

POLICY ALERT

NEW LOBBYING DISCLOSURE ACT GUIDANCE ISSUED

On December 23, 2009, the Clerk of the House of Representatives and the Secretary of the Senate issued new guidance addressing registration requirements for foreign affiliates, the new tariff bill code, dues payments to trade associations, disclosure of mixed-use lobbying activities and disclosure of a foreign interest in a registrant's lobbying activities. In addition, the new guidance clarifies which payments and contributions must be reported on a registrant's or lobbyist's semiannual contribution report (LD-203). The next LD-203 report is due January 30, 2010, and covers contributions and other payments made between July 1, 2009, and December 31, 2009. The new guidance is in effect for the LD-203 report due on January 30.

FOREIGN AFFILIATES

The new guidance clarifies when a foreign entity must be disclosed on a registration (LD-1) as a foreign affiliate. The Lobbying Disclosure Act (LDA) requires that each registration contain the name, address, principal place of business, amount of any contribution greater than \$5,000 to the lobbying activities of the registrant and approximate ownership in the client of any foreign entity that—

1. holds at least 20 percent equitable ownership in the client or any affiliate of the client required to be listed as an affiliated entity on line 13; or
2. directly or indirectly, in whole or major part, plans, supervises, controls, directs, finances or subsidizes the activities of the client or affiliate of the client required to be listed as an affiliated entity on line 13; or

3. is an affiliate of either the client, or an organization affiliated with the client identified on line 13 or 14 of the registration statement, and has a direct interest in the outcome of the lobbying activity.

Therefore, if an entity is wholly owned by a foreign parent or other foreign entity, the foreign ownership structure must be disclosed. The example given in the new guidance states: “Lobbying Firm ‘A’ is retained to lobby on behalf of Company ‘B,’ which is wholly owned by Foreign Company ‘C.’ ‘C’ is wholly owned by Foreign Company ‘D,’ and ‘D’ is wholly owned by Foreign Company ‘E.’ ‘C,’ ‘D,’ and ‘E’ must be disclosed on line 14.”

If necessary, any changes to reflect the new guidance should be made on the upcoming LD-2 report due January 20.

DUES PAYMENTS

The LDA requires that registrants report expenses as they are incurred. Although dues payments may be assessed on a yearly basis, the revised guidance states that dues payments for lobbying activities are to be included in the estimate for the quarter in which they are paid, not apportioned over the course of the year. For example, if dues are assessed in January for the calendar year, and the total amount of dues is paid during the first quarter, then the full amount of the dues must be reported on the quarterly report (LD-2). In contrast, if dues are paid on a monthly, quarterly or semiannual basis for the year, then the amount paid during the quarter should be reported.

MIXED-USE LOBBYING ACTIVITIES

If an organization conducts lobbying activities for mixed-use purposes, i.e., state and federal, then the amount of time and related expenses attributable to those efforts must be reported. The guidance illustrates: “Corporation ‘R’ is a registrant and interested in building a bypass around a city in state ‘S.’ ‘R’ governmental affairs team is comprised of lobbyists who are federally-focused and lobbyists who are state-focused. The entire staff prepares a strategic lobbying plan to support the building of the bypass. This includes both federal and state lobbying. In this example, the time spent by state level lobbyists preparing the materials would be included in ‘R’'s good faith estimate of lobbying expenses for the quarter because, at the time the materials were prepared, they were to be used for federal lobbying.”

Remember, the test is applied at the time that the activity is being performed. If the activities are being done for federal lobbying, even if there is also a parallel state effort that will use the same materials, it should be reported on the LD-2. If the materials are being prepared only for state lobbying efforts, then it is not required to be reported under the LDA.

NEW TARIFF ISSUE CODE

Filers must use code TAR for tariff bills, including miscellaneous tariff bills. This code should be used to report lobbying activity related to tariff issues, including miscellaneous tariff issues. Other trade-related issues should continue to use the TRD code.

DISCLOSURE OF A FOREIGN INTEREST IN LOBBYING ACTIVITIES

Line 19 requires the disclosure of a foreign entity if: (1) the foreign entity is an entity that is required to be identified on a registration; and (2) the entity has an interest in the specific lobbying issues listed on line 16. The requirement to disclose a foreign interest on line 19 is not contingent upon the entity making a contribution of \$5,000 or more to the registrant during that particular reporting period. Even if the foreign entity gives no money towards the lobbying activities, if the entity has an interest in a specific lobbying issue listed on the LD-2, the interest must be disclosed.

DISCLOSURE OF PAYMENTS AND CONTRIBUTIONS (LD-203)

In-Kind Contributions: The new guidance also clarifies that in-kind contributions made to federal candidates, officeholders, leadership PACs or political party committees must be disclosed on the semiannual contribution report filed by registrants and lobbyists. An “in-kind contribution” is a contribution of goods, services or property offered free or at less than the usual and normal charge. The term also includes payments made on behalf of, but not directly to, candidates and political committees. For example, if an individual hosts a fundraiser for a candidate and pays the costs of food or beverages at the fundraiser, the individual has made an in-kind contribution in the amount of the food and beverages.

Events Honoring or Recognizing a Covered Official: Payments for an event honoring or recognizing a covered official must be disclosed on the LD-203. New guidance clarifies that even where the honor or recognition being given is only a portion or fraction of the event, the entire cost of the event must be disclosed. Under the new guidance, it is not permissible to allocate expenses. The guidance explains: “Registrant ‘O’ is a university. In June 2009, in conjunction with its commencement event, ‘O’ conferred an honorary degree upon Senator ‘P.’ ‘O’ would report all payments relating to the commencement event (chair rental, lunch for honorees, etc.) on its LD-203, listing ‘various vendors’ as the payee and Senator ‘P’ as the honoree.”

CONTACT INFORMATION

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