July 8, 2008

Via Fax and First Class Mail

Ms. Nancy Erickson
Secretary of the Senate
United States Senate
Washington, DC 20510

Ms. Lorraine Miller
Clerk of the House
U.S. Capitol, Room H154
Washington, DC 20515-6601

Dear Ms. Erickson and Ms. Miller:

The undersigned are, variously, legal counsel to labor and other nonprofit organizations that are registrants under the Lobbying Disclosure Act ("LDA"), 2 U.S.C. §§ 1601 *et seq.*, and employ lobbyists to carry out some or all of their "lobbying activities" within the meaning of the LDA. We write because we believe that two aspects of the May 29, 2008 changes to the "Lobbying Disclosure Act Guidance" ("the Revised Guidance") issued by your offices in part significantly misinterpret the Honest Leadership and Open Government Act ("HLOGA") of 2007, and they will both chill ordinary interaction and association with Members of Congress and impose undue and unreasonable recordkeeping and reporting burdens on registrants and their employed lobbyists.

I. Reporting Payments for "the Cost of an Event to Honor or Recognize a Covered Legislative Branch Official or Covered Executive Branch Official"

Section 203(a) of HLOGA, 2 U.S.C. § 1604(d)(l)(E)(i), requires lobbyists and entities that employ lobbyists to report, *inter alia*, all of their contributions and disbursements "to pay the cost of an event to honor or recognize a covered legislative branch official or covered executive branch official." The plain meaning of this language is to require a lobbyist to report payments for "an event" *the purpose of which* is "to honor or recognize" a covered official. *See* "Section-by-Section Analysis of S.1" by Sens. Feinstein, Reid and Lieberman, 153 Cong. Rec. S10709 (daily ed. Aug. 2, 2007) ("payments for events honoring or recognizing federal officials"). Accordingly, reporting about such an event under § 203(a) should be required only when the sole or primary purpose of an event is "to honor or recognize" a covered official.

This meaning is confirmed by the legislative placement of this new requirement with six other new reporting requirements, *all* of which entail payments whose primary or exclusive focus is a covered official:

1. Payments "to an entity that is *named for*" a legislative official, 2 U.S.C. § 1604(d)(l)(E)(ii) (emphasis added);

2. Payments "to a person or entity *in recognition of*" a legislative official, *id.* (emphasis added);

3. Payments "to an entity *established, maintained, financed or controlled by*" a legislative or executive official, 2 U.S.C. § 1604(d)(l)(E)(iii) (emphasis added);

4. Payments "to ... an entity *designated by*" a legislative or executive official, *id.* (emphasis added);

5. Payments for "a meeting, retreat, conference, or other similar event *held by*" a legislative or executive official, 2 U.S.C. § 1604(d)(l)(E)(iv) (emphasis added); and

6. Payments for "a meeting, retreat, conference, or other similar event held...*in the name of*" a legislative or executive official, *id.* (emphasis added).

In each of these situations, the primary or exclusive nature of the event or action is a focused credit or benefit to, or payment made at the behest of, a covered legislative or executive branch official; in none of them is an official either secondary or incidental to the reportable event or action. In light of both the statutory text and the legislative context of the phrase "to honor or recognize," then, the only relevant definition of its use of the verb "honor" is "to confer honor or distinction upon," and the only relevant definition of its use of the verb "recognize" is "to show appreciation of (kindness, service, merit, etc.) as by some reward or tribute." *The American College Dictionary* (Random House 1965). And, this interpretation is reinforced by three other HLOGA provisions.

First, the second § 203(a) provision quoted above also uses a form of the verb "recognize" in requiring reporting of payments "in recognition of" a covered official, and that provision clearly means a special and exclusively honorific act.

Second, two other HLOGA provisions amended, respectively, the rules of each House of Congress to preclude any Member from participating in "an event honoring that Member" at a national party convention if a registrant or employed lobbyist pays for the event. *See* HLOGA § 305, adding House Rule XXV(8), and HLOGA § 542, adding Senate Rule XXXV(1)(d)(5). This prohibition pertains to "parties honoring Members," S. Amdt. 65, 110th Cong., 153 Cong. Rec. S637 (daily ed., Jan. 17, 2007), as numerous principal sponsors of HLOGA stressed,[1] and as guidances already issued by the respective ethics committees confirm. *See* Senate Select Committee on Ethics. Memorandum (Feb. 4, 2008) (an event honoring a Senator "does not include being a *featured speaker* at an event" (emphasis in original); House Committee on Standards of Official Conduct, Memorandum (Dec. 11, 2007) (being honored means either being "named ... as an honoree

[1] *See* 153 Cong. Rec. S745 (daily ed. Jan. 18, 2007) (remarks of Sen. Cardin) (stating that this provision "puts an end to the lavish parties they throw in our honor at the national conventions"); *id.* at H9209 (daily ed. July 31, 2007) (remarks of Rep. Van Hollen) (stating that the provision "[b]ans lavish convention parties" by prohibiting Members "from attending national political convention parties held in their honor"); *id.* at. S10689 (daily ed. Aug. 2, 2007) (remarks of Sen. Feinstein) (describing provision as designed to "prohibit[] Senators from attending parties in their honor"); *id.* at E1759 (daily ed., Aug. 4, 2007 (remarks of Rep. Conyers) (describing the prohibition as directed at "parties that are held in [Members'] honor" and "part[ies] to honor a specific Member"). *See also* House Ethics Manual 76-77 (2008).

(including as a 'special guest') in any invitations, promotional materials or publicity for the event" or the Member "receiv[ing] ... some special benefit ... such as ... an exclusive speaking role or a very prominent ceremonial role").

Thus, even at national party convention, which inherently is an extraordinary and high-profile occasion that is redolent with celebration and political import, the term "to honor" means something more than merely listing a Member of Congress as attending or being one of the speakers at an event. The phrase "to honor or recognize" in § 203(a), then, which applies at all times and to all "events" without evident restriction, plainly means the exclusive or primary purpose of an event.

This construction directly serves the widely understood purposes of HLOGA, namely, to curb undue influence on public officials by registrants and their lobbyist employees by restricting or fostering greater transparency regarding particular activities that are most likely to curry favor with public officials. HLOGA was enacted to accomplish these goals by, among other things, more stringently regulating gifts to and travel by Members of Congress and the manner in which Members and other officials negotiate post-governmental employment. Consistent with those provisions, the HLOGA requirement that lobbyists and their employers report payments for events "to honor or recognize" covered officials most sensibly requires disclosure only when an event is exclusively or primarily intended to confer some special prestige upon the official in the absence of "lobbying contacts" or "lobbying activities," as to which different reporting requirements apply.

The Revised Guidance provides four examples of events that would trigger the reporting requirement for an event "to honor or recognize" an official. Examples 1, 6 and 7 are faithful to the plain meaning of this provision. Example 3, however, is critically different. It reads as follows:

> Registrant "R" sponsors an event. Senator "Y" is listed on the invitation as an attendee. Representative "T" is listed on the invitation as a speaker. "R" would disclose the date, amount, recipient(s) of funds, and "Y" and "T" as being recognized.

Example 3 (which actually consists of two examples) is unmoored from the statute's language and purposes because it treats any event as one whose primary or exclusive purpose is "to honor or recognize" that official if the invitation to the event merely lists the attendance or participation by a covered official. But when Congress means to regulate an official's mere attendance or speaking at an event, it says so. Indeed, as we show in the margin, Congress has done so in other provisions of HLOGA as well as in several pre-HLOGA provisions of the Standing Rules of the Senate and the Rules of the House of Representatives.[2]

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[2] *See, e.g.,* HLOGA § 203(a), codified at 2 U.S.C. §1604(d)(l)E)(iv) (requiring registrant/lobbyist reporting of payments for "a meeting, retreat, conference, or other similar event held by, or in the name of," a covered official); HLOGA § 545, amending Senate Rule XXXV(l)(c) and adding Senate Rule XXXV(g)(l) (permitting "a Member, officer or employee [to] accept an offer of free attendance in the Member's home state at a conference, symposium, forum, panel discussion, dinner event, provided by a sponsor of the event" if, among other things, that attendee "participates in the event as a speaker or a panel participant, by presenting information related to Congress on matters before Congress, or by performing a[n appropriate] ceremonial function"); House Rule XXV(5)(a)(4)(C) (conditioning permissibility of a Member, officer or employee of the House "to accept a sponsor's unsolicited offer of free attendance at a charity event"); House Rule XXV(5)(b)(l), as amended by H. Res. 6, Title II, Sec. 205

The adverse practical implications of Example 3 are far-reaching. Members of Congress and other government officials frequently attend or speak at events that are sponsored or funded, at least in part, by entities that employ lobbyists, including policy forums, seminars, meetings, conferences, conventions and other events that have nothing to do with "honor[ing] or recogniz[ing]" the officials. Yet under Example 3 any of these events could become reportable, creating administrative burdens on the regulated entities that are not related to the concerns underlying HLOGA.

Let us provide a specific example, which is typical of the organizations we represent. National and international labor organizations, as well as labor federations, regularly and periodically hold conventions. Some are held annually, while others are held at intervals of two to five years. Such conventions constitute the primary legislative and policymaking bodies of the organizations. Hundreds, and in some cases, thousands of delegates from the organizations' constituent bodies participate in these conventions. At these conventions, which span several days, the delegates elect officers, establish policies for the organizations, adopt and amend changes to the organizations' constitutions and bylaws, and set the organizations' budgetary priorities.

It is common for the organizations to invite Members of Congress to attend or speak at their conventions and for Members to accept such invitations. In those instances, the Member's involvement is limited to a discrete segment of the convention - when, typically, various other convention business is also being conducted. If, as Example 3 indicates, such a convention becomes "an event to honor or recognize" a covered official if an invitation to the convention notes that an official will attend or give a speech at some point during the convention, then the reporting requirements would be applied in a manifestly incorrect and unreasonable way. The exclusive or primary purpose of such conventions is for the union or labor federation to make organizational governance decisions and plan and prioritize strategies and policies. That holds true even if a Member of Congress or other covered official attends or speaks at the convention.

Accordingly, the convention's purposes have nothing to do with "honoring or recognizing" public officials, and the Member's role is purely incidental to the convention's accomplishments. (Indeed, to the extent that there is any "honor[ing]" or "recogni[tion]" involved when a public official attends or speaks at a union convention or other similar event, the better view is that the "honor[ing] or recogni[tion]" flows *from* the official *to* the union, not the other way around.) Yet, the Revised Guidance suggests that a convention would become a fully reportable event if its invitation noted an official's participation, no matter how secondary or incidental it was to the main event.[3]

(conditioning permissibility of private sponsorship of travel by a Member, officer, or employee of the House to "a meeting, speaking engagement, factfinding trip, or similar event," including "attendance at or participation in a one-day event"); Senate Rule XXXV(2), as amended by HLOGA § 544(a) (same with respect to Members, officers and employees of the Senate). *Cf.* 2 U.S.C. § 441i(e) (providing that a federal candidate or officeholder "may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party").

[3] By way of analogy, the Supreme Court's decision in *Ellis v. Railway Clerks*, 466 U.S. 435 (1984), is instructive. The Court decided that all bargaining unit employees could be compelled to defray all of the costs of the union's convention, notwithstanding that non-member employees in a collective bargaining unit covered by a union-security clause may opt out of paying for a union's political or ideological activities that are not germane to collective bargaining. *Id.* at 448. The Court reasoned that union conventions "are normal events ... [that are] essential to the union's discharge of its duties as bargaining agent." *Id.* at 448-49. "Surely if a union is to perform its statutory functions," the Court elaborated, "it

Indeed, the scope of Example 3 is not limited to major events like a convention, nor, of course, is it limited to functions sponsored by registrants that are unions or a labor federation. By its terms, Example 3 describes a mere meeting with an official for which a registrant incurs some costs, even if nominal, simply because the registrant invites others to attend, even by email, by specifying that the meeting will be with the official. Likewise, an incumbent Member's *campaign* appearance before a registrant membership group's members is a routine event whose expenses (meeting space, security and the like) are ordinarily and lawfully paid by the group, see generally 11 C.F.R. § 114.3(c)(2), But Example 3 indicates that this event would trigger reporting although such an appearance typically involves no "honor" or "recogni[tion]" and, in fact, is an effort by the Member to persuade the group and its members to support his or her campaign. We do not believe that Congress intended to require reports of such meetings and appearances under § 203(a), and the language of § 203(a) itself dictates otherwise.

Applying the § 203(a) reporting requirement to such events would result in either (a) the absurdity of a registrant reporting all of its expenses for the event – hundreds of thousands or even millions of dollars in the case of a union, labor federation or other national group's convention – as disbursements "to honor or recognize" covered officials who attend or speak there, or (b) assuming that HLOGA allows some proportional attribution of costs (as to which the bare statutory text is silent), the onerous and artificial task of attempting to allocate contracts and other costs to the portion of a convention or other event that somehow relates to the covered official's involvement. In either case, enforcing this expansive interpretation would result in immense over-reporting of spending and paint a misleading picture of the reporting organizations.

To be clear, we do *not* suggest that an event's invitation is *irrelevant* to a determination as to whether the event is one "to honor or recognize" a covered official. Rather, our point is that this circumstance is not necessarily *sufficient* to warrant that conclusion, as in the convention example described above. In fact, sometimes an invitation may indicate an event to which the requirement applies. For example, a lobbying firm-hosted event whose invitation reads "Please join us for a dinner and award ceremony honoring Senator X's steadfast commitment to the interests of [the lobbyist's clients]," in all likelihood would be "an event to honor and recognize" a covered official. Still, the actual content of the event itself also would support that conclusion. But an approach in which –regardless of event content – the mere mention of a covered official in an event invitation is enough to make the event reportable and, by implication, the mere absence of a covered official's name on an invitation is enough to make the event *non*-reportable, would make the reporting requirement both over- and under-inclusive.

This point can be illustrated with two hypothetical cases. First, imagine that an organization that employs lobbyists sponsors a symposium on problems with health-care delivery at which academics, health-care policy professionals and others representing a diversity of viewpoints on the issue will speak or deliver papers, and a Senator or Representative who chairs a relevant committee

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must maintain its corporate or associational existence, must elect officers to manage and carry on its affairs, and may consult its members about overall bargaining goals and policy." *Id.* at 449. The Court reached this conclusion despite the fact that "[t]he minutes of the convention indicate that a number of major addresses were made by prominent politicians, including Senators Humphrey, Kennedy, Hartke, and Schweiker, the Mayor of Washington, D.C., and four Congressmen." *Id.* at 459 (Powell, J., concurring in part and dissenting in part). *Ellis*'s lesson for current purposes is that the nature and purposes of a union's convention are not altered when public officials attend and speak at it.

or subcommittee is invited to speak about pertinent legislation. All of these presenters are listed on the invitation. It should be clear that this event is not one "to honor or recognize" the Member, yet Example 3 suggests otherwise.

Second, imagine that another organization that employs lobbyists holds a lavish catered gala intended to feature Members of Congress. The sponsor gives the event an anodyne title – its "Round Table Dinner" – and invites a select group of Members that the organization will later target with lobbying contacts concerning a bill that the organization supports. The well-counseled organization ensures that the dinner is allowable as a "widely attended event" under the gift rules and also makes sure not to refer to the Members in the invitation. During the event, however, the organization's officers speak and lavish praise on the Members, who are termed the event's "special honored guests." We submit that such an event *would* qualify as one "to honor or recognize" these Members, but Example 3's focus on the invitation would not reach it.

Accordingly, we ask that the Clerk of the House and the Secretary of the Senate withdraw Example 3 from the Revised Guidance.

II. Reporting Payments Subject to the Key Terms "Established," "Financed," "Maintained" and "Controlled"

As noted above, § 203 of HLOGA requires disclosure of contributions and disbursements made by a registrant or a political committee that is "established or controlled by" a registrant to an entity that is "established, financed, maintained, or controlled by" a covered official. 2 U.S.C. § 1604(d)(1)(E)(iii).

The Revised Guidance offers minimal guidance only with respect to when an entity is "controlled" by an individual, namely, Example 8, which deals with a political committee that is "controlled" by a lobbyist. It reads:

> Lobbyists "C" and "D" serve on the board of an unaffiliated PAC as member and treasurer respectively. As board members, they are in positions that controls [sic] 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.

Under this example, it appears that merely serving as a member of the board of a political committee places one in a "position[] that controls direction of the PAC's contributions," and results in the political committee being controlled by *each* of its board members, and possibly by its treasurer as well.[4] Although common sense dictates that one cannot "control" an organization

[4] It is unclear whether Example 8 concludes that a political committee's treasurer is in a position to "control[] direction of the PAC's contributions." The example presents Lobbyist C as merely a member of the PAC's board while Lobbyist D both serves on the board and is its treasurer. The example reaches the conclusion that "[a]s board members" they are in positions that control direction of the PAC's contributions, and therefore must report various PAC contributions on their Forms LD-203. There is no discussion of the significance of an individual serving as a treasurer – or other officer – without serving on the committee's board.

governed by a board of directors unless one possesses, or exercises some authority over, a *majority* of the board members, Example 8 provides no indication of the total number of people serving on the board of the committee and what, if any, influence the registrants on the board have over other board members.

Likewise, the example presumes that either the board or a board member "control[s] direction of the PAC's contribution," but there is no discussion of the actual authority possessed by the board pursuant to the committee's organizational documents, or whether and how such authority is shared with the Committee's officers. It does not provide any indication of whether or not the position on the board is honorary or paid. Nonetheless, your offices conclude that a lobbyist who is a board member of a PAC controls that PAC.[5]

Example 8 does not square with previous advice given by either the House or Senate ethics committees. The House Committee on Standards of Official Conduct has provided some guidance on when an entity is "established and controlled" by a covered official and appears, at least, to conclude that when a House Member serves as an "honorary, unpaid board member" of an entity, the entity is *not* "established or controlled" by the Member. *See* House Ethics Manual at 348-349. The Senate Select Committee on Ethics provides considerably more guidance on this topic, and it too differs from the apparent thrust of Example 8. Discussing Senate Rule XXXV's prohibition on contributions from registered lobbyists or agents of foreign principals to an entity "maintained or controlled by a Member, officer, or employee," the Senate Ethics Manual explains:

> The Committee has not yet determined what conditions will render an entity to be deemed to be "maintained or controlled" by a Member, officer or employee. However, control and maintenance...would appear at least to include situations where a Senator appoints board members, trustees, or other overseers of an entity; where a Senator serves on the board of a *closely held* entity; or where family members of relatives serve on such a board.

Senate Ethics Manual at 77 (2003) (emphasis added). The Manual then advises that:

> [s]ervice of members of the Senator's staff on the board of a charity organization established by a Member could also cause a charitable entity to be 'maintained or controlled' by the Member. *The determination of whether a particular entity is 'maintained or controlled' by a Member depends upon a case by case analysis based on the totality of the circumstances.*

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[5] We assume that Example 8's guidance on the term "controlled" is intended to extend to that word as it is used in 2 U.S.C. § 1604(d)(1)(E)(iii). If that is the case, another hypothetical may serve to illustrate the breadth of your construction of the term. Take a situation where an executive branch employee who is a covered official for purposes of HLOGA sits on the governing board of a neighborhood association. A lobbyist who lives in the neighborhood and is a member of the association pays her annual dues to the association. Because the covered official, who may or may not be known to the lobbyist, sits on the board of the neighborhood association, the lobbyist, if following Example 8's guidance, would be required to report that dues payment on Form LD-203. Such a result runs astonishingly far afield of the intent of HLOGA.

Id. (Emphasis added.)

In addition to the confusion introduced with respect to the term "controlled," the Revised Guidance provides no direction on how the other operative terms – "established," "financed" or "maintained" – are to be construed. As you can imagine, the lack of guidance on the meaning of these key terms raises important questions for those who are required to report activity related to those terms under threat of criminal penalty. For example, if an entity was established by a covered official before that person became a covered official, is the entity considered to be "established" by the covered official for the purposes of § 203? Does a covered official's contribution to a charity deem that charity "financed" by a covered official? To what degree is a registrant obligated to research the organizational history, structure, finances and activities of each entity to which the registrant makes a contribution or disbursement in order to determine whether it was "established, financed, maintained or controlled" by a covered official?

This last question is an especially important one, as many organizations to which registrants contribute or make disbursements are not required to disclose their officers, directors, funders or other people with whom they interact. Indeed, there is no general obligation for covered officials – of which there are a vast and ever-changing number – to publicly disclose the entities they have "established, financed, maintained or controlled."

The guidance, or lack of guidance, with respect to this aspect of LDA § 203(a) also differs from how the Federal Election Commission ("FEC") has defined the identical language in the Bipartisan Campaign Reform Act of 2002, which prohibits the solicitation, receipt, directing, transfer or spending of non-federal funds by Federal candidates, federal officeholders and entities that are directly or indirectly "established, financed, maintained or controlled" by those persons. *See* 2 U.S.C. § 441i(e). The FEC adopted regulations that take a case-by-case, totality-of-the-circumstances approach regarding whether an entity is so "established, financed, maintained, or controlled," by applying a 10-factor test "in the context of the overall relationship between the sponsor and the entity to determine whether the presence of any factor or factors" indicates that the sponsor "established, finances, maintains, or controls the entity." *See* 11 C.F.R. § 300.2(c)(2).

These factors include whether the sponsor or its agent:

(1) owns a controlling interest in the voting stock or securities of the entity;

(2) has the authority to direct or participate in governance of the entity;

(3) has the authority to control the officers or other decision-making employees or members of the entity;

(4) has a common or overlapping membership with the entity that indicates a formal or ongoing relationship;

(5) has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship;

(6) has any members, officers, or employees who were members, officers, or employees of the entity that indicates a formal or ongoing relationship or indicates the creation of a successor entity;

(7) provides funds or goods in a significant amount or on an ongoing basis;

(8) causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity;

(9) had an active or significant role in the formation of the entity; or,

(10) has a pattern of receipts or disbursements similar to that of the entity that indicates a formal or ongoing relationship.

See 11 C.F.R. § 300.2(c)(2). And, factors other than these 10 may also be considered. *Id.*

We recognize that not all of these factors will be applicable to whether or not a registrant "established or control[s]" a PAC or a covered official "established, finances, maintains, or controls" an entity under § 203(a), and we do not suggest that the FEC regulations supply a perfect standard. We do believe, however, that your adoption of these factors, or similar ones, would provide the flexibility necessary to examine the relationship between covered officials and entities with a variety of organizational structures, and would offer registrants a clearer understanding of which contributions and disbursements must be disclosed pursuant to § 203(a).

Conversely, we believe that the dearth of guidance regarding your interpretation of the terms "established," "financed" and "maintained," along with the overly broad and simplistic guidance provided in your construction of the term "controlled," will have detrimental though unintended consequences. Due to the threat of criminal penalties for violation of the reporting requirements of § 203, the result of the guidance provided thus far will cause registrants to disclose contributions and disbursements made by entities over which they exercise no real authority and to entities to which a covered official has only a tangential connection. This, in turn, will serve only to clutter the public record with unnecessary and misleading information and diminish the public's ability to accurately evaluate the influence of money in the legislative process, thus undermining the legislative intent underlying § 203's enactment.

In view of that, we respectfully request that you withdraw Example 8 from the Revised Guidance and instead provide more comprehensive guidance on your interpretation of the operative terms included in the phrase "established, financed, maintained, or controlled by," as those terms are used in § 203. We submit that your adoption of a totality-of-the-circumstances test, such as the factors set forth at 11 C.F.R. § 300.2(c), would provide sufficient concrete guidance to allow registrants to properly disclose those contributions and disbursements that must be reported pursuant to 2 U.S.C. § 1604(d)(1)(E)(iii) without frustrating the underlying purpose of that provision.

Accordingly, we ask that the Clerk of the House and the Secretary of the Senate withdraw Example 8 from the Revised Guidance and clarify the scope of the terms addressed by it.

III. The Timing of the New Examples in the Revised Guidance

Finally, we wish to point out an important process concern raised by the Revised Guidance that we hope will be considered in crafting any further guidance. The Revised Guidance was issued on May 29, 2008, a scant two months before Form LD-203 is first due to be filed. It revised a guidance that already had been twice revised post-HLOGA, and the most recent January 25, 2008 revision included two examples (Nos. 1 and 4) of events "to honor or recognize" a covered official that fully comport with the intended scope of that requirement. The unexpected breadth of new Example 3 has created a situation in which, in the interest of prudence, registrants must try to reconstruct a host of events that occurred since January 1, 2008, and that for good reason did not appear to implicate reporting. Similarly, Example 8 suggests a breadth of meaning to "control" that is unexpected and arbitrary. To be forced to conduct such after-the-fact inquiries in such a short time span is the height of unfair surprise where there was every reason to believe that these requirements did not apply in the circumstances set forth in the examples.

Thank you for your consideration of these comments.

Respectfully submitted,

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