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NEWSLETTER

The Second Time's a Charm: Revised and Re-Revised Guidance Regarding the Lobbying Disclosure Act

July 2009

On June 10, 2009, the Secretary of the Senate and Clerk of the House of Representatives announced that they had revised their preexisting guidance regarding the Lobbying Disclosure Act (LDA), as amended by the Honest Leadership and Open Government Act. One of the revisions, however, appeared to contradict the language of the LDA and would have significantly altered the manner in which an individual could de-list as a lobbyist. On June 16, the Secretary and Clerk issued a notice to amend their revised guidance.

A summary of the most significant changes to the Secretary and *Clerk's Lobbying Disclosure Act Guidance* follows:

1. Section 4 of the *Guidance*, regarding lobbying registration, was amended to clarify that an individual must spend 20% or more of his or her time engaged in lobbying activities before registration is required.

2. Section 7 of the *Guidance*, regarding disclosure of certain payments on Form LD-203, was amended to state that:

- A Form LD-203 must be filed by any lobbyist who is listed as active on any LDA reports for any part of the semiannual reporting period.
- Contributions to state and local candidates do not have to be disclosed on Form LD-203.
- For purposes of disclosing payments to organizations that are established, financed, maintained or controlled by covered

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officials on Form LD-203:

- A non-voting board member (*e.g.*, honorary or ex-officio) does not control an organization;
- A charitable organization established by a person before that person became a covered official and where that covered official has no relationship to the organization after becoming a covered official is not considered to be an entity established by a covered official; and
- A covered official's *de minimis* contribution to a charity (in proportion to the charity's overall receipts of contributions) is not an indication that the official finances, maintains or controls the charity (although supplemental facts might require reporting the contribution).

- Costs related to non-preferential sponsorship of a multi-candidate primary/general election debate for a particular office do not have to be disclosed on a Form LD-203 as payments for a meeting, retreat, conference or other similar event held by, or in the name of, one or more covered officials.
- If a reporting entity hosts an event to honor or recognize a covered official, it must disclose on its Form LD-203 the direct costs of the event (e.g., hotel, food, flowers, commemorative items, etc.), but not indirect costs such as host staff salaries and host office overhead. In addition, the payee(s) may be disclosed in the aggregate with the term "various vendors."

3. Section 8 of the *Guidance*, regarding lobbyist termination, was amended to explain that a lobbyist may be de-listed only when (i) that individual's lobbying activities on behalf of that client did not constitute at the end of the current quarter, and are not reasonably expected in the upcoming quarter to constitute, 20% of the individual's time for that client; or (ii) that individual does not reasonably expect to make further lobbying contacts. An individual who meets these criteria can be relieved from having to file a Form LD-203 for future semiannual periods by terminating as a lobbyist on Line 23 of the Form LD-2.

A comprehensive summary of all the underlying reporting obligations can be found in the September 2007 issue of *Election Law News*. The Secretary and Clerk's Guidance can be found here.