

Congress Releases Updated Guidance Regarding Semi-Annual Reporting of Certain Contributions

On July 16, 2008, the Secretary of the Senate and Clerk of the House (“Congress”) released updated guidance for preparation by lobbying registrants and individual registered lobbyists of the new LD-203 report, which is due on July 30, 2008. This form has been the subject of previous Kelley Drye alerts.

The changes to the Guidance principally involve the list of examples of what should (and need not) be reported, which are set forth at the end of Part 7 of the congressional Lobbying Disclosure Act Guidance document. The Guidance Document can be found at <http://lobbyingdisclosure.house.gov> and <http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf>.

The prior set of examples, contained in the May 29, 2008, version of the Guidance Document left many questions and concerns about the scope of disclosure obligation on the LD-203 and also whether Congress’ guidance was consistent with the Honest Leadership and Open Government Act of 2007.

Highlights of the July 16th Congressional Guidance

1. Questions have been raised regarding whether an individual lobbyist or a registrant should disclose reportable payments made by the individual lobbyist but reimbursed by a registrant. (We note that it is against the law to reimburse contributions to a federally-registered political committee.) If a lobbyist makes a reportable payment but is reimbursed by a registrant (employer or client), the registrant would report the payment, not the lobbyist.
2. Certain commenters expressed concern regarding the earlier examples to the extent they did not explain sufficiently what kinds of meetings and events would “honor” a covered official, leading to the possibility that certain routine briefings and meetings might have been disclosable. The new Guidance Document makes clear that a lobbyist or registrant does not honor a Member of Congress or congressional staff person simply by having the Member or staff person attend or speak at a legislative or business conference or meeting. Nor does simply announcing the official’s expected presence at the event, without more, amount to honoring that official. Rather, the Member or staff person must be honored with some type of “special award, honor, or recognition” at this type of event for the event to be considered in honor of the Member or staff person. For example, if a trade association (Registrant) just has Senator Jones speak at a congressional fly-in for its members, it does not need to disclose any associated expenses on its LD-203 report. However, if, for example, the trade association gave Senator Jones a Legislator of the Year plaque at this event, it would have to include the plaque and event expenses (e.g., catering and room) on its LD-203 report.
3. Regarding the scope of disclosure relating to charity events, the revised Guidance Document explained that a lobbyist or registrant who simply purchases a ticket or table at an another entity’s event where a Member of Congress is honored is not necessarily honoring a Member of Congress. The sponsor or sponsors of the event would disclose the event (if applicable), not mere ticket or table buyers who are not “sponsors” of the event

under the congressional gift rules. For some events, it may be prudent to seek guidance from counsel in order to comply with gift rules and LD-203 reporting requirements.

4. Finally, significant concern was expressed regarding duplicative disclosure of Political Action Committee (“PAC”) contributions by a registrant and individual lobbyists who served on the PAC Board (or in a related capacity) of the registrant’s “connected” PAC. The revised Guidance Document provides that a lobbyist who serves on a connected PAC’s board or committee does have to disclose that fact on his or her own LD-203. However, the individual lobbyist does not have to list the contributions that the connected PAC makes if the connected PAC’s contributions are disclosed by the registrant on the registrant’s LD-203 report. For example, if Company X is a Registrant and has a connected PAC, the X Company PAC, if Company X discloses X PAC’s reportable contributions on its LD-203 report, none of the X PAC’s board members who happen to be lobbyists, would have to disclose X PAC’s contributions on their own reports. All they would have to disclose is their connection to the X PAC. However, this partial reporting exception is not available for non-connected PACs. Board members of those PACs are still required to report the specific contributions of a non-connected PAC.

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