preliminary analysis of these significant new guidance memoranda. We are available to provide more detailed advice to our clients.

The New LDA Guidance

The Secretary of the Senate and Clerk of the House have updated their long-standing guidance document regarding implementation of the LDA. Click [here](#) for a link to the guidance. In general, there are no surprises. The guidance largely tracks the statute and generally reflects interpretations of the statute that we have previously provided to clients. We highlight below a few notable aspects of the guidance, however:

- The guidance appears to define a surprisingly low threshold for disclosure of members of associations and coalitions that “actively participate” in the lobbying activity of the association or coalition. Note that this new disclosure requirement generally only applies where the association or coalition does not already disclose its membership on its website. HLOGA provides that where a member both actively participates in, and contributes \$5,000 or more per quarter to, the lobbying activity, the member must be publicly identified. Under the new guidance, where a member of an association serves on the association’s board, and the association does not ordinarily identify its members on its website, the member must be listed as an affiliated organization if lobbying is a “substantial part” of the mission of the association and the \$5,000 threshold is met. In contrast, board membership alone apparently would not trigger disclosure if lobbying activity was only a “modest part” of the association’s mission and the board did not directly oversee the lobbying activity. The precise threshold for determining whether lobbying activity is a modest or substantial part of the association’s mission is unclear.
- The guidance further provides that in the case of a coalition funded by a group of companies, if, for example, the vice president for government affairs of one of those companies serves in an “informal group that directs the lobbying strategy of the group” (as is common for such ad hoc coalitions), that company would have to be listed as an affiliated organization (assuming the \$5,000 per quarter threshold is met and the coalition’s membership is not otherwise disclosed on its website). It appears this interpretation may require far greater disclosure of the members of ad hoc coalitions than was true previously. At the same time, the guidance makes clear that merely being a member of an association, paying dues to an association, attending general meetings of the association, or expressing a position on legislative goals in a manner “on a par with” that of all other members will not by itself trigger disclosure.

- The guidance provides additional examples, not summarized here, intended to help parse out the new standard for disclosure of affiliated organizations.
- With regard to the new requirement that registrants and their individual lobbyists identify on the new semiannual reports any political committees that they established or controlled, the guidance pointedly notes that “in some cases, a political committee established or controlled by a lobbyist would be a leadership PAC.” Lobbyist involvement with Members’ leadership PACs has been somewhat controversial of late, particularly where the lobbyist serves as treasurer. The fact that the guidance highlights this issue suggests that lobbyists who are actively involved in organizing and operating leadership PACs should take a particularly close look at whether they are now required to disclose their role.

House Ethics Committee Guidance on Convention Events

With less than nine months to go before the 2008 Democratic and Republican Conventions, the House Ethics Committee yesterday also issued its much-anticipated [guidance](#) interpreting the provision in the House gift rules governing political convention events. That provision prohibits a Member who is not a candidate for President or Vice President from participating in an event “honoring” that Member during the dates of a national party’s convention if the event is directly paid for by a registered lobbyist or an entity that retains or employs a registered lobbyist. In general, the guidance interprets “honoring” somewhat expansively, but then lists a number of potentially significant loopholes, some of which are not readily apparent in the rule itself. A brief summary of the key points follows:

- The new guidance interprets “honoring” relatively broadly. For example, the guidance provides that a Member (who is not his or her party’s nominee for President or Vice President) may not attend an event during the dates of a national convention hosted by a lobbyist or entity that retains or employs lobbyists “if the Member were to receive, through the Member’s participation in the event, some special benefit or opportunity that would not be available to some or all of the other participants, such as if the sponsor were to offer the Member an exclusive speaking role or a very prominent ceremonial role.”
- Notwithstanding the seemingly broad reading of “honoring” mentioned above, the guidance describes several circumstances where a Member’s attendance at an event would not be prohibited, assuming any benefits the Member receives from attending (such as food or drink) are not otherwise impermissible gifts. These circumstances where a Member’s attendance at an event would not violate the gift rules include:
 - a Member’s attendance at an event organized to honor *a delegation or caucus* without naming that specific Member or providing any special benefit or opportunity to the Member;
 - a Member’s participation at an event as a Member of the “honorary host committee” if the host committee includes the names of non-congressional host committee members;
 - a Member’s attendance at an event hosted by a private organization that does not employ or retain lobbyists even if that organization received funding from lobbyists or organizations that employ or retain lobbyists; and

- a Member's attendance at an event that takes place on a date other than the dates during which the national convention is held (including, presumably, the day before the start of the convention, although this is not specifically stated in the guidance).
- Despite this guidance from the House Ethics Committee, a number of important questions remain. For example, the guidance notes that even if the prohibition related to Member attendance at a political convention event is not implicated, the Member still may not accept an offer of free attendance unless the event is a permissible reception, widely-attended event, charity event, or fundraising or campaign event sponsored by a political organization. But the guidance does not address how these particular exceptions to the gift rules will apply in the context of a political convention event. The guidance suggests that the Committee will issue further advice next year addressing these questions in connection with party convention events.

* * *

This overview is intended as a summary of the guidance memoranda issued this week by the Secretary of the Senate and Clerk of the House and the House Ethics Committee. It is not intended to be comprehensive, nor is it intended as legal advice, which often turns on specific facts. Readers should seek legal advice before acting with regard to any of the subjects addressed above.

Covington's Election and Political Law Practice Group is available to help clients implement government affairs compliance programs, and to answer questions concerning the LDA, gift rules, and other government ethics provisions.

Robert K. Kelner

202.662.5503

rkelner@cov.com

Covington & Burling LLP is a leading law firm known for handling sensitive and important client matters. This alert is intended to bring breaking developments to our clients and other interested colleagues in areas of interest to them. Please send an email to unsubscribe@cov.com if you do not wish to receive future alerts.

© 2007 Covington & Burling LLP. All rights reserved.