

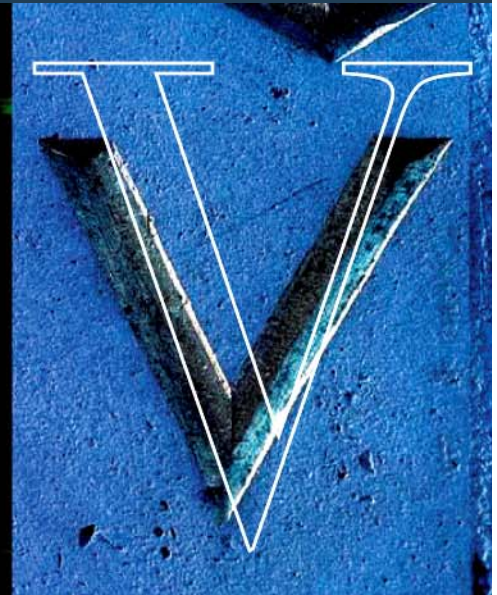
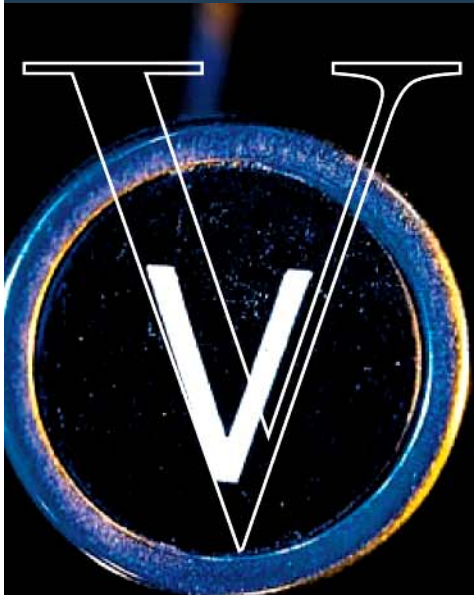
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## Complying with the New Federal Ethics and Lobbying Rules

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# Topics for Today

## Review existing law & new changes

- Lobbying Disclosure Act
  - Who must be registered
  - What is reported
  - Changes to coalition disclosures
  - New semiannual reports
- Legislative Branch Gift Rules
  - What are the new rules
  - Compliance systems
  - Common exemptions for associations
- Executive Branch Gift Rules



# Lobbying Disclosure Act

## WHO HAS TO REGISTER?



## Who Has to Register?

- Any entity that employs an in-house lobbyist
- Entities that retain outside lobbyists are not required to register





# What is a Lobbyist?

## TWO PART TEST

- More than one lobbying contact  
*AND*
- More than 20% of time on lobbying activities



## Lobbying Contact

- Any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—
  - the formulation, modification, or adoption of Federal legislation (including legislative proposals);
  - the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
  - the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
  - the nomination or confirmation of a person for a position subject to confirmation by the Senate.



## Other Definitions

### COVERED LEGISLATIVE BRANCH OFFICIALS

- Anyone in Congress – from Members to the receptionist

### COVERED EXECUTIVE BRANCH OFFICIALS

- President, Vice President, & Executive Office of the President
- Levels 1 through 5 of the Executive schedule (cabinet & some below)
- Certain military officers
- Schedule C political appointments



## Other Definitions

### LOBBYING ACTIVITY

- Contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.





# Deciding Who is a Lobbyist

## PRACTICAL CONSIDERATIONS

- Individuals must file new reports on personal giving
- Individuals subject to gift rule limitations
- Previously there was little impact on an individual if he or she was registered



# Lobbying Disclosure Act

## REPORTING OBLIGATIONS



## Overview of Reporting

- Quarterly Reporting
  - *Replaces Semiannual Reports*
- Semiannual Lobbyist Reports
  - Entirely New
  - First report due July 30



## Contents of Quarterly Reports

- Amount spent on lobbying
  - Minimum amount to report \$5,000 (instead of \$10,000)
  - Rounded to nearest \$10,000 (instead of \$20,000)
  - LDA or IRC
- Individuals who act as lobbyists
  - 20 year look back for covered officials
- Issue areas lobbied
- Agencies/houses of Congress lobbied



# Affiliated Entities

- Test for Affiliation:
  - Contributes more than \$5,000 per quarter toward lobbying activities
    - Dues: percentage allocated for lobbying
    - Special assessments for lobbying
    - Quarterly versus yearly payments

AND

- Actively participates in lobbying
- Disclosure:
  - List each entity on form OR
  - List web site with members
    - May not use web if entity in whole or major part plans, supervises, or controls; must list on form
    - Whole or major part = 20%



## Affiliated Entities

- Examples of Active Participation:
  - Serving on a board of an organization
    - If the organization is substantially devoted to lobbying
    - But not if the organization has multiple purposes and the board only sets overall budget
  - Serving on lobbying oversight committee
  - Serving as part of informal lobbying coalition that directs lobbying strategy
- Examples of passive participation:
  - Attending an annual meeting
  - Providing a list of legislative priorities
  - Responding to requests for information from lobbyists
- Individuals who serve on committees by virtue of working for another organization cause the other organization to “actively participate”





# Practical Impact

## WEB SITE DISCLOSURE

- May disclose web site address rather than listing on form
- Web site may list all members, not just those meeting threshold
- Outside lobbyists will have to disclose as well
- Those who “substantially control” must still be listed on the report



# Lobbying Disclosure Act

## SEMI-ANNUAL REPORTS (LD-203)



# LD-203

## OVERVIEW

- Semiannual disclosure of “political” contributions
- Each organization with in-house lobbyist must complete form
- Each registered lobbyist must complete the form
- Includes certification of Gift Rule compliance
- Online system



# LD-203 FILE REPORT

- Type – one of four types (see next page)
- Contributor Name will be self (unless control a PAC)
- Date is date payment made
- Honoree Name is the name of the covered official



# LD-203

## TYPES OF CONTRIBUTIONS

- FECA
- Honoring
- Meetings
- Presidential Library Foundations



# LD-203

## FECA CONTRIBUTIONS

- All contributions aggregating \$200 or more during the semiannual period given to:
  - Federal candidates
  - Leadership PACs
  - Political parties
- **Leadership PAC:** With respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidates or individual, except such term does not include a political committee of a political party.





# LD-203

## FECA CONTRIBUTIONS (CONTINUED)

- Must report the date and amount of each contribution
- Aggregation is during semiannual period and does not appear to carry over
  - E.g., \$199 in May does not appear to be aggregated with \$199 in August
- All of this information is already disclosed through the FEC
  - **Must still be disclosed on LD-203**
- Does not include state contributions or contributions to PACs
- Search FEC website and review check register/credit card receipts to find all contributions



# LD-203

## CONTRIBUTIONS TO ORGANIZATIONS

- Name, date, recipient, covered official, and amount of contribution or disbursement for the following:
  - To pay the cost of an event to honor or recognize a covered executive or legislative branch official
  - To an entity that is named for a covered legislative branch official, or to a person or entity in recognition of such official
    - E.g., honorarium to charity, payment to endow a chair at a school
    - Does not include covered executive officials
  - To an entity established, financed, maintained, or controlled by a covered legislative or executive branch official **or an entity designated by such official**
  - To pay the costs of a meeting, retreat, conference, or other similar event held by, or in the name of, one or more covered legislative or executive branch officials



# LD-203

## PAYMENTS NOT DISCLOSED

- **Speaking Events:** Payments for events where covered officials are speakers do not have to be reported unless the speaker receives an award or other special recognition.
- **Appearing on Program:** Listing a covered official as an attendee of an event does not have to be reported unless the speaker receives an award or other special recognition.
- **Co-Hosts:** An event that lists a covered official as an “Honorary Co-Host” is not one honoring or recognizing such officials, or one named for the covered official, unless they are given an award or other special recognition at the event.
- **Titles:** Using the recognized honorific “The Honorable” before a person’s name does not make the event one honoring or recognizing the official.
- **Tickets:** Purchasing a ticket, or even a table, to an event where a covered official will be honored or recognized does not have to be reported, even if the host organization would report its costs for the event.
- **Solicitation:** A solicitation by a covered official for a charitable contribution is not one “designated” by that official unless the official has some other role, such as being on the board of the entity to receive the contribution, or the contribution was one made in lieu of an honorarium for speaking.



# LD-203

## PAYMENTS TO BE DISCLOSED

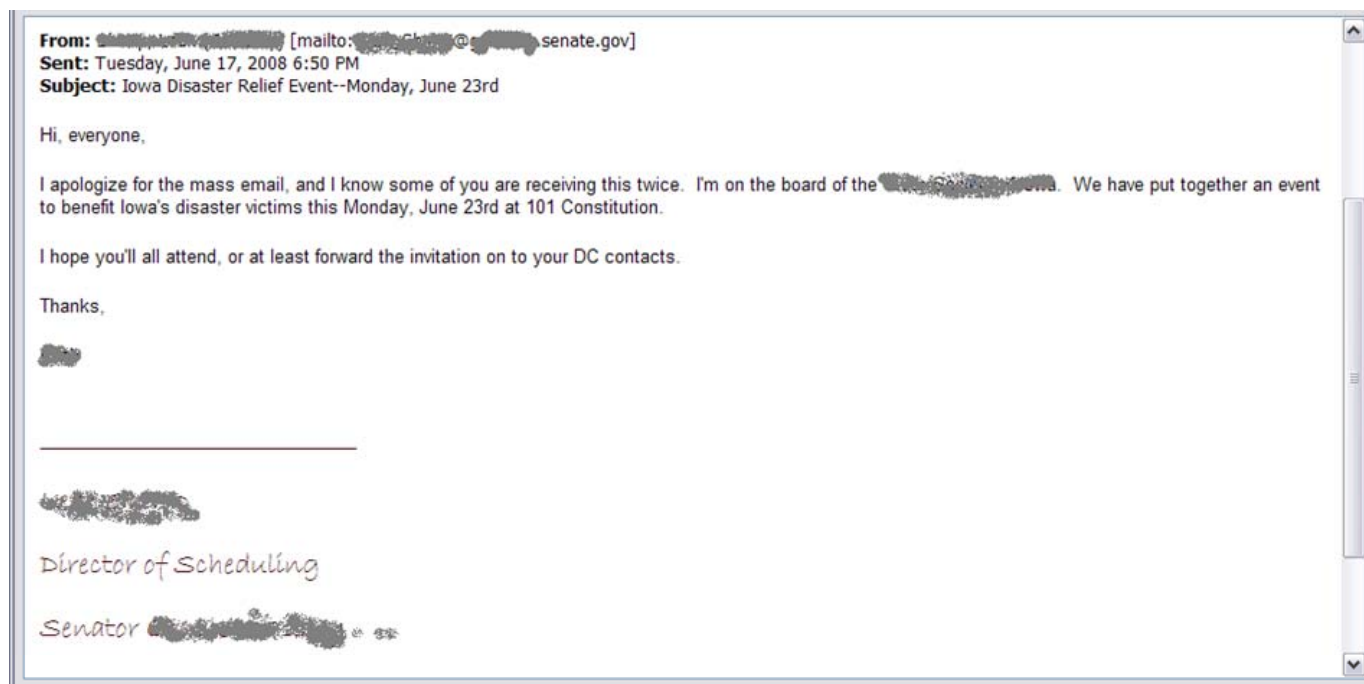
- **Plaques, Awards, Etc.:** If a covered official will be given a “special award, honor, or recognition by the organization” at an event, then it is one honoring or recognizing the official. While not entirely clear from the *Guidance*, this appears to mean more than a simple “thank you for being here today and speaking to us” and more akin to giving that person a specific award or plaque.
- **Payments:** If an individual or organization makes a specific donation to fund an event honoring or recognizing an official, and the donor is aware that the event will be a reportable event at the time of the contribution, then it must be disclosed. This is different than a payment to purchase a ticket or a table at the event.
- **Block Purchases:** If an entity purchases enough tables or tickets to an event 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 the payment would have to be disclosed.



# LD-203

## EXAMPLES

- Request for contribution to Iowa relief from Senate staff person
- Looking only at email, is this made at the designation of a covered official?
  - Not merely because of the request BUT because she is on the board of the organization



## LD-203

### EXAMPLES

- Guidance would exclude this event because the Covered Officials are only “honorary hosts”

**THE STATE SOCIETY OF IOWA**  
*In conjunction with*  
The Capital Area Iowa Club      University of Northern Iowa Alumni Association  
Iowa State University Alumni Association      Drake University National Alumni Association

**Event Sponsors**  
American Council of Life Insurers  
Honeywell  
National Beer Wholesalers Association

**With Honorary Hosts**  
Governor Chet Culver  
Senator Chuck Grassley  
Senator Tom Harkin  
Congressman Leonard Boswell  
Congressman Tom Latham  
Congressman Steve King  
Congressman Bruce Braley  
Congressman David Loebsack


*Invite you to*

**IOWA**  
*Disaster Relief*  
**2008**

**A FUNDRAISER TO BENEFIT  
THE VICTIMS OF IOWA'S RECENT FLOODS AND  
TORNADOES**

**SUGGESTED MINIMUM  
CONTRIBUTION \$20**

**Date:** Monday June 23, 2008  
**Time:** 6:00-8:00  
**Location:** 101 Constitution Avenue, NW,  
Rooftop, Washington, DC  
**Questions:** [social@iowasociety.org](mailto:social@iowasociety.org)



All proceeds will be given to the relief efforts  
The State Society of Iowa is a 501(c)(4) tax-exempt organization  
Tax deductible charitable giving options are available





# LD-203

## CONTRIBUTIONS TO PRESIDENTIAL ENTITIES

- Name of each Presidential Library Foundation to which contributions aggregating \$200 or more in the semiannual period are given, along with date and amount of contribution
- Name of each Presidential Inaugural Committee to which contributions aggregating \$200 or more in the semiannual period are given, along with the date and amount of the contributions
  - Would include tickets purchased from such committees



# Certification of Compliance

## NEW REQUIREMENT

- “Has read and is familiar with” the House and Senate Gift Rules
- “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 of the gift would violate” the House or Senate Gift Rules



## Suggestions for LD-203

- Implement Gift Rule compliance program
- Implement tracking of payments/undertake look-back system for this report
- Establish filing procedures to complete report and have appropriate individual review report
- Issue internal directive to have report filed



# Legislative Gift Rules

NO GIFTS FROM LOBBYISTS



# Gift Rule

## OLD RULE

- Basic Rule:
  - Gifts of up to \$49.99
  - Total for year of up to \$99.99
- Unless:
  - There is an applicable exemption
  - Then could give more



# Gift Rule

## NEW RULE

- Basic Rule:
  - No gifts or travel from lobbyists or entities that retain or employ lobbyists
- Unless:
  - There is an applicable exemption
- Cannot expense “gifts”
  - No reimbursement
  - No deductions
  - May pay using own money if preexisting friendship (discussed below).
- Does not apply to executive branch gifts
  - \$20 limit





# Gifts From Lobbyists

## EXPANSION OF LIABILITY

- LDA now prohibits giving gifts “if the person has knowledge that the gift or travel may not be accepted by that covered legislative branch official under the Rules of the House of Representatives or the Rules of the Senate.”
  - Subject to criminal and civil penalties



## Application to Non-Lobbyists

- May give gifts of up to \$49.99
- Annual limit of \$99.99
- May not be reimbursed for gifts from entity that employs or retains a lobbyist



## Compliance Suggestions

- Allow meals to be expensed for employees, but not members or staff
- Include on receipts/reimbursement forms statement:
  - “Reimbursement for employee’s portion of meal only; guest paid for own meal”
- Review lobbying firm bills for meals/gifts
  - Include provisions in contracts
- Train accounting to prevent reimbursement
- Train employees, implement policies



# Gift Rules

## EXEMPTIONS



## Personal Friendship

- Must consider the following factors:
  - History of the relationship
  - Previous exchange of gifts
  - Will it be reimbursed or expensed
  - Similar gifts given to others on Hill
- If exemption applies, limited to \$250
  - Unless waiver obtained
- What this allows:
  - Gifts paid for with your own money
  - Dinner, drinks, etc.



## Widely Attended Events

- Invitation must come from sponsor of event
- Event must be:
  - Open to individuals from throughout a given industry or profession or
  - those in attendance represent a wide range of persons interested in a given matter
- Must have 25 people not from Congress invited
- Member or employee must either:
  - be a speaker at the event or
  - determine that attendance is related to official duties



## Charity Events

- Invitation must come from sponsor of event
  - Contributors to event may make requests
  - “All communications with Members or staff regarding the event should be made by the event sponsor, because a communication from an event contributor may be deemed an impermissible invitation from the contributor”
- Must be a fundraising event (not merely a congratulatory event)





## Receptions

### DOES NOT INCLUDE ONE-ON-ONE SITUATIONS

- food or refreshments of a nominal value offered other than as a part of a meal
- the kinds of food and refreshments usually offered at receptions—such as hors d'oeuvres, appetizers, and beverages
- morning meetings—coffee, juice, pasty, or bagels—may be accepted.
- The exception does not allow Members or staff to accept a “meal,” or “food or refreshments offered as part of a meal,” no matter how nominal the cost





# Executive Branch Gift Rules

## New Obama Ethics Rules

- The new rules apply to all political appointees:
  - Appointed by President and Vice President
  - Senior Executive Service appointments
  - Schedule C appointments
  - Will eventually include other career agency officials
- Requires appointees to sign pledge
- More strict than existing Executive Branch Rules



## Gifts from Lobbyists

- Bans gifts from registered lobbyists and organizations registered under the LDA
- Exceptions:
  - Based on personal relationship
  - Discounts and similar benefits
  - Resulting from spouse's employment
  - Gifts to President or Vice President
  - Authorized by agency regulation or accepted under specific statutory authority



## Gifts from Lobbyists

- Exceptions from OGE gift rules that no longer apply:
  - \$20 de minimis value
  - Awards and honorary degrees
  - Gifts resulting from employee's own outside business or employment
  - Widely attended gatherings
  - Social invitations
  - Food, refreshments, and entertainment from persons other than a foreign government



## Other Restrictions

- Banned for two years:
  - Employment in agency lobbied in former job
  - Participation in issue areas lobbied
  - Participation in decisions related to former employment in private sector
- After leaving government, no lobbying covered executive branch official or Senior Executive Service for remainder of Obama Administration





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## Complying with the New Federal Ethics and Lobbying Rules

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