

April 6, 2018

Guidance on LDA Reporting

The Lobbying Disclosure Act (the “LDA”) requires registrants to file the LD-2, a quarterly lobbying report, due on January 20, April 20, July 20, and October 20 of each year. LDA registrants and their employees who are registered lobbyists also are required to file an LD-203, which is a semiannual report of political contributions due on January 30 and July 30 of each year.

Any hospital currently registered under the LDA is required to file both the LD-2 and the LD-203; any active federal lobbyist employed at the hospital is required to file the LD-203.

The House and Senate provide guidance that clarifies disclosure obligations under the LDA. The full text of the published guidance is available at: http://lobbyingdisclosure.house.gov/amended_lda_guide.html. Member hospitals are encouraged to review this guidance in advance of filing LD-2s and LD-203s. The following highlights certain issues of interest in determining obligations under the LDA.

Note that this brief is intended as a reference guide and does not constitute legal advice or represent or otherwise address all applicable authority and guidance on LDA reporting. You should consult the relevant laws, rules, and standards of conduct, or engage legal counsel and/or compliance personnel, should you have any questions about LDA reporting in connection with a specific situation.

A. Guidance on LD-2 Reporting

a. Expense Reporting

Each LDA registrant must disclose on its LD-2 a good faith estimate of the total expenses incurred by the registrant and its employees for federal lobbying activities during the applicable quarterly period.

i. Dues Payments

LDA registrants that are coalitions or associations must disclose outside organizations that contribute more than \$5,000 toward the registrants’ lobbying activities in a quarterly period **and** actively participate in the planning, supervision, or control of such lobbying activities.

Examples of activities constituting only a passive role would include merely donating or paying dues to the association or coalition, receiving information or reports on legislative matters, occasionally responding to requests for technical expertise or other information in support of the lobbying activities, attending a general meeting of the association or coalition, or expressing a position with regard to legislative goals in a manner open to, and on par with, that of all members of a coalition or association (such as through an annual meeting or a questionnaire). Even more frequent participation, such as offering informal comments to the coalition or association regarding lobbying

strategy, in the absence of any formal or regular supervision or direction of lobbying activities, may not constitute active participation if neither the organization nor its employees has the authority to direct the coalition or association on lobbying matters and the participation does not otherwise exceed a de minimis role.

LDA registrants that are members of coalitions or associations should include in their lobbying expenses the portion of membership dues paid to a coalition or association for lobbying activities, regardless of whether the registrant actively participates in the planning, supervision, or control of such activities. Consistent with this requirement, member hospitals report on their LD-2s the portion of their Children's Hospital Association¹ membership dues allocable to the Association's lobbying activities. The allocable portion of dues for lobbying activities must be reported in the quarter in which the dues are paid.

ii. Reportable Expenses

If a Children's Hospital Association member retains state and federal lobbyists, at least a portion of any time spent by state-level lobbyists preparing materials for a strategic lobbying plan that includes both state and federal lobbying would need to be included in the member'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.

b. Foreign Entity Disclosure

The LDA sets forth the circumstances under which a registrant must disclose a foreign entity on an organization's lobbying registration form. Registrants must disclose the approximate percentage of equitable ownership in the client, if any, of a foreign entity that:

- (1) holds at least 20 percent equitable ownership in the client or any organization identified as contributing more than \$5,000 toward the registrant's lobbying activities and planning, supervising or controlling such activities;
- (2) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the client or any organization identified in the above paragraph; or
- (3) is an affiliate of the client or any organization identified in (1) and has a direct interest in the outcome of the lobbying activity.

The foreign entity must have an interest in the specific lobbying issues listed on the registrant's report, and such an interest should be described. In addition, the House and Senate have clarified that the disclosure of a foreign entity's interest in specific lobbying issues identified in the LD-2 is not contingent upon the foreign entity making a contribution of \$5,000 or more to the registrant during the reporting period.

B. Guidance on LD-203 Reporting

a. Events "Honoring" or "Recognizing" a Covered Official

¹ The Children's Hospital Association's legal name is the National Association of Children's Hospitals.

Each LD-203 filer must disclose on the form, among other things, contributions made by the filer to events or entities “honoring” or “recognizing” covered legislative and executive branch officials. The below can assist in determining whether a particular contribution should be disclosed on a filer’s LD-203.

i. Covered Officials Listed As Event Speakers

The listing of a covered official’s name on an invitation as a speaker at a registrant-sponsored multi-day/multi-part event is not, in and of itself, a basis for disclosing a filer’s provision of expenses for an event. However, if the covered official were given a special award, honor, or similar recognition by the organization at the event, the costs of the event would be reportable, even though the event invitation did not state that any award, honor, or recognition would be given.

ii. Covered Officials Listed As Attendees or Special Invitees

Mere listing of a covered official’s anticipated attendance at event to promote issue awareness is not sufficient for the official to be considered “honored” or “recognized,” but supplemental acts might require reporting the costs of the event (e.g., if the covered official received an honor, award, or similar recognition given by the registrant sponsor at the event).

The use of the phrase “The Honorable” with a covered official’s name is consistent with accepted notions of protocol applicable to referencing senior government officials and its use in invitations does not serve as a basis for establishing “honor” or “recognition” in connection with an event.

iii. No Allocation of Costs Where Covered and Non-Covered Officials Are Honored

Registrants must disclose the entire amount paid to sponsor an event which honors a covered official, regardless of whether the covered official honoree is only one of several individuals so honored. No allocation of costs is permitted, but members may use the Comments section of the report to explain the circumstances.

For example, if a hospital holds an annual fundraising event that honors four different individuals, only one of whom is a covered official, the hospital must disclose on its LD-203 the total amount that it paid for the event. The cost of any award, plaque, or any other commemorative item given to the covered official should be listed separately on the report. All other costs for the event may be reported in one line item, using the term “various vendors” for the payee designation. Although not required, the filer may note in the Comments section that only one of the four honorees was a covered official.

In the above example, the hospital should not report any amounts paid in connection with the event that were then reimbursed by others. If another LDA registrant paid for a portion of the costs associated with the hospital’s event, then that registrant is required to list such amounts on its own LD-203.

b. Contributions to Entities “Designated” by a Covered Official

The LDA requires that any funds contributed or disbursed to an entity designated by a covered official be disclosed on the LD-203. LDA guidance explains that the term “designated” includes directing a charitable contribution in

lieu of an honorarium pursuant to House, Senate, or executive branch ethics rules. It also includes a payment that is directed to an entity by a covered official who serves on the entity's board. However, a contribution by the registrant or lobbyist following a covered official's "mere statement of support" or solicitation is not necessarily reportable without some further role by the covered official.

Note that, notwithstanding the LD-203 disclosure requirements, House and Senate gift rules continue to prohibit individual lobbyists from making contributions to organizations "maintained or controlled" by Members of Congress. If an individual lobbyist at your hospital has any questions about this prohibition, he or she should contact legal counsel and compliance personnel.

c. Event Tickets and Table Purchases

The LDA requires disclosure of any funds contributed or disbursed to pay for the costs of an event that honors or recognizes a covered official, or is held by, or in the name of, a covered official. The LDA guidance explains that mere purchase of a table or ticket to another entity's event, in and of itself, generally is not sufficient to be considered paying the "cost of an event." However, where lobbyists or registrants undertake activities such that they become a "sponsor" of the event for House/Senate gift rule purposes, or purchase enough tickets/tables so that it appears that they are paying the costs of the event (rather than just the costs of their attendance), then these "sponsorship" costs would be reportable. Circumstances in which an entity purchases groups of tickets or several tables to an event require a case-by-case analysis according to the LDA guidance to determine whether the quantity of tickets/tables purchased is such that it would require disclosure on an LD-203.

d. Treatment of Lobbyist's Reportable Contributions When Reimbursed by Employer/Registrant

The LDA guidance states that, where a lobbyist makes a reportable honorary contribution and is reimbursed by his employer/registrant, the contribution is properly reported on the employer's/registrant's LD-203 and not on the individual lobbyist's LD-203.

e. Duplicate Reporting of PAC Contributions by Lobbyists Serving on the Board of Non-Connected PACs

Individual lobbyists serving as board members for a registrant's connected PAC or separate segregated fund ("SSF") do not need to report the SSF's contributions on their individual LD-203 reports. The individual may simply indicate on his individual report that he is a SSF board member. Note, however, that a hospital organized as a 501(c)(3) will not have a connected PAC; therefore, this option would not be available. A lobbyist who serves on the board of a non-connected PAC must disclose reportable contributions from the PAC on his or her LD-203s.

f. In-Kind Contributions

The LDA guidance clarifies that payments falling under the Federal Election Campaign Act's definition of "contribution" to Federal candidates, political party committees, and leadership PACs, *including in-kind contributions*, must be disclosed on the LD-203 if the aggregate to the recipient during the reporting period is \$200 or more. In-kind contributions are generally defined as contributions of goods, services, or property offered free or at less than the usual and normal charge.

g. Helpful Examples

The revised guidance offers several examples of the types of events reportable as events to “honor” or “recognize” a covered official:

- Three 501c(3) organizations sponsor a large regional conference where Sen. Y and Rep. T are given a “Champions of Our River” award at a dinner event that is part of the conference. Registrant B contributes \$3,000 specifically for the costs of that dinner event by paying one of the sponsors directly. At the time of the specific or restricted contribution, Registrant B was aware that Sen. Y and Rep. T would be honorees. Registrant B would disclose the \$3,000 payment on its LD-203 and identify Sen. Y and Rep. T as honorees. This is true regardless of whether Registrant B is a sponsor under the House and Senate gift rules, listed on the invitation as a sponsor, or publicly held out as a sponsor.
- Registrant B, an industry organization, hosts its annual gala dinner, revenues from which will help fund the organization’s activities throughout the year. At the dinner, the organization will present Rep. T with a “Legislator of the Year” award. Registrant B must report the costs of the event (event space, food, flowers, etc., but not indirect costs such as host staff salaries and host office overhead), the payee(s) and Rep. T as an honoree. The fact that the event helped raise funds for the organization does not change the reporting requirement; the registrant may choose to note the fundraising aspect in the LD-203 Comments section. Note that Registrant B must still separately report the cost of any item that Registrant B gave Rep. T when honoring Rep. T as the “Legislator of the Year.”