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# Compliance Training: Lobbying Disclosure and Filing Your LD-2 and LD-203

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- Approximately 80 LD-2 random audits per year
- Approximately 160 LD-203 random audits per year
- DOJ is responsible for civil and criminal enforcement
- 2009 through 2016: 2,709 referrals from Secretary of Senate and Clerk of House to DOJ for LD-2 failure to comply
- Pre-audit online survey asks about documentation and support for lobbying activity and issues, among other disclosures
  - GAO found numerous instances of failure to provide documentation for various disclosures

# Federal Lobbying Law—Lobbying Disclosure Act of 1995 ("LDA") and Honest Leadership and Open Government Act of 2007 ("HLOGA"): LD-1 Report

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- Three requirements must be met to trigger LDA registration and reporting requirements:
  - A company must have at least one employee who spends 20% or more of his or her working time engaging in lobbying activity;
  - That same employee must have 2 or more lobbying contacts; and
  - The company must spend more than \$13,000 on such lobbying activity over a 3-month period.
    - » Lobbying firm threshold: lobbying income for a particular client must exceed \$3,000 over a 3-month period.
- Register only the entity that employs the lobbyists.
- *Foreign-owned entities* – Requirement to list all foreign entities that are 20% equitable owners of the registrant (including intermediate foreign entities), in major part supervise or control the registrant's activities, or are affiliated with the registrant and have a direct interest in the outcome of the lobbying activity.



# What is Lobbying Activity Under the LDA and HLOGA: LD-2 Report



- Lobbying activity
  - Lobbying contacts; and
  - Research and preparation for such contacts (*i.e.*, work done with the intent that the results will be used for lobbying contact).
    - » Includes strategizing, planning, possibly other background work
    - » Does time spent at PAC fundraisers count?
- Covered officials
  - Lobbying contact includes making the following communications in an attempt to influence legislation, federal contracts, or any other position of the federal government:
    - » Under Methods A and C, communications with Congressional members and staff; and
    - » Under Method A (LDA), communications with Covered Executive Branch Officials (*i.e.*, White House Staff, Military Personnel at or over pay grade O-7, and Presidential and Schedule C Appointees but not career SES employees).
      - > Plum book:  
<https://www.govinfo.gov/app/#contentDetails?packageId=GPO-PLUMBOOK-2016>

# LDA Method vs. IRC Method



- Under Method C (IRC), lobbying contact includes communications with Covered Executive Branch Officials (*i.e.*, White House Staff, top two officials in any office of the EOP, and Cabinet-level officials and their deputies).
  - » Includes communications with any executive branch official regarding federal legislation
- Other differences between Method A and Method C
  - Method A
    - » Only covers federal lobbying
    - » Does not cover grassroots lobbying
    - » No de minimis exception
  - Method C
    - » Includes federal lobbying plus state legislative, and now, as a result of the Tax Cuts and Jobs Act of 2017, local direct legislative lobbying
    - » Covers grassroots lobbying
    - » The time of employees with no contacts and who spend less than 5% of their time on lobbying activity does not need to be reported



- Types of social media communications, expanding lobbying footprint:
  - Direct messages
  - “Tagging” public officials
  - Grassroots communications
  - Likes and retweets
  - Emails
- Petitions
- Form letters
- Employee personal activity: when, if ever, is it lobbying for the company?
- State regulators are giving increased consideration to social media activity
  - Evolving area
- Customer relationship management (CRMs)
  - Services that combine data regarding elected officials, including votes, tweets, sponsorship, and political contributions. This concentration of data can raise a pay-to-play compliance risk.

# Filing Dates – Quarterly



- Lobbying reports ("LD-2") are quarterly.
- Reports are electronic and placed on a public database.
- Reports are due 20 days after end of quarter. 2018 due dates:
  - January 22, 2018
  - April 20, 2018
  - July 20, 2018
  - October 22, 2018





- Disclosure only of lobbyist employer
  - In-House Personnel: Must include internal expenditures (employee salary and overhead). Must include compensation of all employees who lobby. Time tracking.
  - Outside Lobbyists: Must include payments made to outside lobbyists.
  - Trade Association and Coalition Dues: Must include the portion of dues payments made to trade associations for lobbying.
    - » Guidance requires reporting of dues in the quarter in which they are paid
  - Travel and Entertainment: Must include travel and entertainment expenses related to lobbying.



# Backup Information and Reporting Issues



- Contemporaneous tracking of time
  - The identity of public officials is not disclosed
  - The issues worked on are disclosed only if a lobbyist works on the issues, not a non-lobbyist employee
- Documentation supporting contacts with covered officials
- Documents reflecting issues lobbied supporting representations on LD-2
- Should include bill and brief description of legislation.

# Other Reporting Issues



- LDA registrants required to identify whether any client is a state or local government or government-controlled entity (e.g., agency, district)
- The interest of any foreign entities listed on the LD-1 with respect to an issue lobbied during the quarter should be disclosed on line 19 of the LD-2
- Updates to registration information are made on the last page (e.g., terminations, address change, etc.)
- Disclosure of Previous Legislative and Executive Branch Employment – Registrants required to disclose certain legislative and executive branch employment during the past 20 years (previous requirement: two-year look back).
  - Disclose only once per client (the first time a new lobbyist is reported).

# Disclosure of Affiliate Relationship



- If a corporation has an affiliated entity and the affiliate contributes or has a "chargeback" to its profit-and-loss statement of more than \$5,000 in a calendar quarter and an employee of the affiliate actively participates in the planning, supervision, or control of the registrant's lobbying activity, that affiliate must be disclosed on the LD-1 at line 13.
  - Additions are made on the LD-2 at line 25, and deletions are made on the LD-2 at line 26.





- Disclosure by Trade Associations and Informal Coalitions – HLOGA requires registrants to disclose any entity that:
  - (i) contributes over \$5,000 per reporting period to the lobbying effort of the Registrant; and
  - (ii) "actively participates" in the planning, supervision, or control of the Registrant's lobbying activities (under pre-existing law, the threshold is contribution of \$10,000 per reporting period and "in whole or major part plans, supervises, or controls" lobbying activities).
    - » The term "actively participates" sets a lower threshold than the pre-existing law.
    - » Certain foreign entities affiliated with or interested in such entities must also be disclosed.



- Disclosure by Trade Associations and Informal Coalitions
  - There is an exemption from this disclosure requirement if:
    - » (i) the Registrant lists the member entity on its public website as being a member of the Registrant or a contributor to the Registrant's lobbying effort (the specific Internet address must be provided); and
    - » (ii) the member does not in whole or major part plan, supervise, or control the Registrant's lobbying activities.

# LD-203 Reports – Semi-Annual



- Reports are due 30 days after the end of a semi-annual period. 2018 due dates:
  - January 30, 2018
  - July 30, 2018
- Semi-Annual Disclosure Report ("LD-203") – Lobbyists, lobbying firms, and lobbyist employers are required to file a semi-annual report detailing political contributions, charitable contributions, and other expenditures related to covered legislative and executive branch officials.
- Even if an employee had no activity or activity that fell below the threshold for becoming a lobbyist, if he or she was listed on an LD-2 report, that employee must file an LD-203 for that semi-annual period.





- FECA
  - The name of all PACs established or controlled by the lobbyist, lobbying firm, or lobbyist employer.
  - Each federal candidate or incumbent, leadership PAC, or party committee that received contributions of \$200 or more (aggregate) from the lobbyist, lobbying firm, lobbyist employer, or their PACs during the semi-annual period.
    - » The date and amount of each contribution is required.
  - When reporting contributions to joint fundraisers, break out ultimate recipients. Merely importing FEC data does not always properly reflect them.



- Honorary Expenses
  - Donations to entities or events related to a covered official (unless required to be reported under FECA), including:
    - » Events held to honor or recognize a covered legislative or executive branch official.
    - » Entities designated by, or established, financed, maintained, or controlled by, such an official.
      - > A charity established by an official prior to becoming a covered official is not covered if the official has no relationship to the organization after becoming a covered official.
    - » Entities named for a legislative branch official.
    - » Any entity in recognition of a legislative branch official.



- Meeting Expenses
  - Any funds paid or contributed by a lobbyist, lobbying firm, lobbyist employer, or their PAC(s) to pay for a meeting, conference, or similar event held by, or in the name of, one or more covered legislative or executive branch officials.
- Presidential Library Expenses and Inaugural Committee
  - Each Presidential library foundation and inaugural committee to which contributions of  $\geq \$200$  (aggregate) were made by a lobbyist, lobbying firm, lobbyist employer, or their PAC(s).





- With each semi-annual report, lobbyists, lobbying firms, and lobbyist employers must provide a certification that (i) they are familiar with the House and Senate gift rules, and (ii) they have not provided, requested, or directed a gift (including travel) to a Member or staff with knowledge that receipt of the gift would violate such rules.

# Due Diligence Regarding Certification



- Who signs the LD-203 report and certification
  - For internal governance purposes, companies should identify who is ultimately responsible for the certification.
- Robust gift policy
- Training
  - Ensure appropriate employees are familiar with gift rules
- Conduct due diligence to support the gift certification
- Conduct gift email confirmation for gift compliance
  - "Negative sign-off" vs. affirmative response



- The LD-203 provides an optional comment box (fits 250 characters)
- With regard to the certification, filers may insert "disclaimer" language such as, "to the best of my knowledge," "after reasonable due diligence" or "after good faith efforts"
- Filers may also insert comments related to other parts of the LD-203
- Note if filer serves on a corporate, trade association, or other PAC Board



# Terminating Registrations and Lobbyists



- Registrations
  - Termination is permitted if an individual has no reasonable expectation of further lobbying contacts, even if the individual continues to meet the 20% threshold.
- Lobbyists
  - A registrant can terminate a lobbyist by listing the lobbyist's name on Line 23 of the LD-2 report
  - The registrant (not the lobbyist) must sign in to the LD-203 Contribution System and update the lobbyist's status to "inactive" and enter an effective date of termination
  - The lobbyist must file an LD-203 report for any reporting period for which he or she was an active lobbyist, even if for only one quarter of the LD-203 semi-annual period
  - When a lobbyist leaves a company or organization, lobbyist should properly terminate registration and make it part of exit interview process

# When a Lobbyist Switches Employers



- Prior employer registrant terminates the lobbyist on line 23 of LD-2
- Once the individual meets the registration threshold under new employer, new employer registers the individual by listing the individual's name on Line 18 of the appropriate LD-2 report
- Registrants should not create an account for new lobbyists who already have a lobbyist ID
- The lobbyist must sign in to the LD-203 Contribution System and, in the Manage Your Profile section, click on the Request Employer Transfer link and follow the instructions.

# Bundling per HLOGA: Disclosure Requirements



- Bundling Disclosure by Candidates – HLOGA amends FECA to require candidates' campaigns, leadership PACs, and political party committees ("Covered Recipients") to disclose for each reporting period the name, address, and employer of each lobbyist, lobbying firm, or lobbyist employer that it has acknowledged or recognized as having raised contributions totaling over \$18,200 (and the specific amount bundled) during that period. FEC Form 3L.

# Bundling per HLOGA: Disclosure Requirements



- Bundling Disclosure by Candidates
- A contribution is considered to be "bundled" under HLOGA if:
  - (i) the contribution is forwarded from the contributor(s) to the Covered Recipient by the lobbyist, lobbying firm, lobbyist employer (including its in-house lobbyists), or their PACs, or
  - (ii) the contribution is received by a Covered Recipient from the contributor(s) but will be, or has been, credited to a lobbyist, lobbying firm, lobbyist employer (including its in-house lobbyists), or their PACs through written records, designations, or other means of recognizing that a certain amount of money has been raised.
- Attribution of \$18,200 is per sponsor of the fundraiser



# Other Lobby Issues



- Foreign Agents Registration Act (FARA)
  - LDA exception for private foreign principals
- STOCK Act
- Byrd Amendment
  - Form LLL

# Federal Congressional Gift Rules



- Lobbyist/Lobbying Firm/Lobbyist Employer Gift Ban – the gift limit from lobbyists, lobbying firms, and lobbyist employers is \$0, except for the following exceptions:
  - Reception exemption
  - Nominal food in certain settings
  - Widely attended gathering
  - Outside activities
  - Friendship (cannot be expensed and subject to increased scrutiny)
  - Site visits: food and local travel outside D.C. (House rules vs. Senate rules)
  - Attendance at events sponsored by charity (House rules vs. Senate rules)
  - Home district products
  - Nominal items (baseball caps, t-shirts, and greeting cards)
  - Training
  - Informational materials
  - Items paid for at market value or promptly returned
  - Commemorative items (allows certain gifts during site visit)
  - Personal hospitality exemption is not permitted for lobbyists
  - Political contributions

# Federal Executive Branch Gift Rules



- Gifts to executive branch officials and employees are generally limited to \$20 per occasion and \$50 per calendar year.
- Commonly used exceptions include:
  - There is no reception exception
  - Widely attended gathering (but requires pre-clearance from agency)
  - Meals and entertainment from non-prohibited source
  - Personal relationship (factors: personal payment and relationship history)
  - Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal
  - Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
  - Gifts the receipt of which is specifically authorized by statute (e.g., Foreign Gifts and Decorations Act)
  - Gifts to the President and Vice President

# Trump Executive Order Federal Executive Branch Gift Rules



- Trump Executive Order prohibits most gifts to executive branch officials and employees from lobbyists, lobbying firms, and lobbyist employers.
- May not utilize \$20/\$50 or widely attended exceptions, among others.
- Limited exceptions remain, including:
  - Personal relationship (factors: personal payment and relationship history)
  - Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal, but not including receptions with alcohol like in the legislative branch
  - Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
  - Gifts the receipt of which is specifically authorized by statute (e.g., Foreign Gifts and Decorations Act)
  - Gifts to the President and Vice President
- Press and charity exceptions



# Recap of Common Errors: LD-2



- Registering under the wrong legal entity name.
- Failure to round to nearest \$10,000 in lobbying expenses.
- Listing executive branch departments whose official(s) are not covered under LDA regulations or especially under the Internal Revenue Code definitions, if applicable.
  - Senior Executive Service ("SES") employees of Executive Branch agencies (e.g., career employees) are generally not covered.
- Proper disclosure of a bill.
  - LDA regulations require the disclosure of the updated bill number, name of legislation, and description of the provisions lobbied.
- Proper termination of a registered lobbyist on Line 23 of the filing.
- For new lobbyists, failing to properly list their covered official positions or repeatedly listing them in each filing for the same principal.
  - It is only required in the initial filing on behalf of a new client.

# Recap of Common Errors: LD-203



- Disclosure of company PAC contributions as corporate contributions.
  - Do not list "Self" as the contributor name for FECA contributions. List the name of the PAC.
- Failure to disclose a JFC contribution correctly.
  - The payee is the JFC, while the honoree should be the name of each official whose political committee benefited from the contribution.
- Failure to report corporate donations to an inaugural committee or presidential library.
- Failure to file LD-203 reports for lobbyists who terminate during the middle of a reporting period.
- Failure to use disclaimer language when filing LD-203 reports.
  - “This disclosure is to the best of my knowledge correct and based on reasonable due diligence.”
- For individual filers, neglecting to disclose they are on a PAC Board and/or neglecting to list the name of the PAC on Line 5.

# HLOGA Enforcement: Criminal and Civil



- Donor Liability – HLOGA amends the Lobbying Disclosure Act ("LDA") to make lobbyists, lobbying firms, and lobbyist employers liable for providing gifts or travel not permitted by Senate or House rules.
- Increased Penalties – HLOGA amends the LDA to increase civil penalties for violations and add criminal penalties (up to 5 years in prison and/or fines under Title 18 of the U.S. Code). HLOGA sets a "knowingly and corruptly" standard for criminal penalties.
- There is still a 60-day cure provision for reporting violations, but not for violations of the gifts law, which are the basis of the LD-203 certification.

# Meeting the HLOGA Good Faith Standard



- Good faith standard for disclosure of expenditures
  - No definition in the law
  - Rounding (up or down) to the closest \$10,000
    - » GAO found 26% in non-compliance for not rounding
  - Having a reasonable basis for your numbers
  - Be careful of using the same amount or percentage each quarter
- Random GAO audits
- DOJ recently announced increased focus on HLOGA compliance
  - Carmen Group
    - » \$125,000 fine announced August 2015
  - Mauk
    - » March 2014 complaint filed
    - » Potential fines of \$5.2 million
      - > \$30,000 settlement
  - Biassi Business Services
    - » December 2013: \$200,000 default judgment