

LD-203: What Registrants and Lobbyists Must Report

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Semi-Annual LD-203 Reports

- All registered registrants and lobbyists must file
 - Acme, Inc. files report *and* all individual lobbyists employed by Acme, Inc. file report
- Must be electronic filing
 - Each lobbyist needs electronic ID from House/Senate (go to www.disclosure.senate.gov) – Don't wait until 7/30!
 - Process: Firm administrator must activate lobbyists; lobbyists receive e-mail and must obtain password
- Must use form LD-203
- Failure to report – or failure to correct a defective filing – can result in civil fine up to \$200,000
- Knowingly failing to comply with requirements can result in a criminal fine and/or up to 5 years imprisonment

LD-203 covers last 6 months and requires disclosure of:

- Lobbyist's name & employer
- List of all political committees established/controlled by lobbyist
 - PAC board members should list the firm PAC
- All federal campaign contributions of \$200 or more (includes candidate committees, leadership PACs, and party committees)
 - Date
 - Recipient
 - Amount

LD-203 Contents Continued:

- Date, recipient and any amount contributed to:
 - Event honoring/recognizing Congressional or executive branch official, e.g. USCHS dinners for committee members; award dinners
 - Entity named for Congressional or executive branch official,
 - Entity established/financed/maintained/controlled/designated by Congressional or executive branch official
 - Pay costs of meeting/event held by/in name of Congressional or executive branch official

LD-203 Contents Continued:

- Date and amount of any contribution of \$200 or more to presidential inaugural committee or presidential library foundation
- Note: The LD-203 form and software don't perfectly track the statutory requirements

LD-203 Also Requires Certification

- Filer must certify that he/she/it have “read and is familiar with” House and Senate travel/gift rules and “has not provided, requested, or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress with knowledge that receipt would violate” those rules.

Disclosure Requirements and Examples

- All federal campaign contributions of \$200 or more (includes candidate committees, leadership PACs, and party committees)
 - Note: This is a different threshold than FEC reporting, which is more than \$200.

Disclosure Examples

- Lobbyists “K” and “L” serve on the board of an unaffiliated PAC as member and treasurer respectively. As board members, they are in positions that control direction of the PAC’s contributions. Since both are controlling to whom the PAC’s contributions are given, they must disclose applicable contributions and payments on their semi-annual reports.

In regard to a Separate Segregated Fund (SSF) (*i.e.*, a connected PAC), in order to avoid duplicative reporting a lobbyist may report that he or she is a board member of an SSF in lieu of reporting the SSF’s applicable contributions, so long as the SSF’s contributions are reported in a disclosure filed with the Clerk of the House and the Secretary of the Senate.

Disclosure Examples (cont'd)

- Date, recipient and amount contributed to event honoring/recognizing covered Congressional or executive branch official.
 - In State A, a group of constituents involved in widget manufacturing decide to honor Senator “S” and Representative “R” with “Widget Manufacturing Legislative Leaders of 2008” plaques. Registrant “L” knows that “S” has checked with the Senate Select Committee on Ethics regarding her ability to accept the award and attend the coffee, and “R” has checked with the House Committee on Standards of Official Conduct. “L” pays caterer “Z” \$500 and Hotel “H” \$200 to partially fund the event. “L” would report that it paid \$500 to “Z” and \$200 to “H” on November 20, 2008, for the purpose of an event to honor or recognize “S” and “R” with the plaques.

Disclosure Examples (cont'd)

- Registrant “K” sponsors an event to promote “Widget Awareness.” “The Honorable Cabinet Secretary Z” is listed on the invitation as an “attendee” or “special invitee” but will not receive an honor or award at the event. Based on these facts alone, “K” would not need to include the costs of this event on “K’s” disclosure under this section. Mere listing of “Z’s” anticipated attendance at an event the purpose of which is to promote Widget Awareness, in and of itself, is not sufficient to be considered “honored or recognized”. Use of the phrase “The Honorable” in this context is consistent with widely accepted notions of protocol applicable to referencing certain very senior government officials. Supplemental facts might require reporting the cost of the event. For instance, if “Z” received a special, award, honor, or recognition by “K” at the event, “K” would have to report the costs of the event noting that “Z” was being honored or recognized.

Disclosure Examples (cont'd)

- In State A, three 501c(3) organizations sponsor a large regional conference on “Saving Our River.” Senator “S” and Representative “R” are given “Champions of Our River” awards at a dinner event that is part of the conference. Registrant “K” contributes \$3,000 specifically for the costs of the dinner event, paying one of the sponsors directly. At the time of the specific or restricted contribution, “K” was aware that “S” and “R” would be honorees. “K” would disclose a payment of \$3,000 on the relevant date payable to the sponsor with the notation that “S” and “R” were honored.

Disclosure Examples (cont'd)

- Registrant “L,” an industry organization, hosts its annual gala dinner and gives a “Legislator of the Year” award to Representative “R.” Revenues from the gala dinner help fund Registrant “L’s” activities throughout the year. Registrant “L” must report the cost of the event, the payee(s), and that the event honored Representative “R.” The fact that the event helped raise funds for the organization does not change the reporting requirement, though it could be noted in the filing.

Disclosure Examples (cont'd)

- Registrant “K,” an industry organization, has an annual two-day “Washington fly-in” for its members. Among the events for its members is an event on “The Importance of Industry G to the U.S. Economy.” Senator “S” is listed on the invitation as a speaker at the event.

Based on these facts alone, Registrant “B” would not need to report the event under this section. For a covered official to speak at such an event would not, in and of itself, form the basis for concluding that the official is to be honored or recognized.

Supplemental facts might require reporting the cost of the event. For example, if Senator “S” were given a special award, honor, or recognition by the organization at the event, the cost of the event would have to be reported, even if the invitation did not indicate that such would be given.

Disclosure Examples (cont'd)

- Registrant “K” buys a table at a dinner event sponsored by a 501(c) organization to honor Representative “R” but Registrant “K” is not considered a sponsor of the event under House and Senate gift rules. Lobbyist “L” pays the \$150 individual ticket cost to attend the dinner, but is not considered a sponsor of the event under House and Senate gift rules. The purchase of a table or ticket to another entity’s event, in and of itself, is not sufficient to be considered paying the “cost of an event.” Supplemental facts might require reporting the cost of the event. For example, if (1) “K” or “L” undertake activities such that “K” or “L” becomes a sponsor of the event for House and/or Senate gift rule purposes; or (2) “K” or “L” purchase enough tickets/tables so that it would appear that they are paying the costs of the event and/or would not appear to be just ticket or table-buyers, then “K” or “L” would need to report the costs incurred by “K” or “L” (as the case may be) for the event, noting that Representative “R” was the honoree.

Disclosure Examples (cont'd)

- Date, recipient and amount contributed to Entity named for covered Congressional or executive branch official
 - After checking whether the activity is permissible, Lobbyist “L” contributes \$300 on June 1, 2008, to Any State University toward the endowment of a chair named for Senator “S”. “L” would report the information above noting that the payment was made to Any State for the endowment of “S’s” chair.

Disclosure Examples (cont'd)

- Date, recipient and amount contributed to Entity established/financed/maintained/controlled/designated by covered Congressional or executive branch official
 - Senator “S” has been asked to speak at a conference held in Washington, D.C., sponsored by a professional association of which Registrant “R” is a member. “R” makes a donation of \$100 to Charity “X” in lieu of the association paying a speaking fee (i.e., a contribution in lieu of honoraria). “R” would disclose a contribution of \$100 on the date of the payment, with the notation the payment was made as a contribution in lieu of honoraria to an entity designated by “S.”

Disclosure Examples (cont'd)

- Date, recipient and amount contributed to pay costs of meeting/event held by/in name of covered Congressional or executive branch official.
 - Senator “S” and Representative “R” are “honorary co-hosts” of an event sponsored by Registrant “K” to raise funds for a charity, which is not established, financed, maintained, or controlled by either legislator. “S” and “R’s” passive allowance of their names to be used as “co-hosts,” in and of itself, is not sufficient to be considered “honored or recognized.” The purpose of the event is to raise funds for Charity V, not to honor or recognize “S” or “R.” Nor are these facts, in and of themselves, sufficient to treat the event as being held “by or in the name” of “S” or “R.” Supplemental facts might require reporting the cost of the event.

Common Questions

- Can I have someone else file for me?
 - No. While someone else may use your login and password information to fill out the LD-203, the individual lobbyist must manually check the certification box and submit the form.
- Do I need to report a portion of annual dues that may go toward events?
 - In certain cases, yes. Apportionment of dues may be necessary for events that meet the reporting test.

Common Questions

- Do I list the date of an event or the date of a contribution?
 - The date of the contribution.
- What if we have an employee listed who is no longer a lobbyist or no longer qualifies under the definition of lobbyist?
 - By amending a previous filing, it may be possible to prevent an employee who has performed no lobbying during the covered period from having to file an LD-203. Call a member of the K&L Gates ethics team for details on the required procedure.

Certification:

- Covers all Congressional gift/travel rules
- Underscores the need to:
 - Have compliance program in place
 - Ask for ethics advice on gift/travel questions
 - Check for new interpretations/rulings
 - Take ethics training seriously
 - Report any after the fact issues as well
 - Keep good records

Record Keeping:

- Lobbyists need to keep/report internally:
 - Federal campaign contributions
 - Reliance on Congressional gift exceptions
 - Advice on Congressional gift/travel rules
 - Attendance/contributions to events honoring or related to Members
 - Contributions to inaugural committees and presidential library foundations
 - Inaugural tickets considered contributions

LD-203 Enforcement:

- GAO can audit compliance with statute by any registrant
- House/Senate can refer compliance matters to DOJ
 - Congressional guidance: This section “written broadly”
- Internal firm compliance monitoring
 - Continuous
 - Comprehensive
 - Careful

Simple Rules for Effective LDA Compliance

- Establish compliance rules and enforce them
- Keep good, up-to-date records
 - External/internal audits
- Ask questions/consult ethics counsel
 - Recognize that:
 - Interpretations can change
 - Circumstances do change