

Election and Political Law

E-ALERT

July 1, 2008

Clerk of the House and Secretary of the Senate Finally Go Live with HLOGA Semi-Annual Certification

Yesterday, after months of anticipation, the Clerk of the House and the Secretary of the Senate finally went live with an [online system](#) for filing semi-annual reports (the "Contributions Reporting System") now required by the Lobbying Disclosure Act ("LDA"), as amended by the Honest Leadership and Open Government Act ("HLOGA"). Despite months of development, video tutorials, online guidance, and a lengthy but apparently incomplete user manual, the new system still leaves some questions unanswered. In this e-alert, we provide our preliminary analysis of this new system. We expect clarifications from the Clerk and the Secretary in the coming days, and we are available to provide more detailed advice to our clients.

Certification Requirement. Among other things, HLOGA provides that "each person or organization" registered or required to be registered under the LDA and "each employee who is or is required to be listed as a lobbyist" file semiannual reports called LD-203 reports. The first such report is due July 30, covering the first half of 2008. Each person or organization who files the report must certify that the person or organization has not provided, directed, or requested any gift, the receipt of which would violate the House or Senate gift rules. To comply with this certification requirement, a person or organization must check the box next to the following certification:

"I certify that I have read and am familiar with the provisions of the Standing Rules of the Senate and the Rules of the House of Representatives relating to the provision of gifts and travel. I have not provided, requested, or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress with knowledge that receipt of the gift would violate rule XXXV of the Standing Rules of the Senate or rule XXV of the Rules of the House of Representatives during this filing period."

The form somewhat muddles the question of who bears liability by asking the *organization* to certify that "I" have not provided, requested, or directed a gift -- language that seems appropriate for an individual lobbyist's certification but less so for an organization's. This is a drafting anomaly that no doubt will provide grist for defense lawyers in the future.

Moreover, the certification does not require disclosure of the name of any person making the certification on behalf of the organization. Rather, the

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individual who submits the certification on behalf of the organization simply uses the organization's password and presses the "submit" key. The LD-203 appears to have been designed with the intention of relieving any one individual from "signing" the form on behalf of the organization. It is important to note, however, that even though the Clerk and the Secretary have not required the signer to be identified, anyone who submits a false certification under HLOGA on behalf of an organization could still be held liable under the Federal False Statements Act, which prohibits knowingly and willfully making materially false statements to the United States Government. The same is true for quarterly lobbying activity disclosure reports filed under the LDA.

The Secretary and the Clerk very helpfully have included a "Comments" section in the LD-203, which will allow filers to augment their certification with an explanation of the circumstances surrounding particular gifts, including presumably gifts that are discovered to have been given in violation of the rules. Organizations needing to avail themselves of this "Comments" section should consult counsel concerning the particulars.

Overview of the Semi-Annual Reporting Requirements. The Contributions Reporting System arises out of HLOGA, which in turn requires registrants and their listed lobbyists to disclose, among other things:

- the names of all political committees established or controlled by the person or organization;
- information regarding certain political contributions equal to or exceeding \$200 made by the person or organization or a political committee established or controlled by the person or organization;
- information regarding funds contributed by the person, organization, or political committee established or controlled by the person or organization:
 - to pay the cost of an event to honor or recognize certain legislative branch or executive branch officials;
 - to an entity that is named for certain legislative branch officials or to a person or entity in recognition of such an official;
 - to an entity established, financed, maintained, or controlled by certain legislative branch officials or executive branch officials, or entities designated by such officials; or
 - to pay the costs of a meeting, retreat, conference, or other similar event held by, or in the name of, certain legislative or executive branch officials; and
- information regarding contributions from the person, organization, or political committee established or controlled by the person or organization to Presidential library foundations and Presidential inaugural committees.

Individual lobbyist filing. Organizations employing lobbyists are required to file these semi-annual reports. Each active lobbyist is also required to file his or her own LD-203 report. To do so, each individual lobbyist must have an active Lobbyist Account. To activate the Account, the lobbyist employer must first verify the active status of each lobbyist:

- The employer-registrant should log into the Contributions Reporting System (using the registrant's Senate ID number and password) and click on the "Manage Lobbyists" tab.
- The names of previously listed lobbyists will be displayed. Click on the name of the lobbyist whose account you wish to activate.
- The "Edit Lobbyist" screen will be displayed. Add Contact Information for that lobbyist, including a telephone number and email address; the email address supplied will be used to notify the lobbyist that his or her account has been activated.
- Once contact information has been supplied, click "Active" in the Account Status Section, and then click "Save."
- An email notification will be sent to that individual lobbyist. Upon receipt of that notification, the individual lobbyist must activate his or her own account and set up a unique password by following the instructions in the activation email.

Note that the Contributions Reporting System is not used to add or remove individual lobbyists from the organization's registration. Any new lobbyist must be added to the registration statement by listing that individual on the next scheduled Quarterly Activity Report. Similarly, individuals no longer expected to meet the definition of a lobbyist in the current or next reporting periods are also de-listed by including the name on Line 23 of the Information Update Page on the next scheduled Quarterly Activity Report.

What Contributions to Report. [Guidance](#) on the House lobbying disclosure website indicates that the Secretary of the Senate and Clerk of the House have interpreted the contribution reporting requirements of HLOGA broadly. This Guidance provides, for example, that funds used to pay for an event for which a Senator or Representative is an "honorary" host must be disclosed. Moreover, even if a Senator or Representative is simply listed on an invitation as a speaker or attendee, funds used to pay for those events must be disclosed. The Guidance also provides that this reporting requirement applies even if the registrant does not directly fund the event at which the Senator or Representative speaks, but instead makes a charitable contribution in lieu of honoraria.

Registrants and individual lobbyists must report their own contributions and contributions made by political committees they have established or "control." The LDA Guidance explains that, for registrant entities, a corporate PAC is a political committee established or controlled by the registrant, and for individual lobbyists, in some cases a leadership PAC may qualify. Therefore, lobbyists who serve as the Treasurer of a PAC or who sit on a PAC board may be required to report contributions made by that PAC on their own LD-203 reports. The LDA Guidance has concluded that lobbyists, "[a]s board members...are in positions that controls [sic] direction of the PAC's contributions." It is not entirely clear at this point whether this means that a lobbyist who serves on his own corporation's PAC board would have to report the corporate PAC's contributions on his or her LD-203 even though the corporation would already have disclosed those contributions on the corporation's own LD-203.

How to Report Contributions. Those required to file the LD-203 report must disclose the name of each Federal candidate or officeholder, leadership PAC, or political party committee, to whom the person or organization made aggregate contributions equal to or exceeding \$200. They must also report such contributions if they were made by a political committee established or controlled by the person or organization.

To report such information using the Contributions Reporting System, the filer cannot simply link to its FEC report. Instead, it must upload the data in XML file format. This can be done by uploading the XML file at the “import contributions data” section of the “report period and name” page. Registrants that have established or that control political committees may wish to consult with their IT professionals or their PAC compliance vendors to develop an efficient system for gathering this information and saving it in XML format.

To report the other kinds of contributions that HLOGA requires be disclosed, go to the List Contributions section of the website. The List Contributions page does not include a “comments” field where registrants can add a notation about individual contributions. The House Legislative Resource Center, however, has advised us that appropriate notations about contributions should be listed in the “comments” field on the Certification section of the website, even though it seems counter-intuitive. The Guidance issued by the Clerk of the House and Secretary of the Senate provides examples of the kind of information that should be disclosed in the comments field. It appears from this Guidance that a notation would be advisable if the purpose of the contribution is not apparent after disclosure of the names of the payee and honoree. For example, a lobbyist who contributes to a university toward the endowment of a chair for a Senator should report that the payment was made to the university for the endowment of the Senator’s chair. And, when a Senator speaks at a conference and a registrant makes a charitable contribution in lieu of honoraria, the registrant should make a notation that the Senator was a speaker and the contribution was made in lieu of honoraria.

The List Contributions section provides four categories for contributions: FECA, Honorary Expenses, Meeting Expenses, and Presidential Library Expenses.

- The FECA category is designed for contributions to federal candidates or officeholders, leadership PACs, and political party committees. Because that information can already be uploaded in XML format, the House Legislative Resource Center has told us that it would not need to be re-entered on the List Contributions page. The FEC has requested all political committees to identify on their registration statement (Form 1) if they are a leadership PAC.
- Presumably, information regarding funds used “to pay the cost of an event to honor or recognize a covered legislative branch official or covered executive branch official” would be categorized as Honorary Expenses. The same would appear to be the case for information about funds provided “to an entity that is named for a covered legislative branch official, or to a person or entity in recognition of such official.”
- Information regarding funds used “to pay the costs of a meeting, retreat, conference, or other similar event held by, or in the name of, one or more covered legislative

branch officials or covered executive branch officials” would presumably be categorized as a Meeting Expense.

- Information regarding contributions to a Presidential library foundation would be categorized as a Presidential Library Expense.

This leaves two kinds of contributions that are required to be reported under the statute that do not appear to fit under any of these four categories: contributions “to an entity established, financed, maintained, or controlled by a covered legislative branch official or covered executive branch official, or an entity designated by such official” and contributions to Presidential inaugural committees. We have contacted the House Legislative Resource Center and asked how such contributions are to be reported. They indicated that it is still early for Presidential inaugural committee contributions but expected that such contributions would be disclosed as Honorary Expenses with a notation describing the nature of the contribution in the comments field on the Certification page. They also advised us that a contribution to an entity established, financed, maintained, or controlled by covered officials or designated by such officials would be categorized as a Meeting Expense with a similar notation.

We will distribute further advice for clients as additional guidance is issued by the Secretary and the Clerk.

* * *

This overview is intended as a summary of the new Contributions Reporting System available at <https://fd.congress.gov:4433/LC/>. 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.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our election and political law practice group:

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