

Notice Regarding Conditions for Lobbyist Termination

June 5, 2009

This notice responds to questions about the impact of filing an amended LD-1 or LD-2 report on the duty to file an LD-203 report.

1. Who must file an LD-203 report?

Under section 203 of the Honest Leadership and Open Government Act (HLOGA), 2 U.S.C. § 1604(d)(1), “each person or organization **who is registered or is required to register** under paragraph (1) or (2) of section 1603(a) of this title, and each employee **who is or is required to be listed** as a lobbyist under section 1603(b)(6) of this title or subsection (b)(2)(C) of this section, shall file a report...” Thus, the requirement to file an LD-203 report falls upon all lobbyists who were listed on an LD-1 or LD-2 report, regardless of whether they were required to be listed (as in the case in which a registrant listed an individual as a lobbyist in an abundance of caution).

2. Does amending an LD-1 or LD-2 to remove a lobbyist from a previously filed LD-1 or LD-2 nullify that lobbyist’s duty to file an LD-203?

No. Because the Lobbying Disclosure Act of 1995 (LDA), as amended by HLOGA, requires filings not only for those required to be listed, but also for each person who “is listed,” the filing of an intended retroactive removal of a lobbyist does not undo the duty of the individual to file an LD-203. **Filers are expected to use reasonable care when filling out and submitting LD-1, LD-2, and LD-203 forms.**

3. If a registrant or lobbyist receives notice of failure to file an LD-203, is filing an amendment removing the lobbyist from the LD-1 or LD-2 that triggered the LD-203 filing requirement a sufficient response?

No. While amended LD-1 and LD-2 forms will be accepted for filing, they do not undo the effect of having listed a lobbyist on the original filing. Therefore, the filing of such an amendment does not constitute “an appropriate response” to a notice of apparent noncompliance for failure to file an LD-203.

4. How can an individual who no longer meets the definition of lobbyist in the LDA be freed from the requirement to file an LD-203 for future semiannual periods?

An individual who no longer meets the lobbyist definition under 2 U.S.C. § 1602(10) can be relieved from having to file an LD-203 for future semiannual periods by the registrant removing the lobbyist from its active lobbyists list. This is accomplished by the registrant listing such an individual on line 23 of the LD-2 quarterly report for each client for which the individual was previously listed. A registrant may terminate/remove an individual only when: (i) that individual’s lobbying activities on behalf of that client did not constitute at the end of the current quarter, and are not reasonably expected in the upcoming quarter to constitute, 20 percent of the time that such employee is engaged in total activities for that client; or (ii) that individual did not in the current quarter and does not reasonably expect in the upcoming quarter to make more than one lobbying contact per quarter.

5. *If a registrant does not electronically activate a lobbyist in the LD-203 contributions reporting system, is a lobbyist excused from filing a 203 Report?*

No. Any lobbyist who is reported on line 10 of a LD-1 or line 18 of a LD-2 must file a LD-203 report, unless that lobbyist has been listed on line 23 as removed for all clients of the registrant prior to the beginning of the relevant LD-203 filing period. The Secretary and the Clerk view lines 10 (LD-1), 18 and 23 (LD-2) as determinative for an individual lobbyist's obligation to file a 203 Report. The mechanics of the contributions electronic filing system is for process only and is not relevant in the determination of a filer's legal obligations.

This notice is unrelated to, and has no effect on, the obligation of registrant organizations and lobbying firms to file LD-203 reports.

The Secretary and the Clerk encourage reporting individuals and organizations to file their reports consistent with the law and the Guidance. Please note that failure to file reports or failure to file an appropriate response to a Secretary/Clerk notice (pursuant to 2 U.S.C. 1605(a)(7)) may result in a referral to the U.S. Attorney (pursuant to 2 USC 1605(a)(8)). The Secretary and Clerk are available to help you with your reporting and welcome any questions you may have.