Election and Political Law

E-ALERT

July 17, 2008

Revised Guidance for LD-203 Reporting Issued by the Clerk of the House and Secretary of the Senate

Responding to criticism that initial guidance read the statute too broadly and placed an unmanagable burden on organizations registered under the LDA, the Clerk of the House and Secretary of the Senate yesterday issued revised LDA Guidance for completing the new LD-203 reports due by the end of this month. The revised guidance reflects a much narrower interpretation of the law's disclosure obligations and consequently will greatly reduce the burden organizations have to bear in determining their reportable activity. While normally last minute changes in the rules are unwelcome, in this case, most clients will find these changes simplify, and in some cases greatly simplify, the task of completing their LD-203 forms by July 30.

The Lobbying Disclosure Act ("LDA"), as amended by the Honest Leadership and Open Government Act last fall, requires that each entity registered under the LDA and each active lobbyist file new Contribution Disclosure Reports (Form LD-203) using a new online Contributions Reporting System. These new reports are to be filed twice each year, 30 days after the close of each semiannual period. The reports require the disclosure of:

- Political committees established or controlled by the filer.
- Certain contributions or payments made by the filer during the reporting period.
- Certification of compliance with the congressional gift rules.

The revised guidance issued yesterday impacts the first two required disclosures by answering key questions about the scope of those disclosures.

What does it mean to "honor" or "recognize" a covered official?

The revised guidance presents a narrow view of when an event may be viewed as "honoring" or "recognizing" a covered official, such that payments relating to that event must be disclosed. The examples included in the revised guidance make two important points:

First, payments made to simply purchase a ticket, block of tickets, or a table at an event that honors or recognizes a covered official do not trigger disclosure obligations. Rather, the filer must pay some significant part of the "cost of an event." This may happen if the filer is one of the event sponsors, or if the filer has purchased enough tickets or tables to appear to be funding a significant portion of the costs of the event.

COVINGTON
COVINGTON & BURLING LLP

BRUSSELS
Kunstlaan 44 /
44 Avenue des Arts
1040 Brussels
T: 32.2.549.5230
F: 32.2.502.1598

LONDON
265 Strand
London WC2R 1BH
T: 44.(0)20.7067.2000
F: 44.(0).20.7067.2222

NEW YORK
The New York Times Building
620 Eighth Avenue
New York, NY 10018
T: 212.841.1000
F: 212.841.1010

SAN FRANCISCO
One Front Street
San Francisco, CA 94111
T: 415.591.6000
F: 415.591.6091

WASHINGTON
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401
T: 202.662.6000
F: 202.662.6291

WWW.COV.COM

Second, the revised guidance takes a narrow view of what it means to "honor" or "recognize" a covered official, adhering to a common-sense understanding of those terms.

- If a covered official simply *speaks* at an event, or is listed as a speaker on invitation material, the event is not automatically one honoring or recognizing the speaker.

- If covered officials are listed as "honorary co-hosts" of an event, the event is not, without more, one honoring those co-hosts. As the revised guidance states, "passive allowance of their names to be used as 'co-hosts,' in and of itself, is not sufficient to be considered 'honored or recognized.'"

- Similarly, simply listing a covered official as an "attendee" or "special invitee" at an event is not enough to make the event one that honors or recognizes that official.

In each of these examples, however, other facts may lead to the conclusion that the event is one that honors or recognizes a covered official. For example, if a covered official listed as a special invitee or speaking at an event were to be given a special award or recognized by the sponsoring organization during the event (as a "Friend of the Industry," for example), the event may be one honoring or recognizing the official, requiring disclosure of the costs of the event.

The Secretary and the Clerk therefore are adopting the plain, everyday meaning of the terms "honor" or "recognize," very much along the lines of the interpretation of those statutory terms that we offered in our July 11 conference call for clients. While this still leaves some room for judgment calls, based on the facts surrounding a particular event, it greatly reduces the uncertainty.

The guidance also makes clear that a contribution or payment made by a lobbyist but reimbursed by the lobbyist's employer (the LDA "registrant") is reportable by the *employer* on its own LD-203 (if it is required to be reported at all) rather than by the lobbyist. This is true in all cases except in the case of contributions to a federal political committee, none of which can legally be reimbursed.

When is a political committee "controlled" by the filer?

A new Example 10 offers new guidance for determining when an individual lobbyist is required to disclose contributions made by a political committee *established* or *controlled* by the filer. This example maintains the earlier guidance position that serving as a PAC Treasurer or as a member of a PAC Board means serving in positions "that control direction of the PAC's contributions." The guidance goes on to provide, however, that a lobbyist who serves as the Treasurer or Board Member of a PAC connected to his or her employer (the entity's Separate Segregated Fund) does not need to report each of the connected PAC's contributions on his or her own report, if instead the lobbyist discloses on the report that he or she holds such a position. This should avoid needless duplication of PAC contribution disclosure.

When are payments to an entity *designated by* a covered official reportable?

The LDA requires that registrants and individual lobbyists disclose payments made to any entity *designated by* a covered legislative or executive branch official. For example, a contribution made to a charitable organization designated by a covered official in lieu of honoraria must be disclosed. The revised guidance expands on when designation by a covered official may trigger disclosure. First, a contribution directed to an entity by a covered official who is also on the board of that entity is a reportable contribution. On the other hand, a contribution made following "a mere statement of support or solicitation" by a covered official is generally not a reportable contribution without some additional relevant facts.

We are available to address specific reporting issues for our clients.

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This E-Alert is meant as a summary of the revised guidance issued by the Clerk of the House and Secretary of the Senate.

The full text of the revised guidance may be found on the website of the Clerk of the House: http://lobbyingdisclosure.house.gov/amended_lda_guide.html.

This summary 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 discussed 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:

Robert K. Kelner	202.662.5503	rkelner@cov.com
Robert Lenhard	202.662.5940	rlenhard@cov.com
Scott Gast	202.662.5533	sgast@cov.com