

Congress Raises the Bar - and the Stakes - on Lobbying Disclosure and Ethics

The House and Senate have recently completed action on the “Honest Leadership and Open Government Act of 2007” (S.1). Some of the provisions will become effective upon enactment, while others will be effective at later times as defined in the Act. With this new piece of legislation, our clients need to be aware of several major provisions; not the least of which is the addition of criminal penalties for anyone who “knowingly and corruptly fails to comply with any provision of the Act.”

With increased diligence from the Public Integrity Section of the Justice Department, these provisions likely will be closely monitored for compliance and potential prosecution. Given the sweeping changes of this Act, new restrictions placed on lobbyists as well as Members and staff, coupled with new and complex reporting requirements, we strongly advise any client that has a government affairs office or employs a registered lobbyist to put in place a vigorous compliance program. Lawyers from our Political Law practice group are happy to work with any client in developing or updating such a compliance program.

Provisions of the Honest Leadership & Open Government Act of 2007

Revolving Door

The House kept to the current 1 year post-employment ban for Members and senior staff.

The Senate imposes a 2 year post employment ban for Senators. Furthermore, for senior staff the 1 year ban now applies Senate-wide, not just their last employing office.

Disclosure by Members and Staff of Employment Negotiations

The Act creates new House (Rule XXVII) and Senate (Rule XXXVII) rules pertaining to the disclosure of employment negotiations. A Member is prohibited from negotiating or having any agreement of future employment or compensation until after his or her successor has been elected, unless the Member, within 3 business days after the commencement of such negotiations, files with each bodies' Ethics Committee a statement regarding the negotiations or the agreement, including the name of the private entity and the date negotiations commenced.

This provision also applies to senior staff (those earning 75% of a Member's pay).

Recusal

A House Member or staff person must recuse themselves from any matter in which there is a conflict of

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interest **or an appearance of a conflict**, and must notify the Committee on Standards of Official Conduct of the recusal. The Member or staff person must also submit to the Clerk of the House the statement of recusal for public disclosure.

"K Street Project"

No Senator, House Member, or employee can seek to influence an employment decision of any private entity solely based on partisan political affiliation. This includes taking or withholding an official act, or threatening to take or withhold an official act.

Public Disclosure of Lobbying

Filing Requirements

The Act now requires **quarterly** filing instead of semiannual filing and reduces the threshold amounts by half to reflect the more frequent filing.

New Reporting Requirements on Lobbyist Campaign & Other Contributions

Twice a year, a lobbyist or their organization is required to disclose contributions exceeding \$200 along with the date and amount each contribution was made. This reporting requirement also pertains to events honoring or recognizing covered executive or legislative branch officials, an entity established, financed, maintained or controlled by a covered official, or payment of costs of a meeting, retreat, conference or other similar event held by, or in the name of, 1 or more covered officials.

This also covers contributions to Presidential library foundations or Presidential Inaugural Committees in excess of \$200.

The person or organization filing the report must also certify that the person or organization has read and is familiar with the House and Senate rules pertaining to gifts and travel.

This section is effective as of the first semiannual period that begins after the enactment of the Act.

Disclosure of Bundled Contributions

The Federal Election Campaign Act is amended to require a **candidate's campaign committees** to disclose who provides 2 or more bundled contributions to the campaign committee over \$15,000, excluding contributions made by the bundler. The FEC is charged with making this information publicly available through the Commission website, with links to Clerk and Secretary's website as well.

"Bundled contribution" is defined as a contribution forwarded from the contributor to the committee by the person; or received by the committee from a contributor but credited by the committee or candidate involved to the person through records, designations, or other means of recognizing that a certain amount of money has been raised by the person. The provision also covers Leadership PACs.

Electronic Filing

The Act requires reports to be filed in electronic form, as well as any other form the Clerk of the House or the Secretary of the Senate may require or allow.

Gifts and Travel from Registered Lobbyists

A lobbyist or any organization that employs 1 or more lobbyist may not make a gift or provide travel to a covered legislative branch official.

Disclosure of Lobbying Activities by Coalitions & Associations

Coalitions and Associations that contribute more than \$5,000 to the registrant or the client in the quarterly period to fund lobbying activities of the registrant must be disclosed.

Lobbyist Disclosure of Past Executive and Congressional Employment

A lobbyist will now be required to disclose their previous Executive Branch or Congressional employment covering the last 20 years.

Public Availability of Lobbying Disclosure Information

The Act requires the Clerk of the House and the Secretary of the Senate to make all registrations and reports filed under the Act publicly available over the internet in a searchable, sortable, and downloadable manner. It also requires them to provide electronic links to the Federal Election Commission website.

Disclosure of Enforcement for Non-Compliance

The Clerk of the House and Secretary of the Senate are also required to make publicly available, on a semiannual basis, the aggregate number of registrants referred to the US Attorney for the District of Columbia for non-compliance. The US Attorney is to report back to Congress the number of enforcement actions taken by the Department under the Act and any sentences imposed.

Increased Civil and Criminal Penalties for Failure to Comply

The Act **increases civil penalties** that can be imposed **from \$50,000 to \$200,000**, and adds a **new criminal penalty**. Anyone who knowingly and corruptly fails to comply with any provision of the Act shall be **imprisoned for not more than 5 years** or fined under title 18, United States Code or both.

Electronic Filing & Public Database for Lobbyists for Foreign Governments

The Act requires the Attorney General to maintain and make available to the public over the internet information contained in registration statements and updates.

Comptroller General Audit and Annual Report

The Act requires the Comptroller General to audit the extent of compliance or non-compliance with the requirements of the Act through a random sampling of publicly available lobbying registrations and reports filed under the Act.

The Comptroller General may request information from and access to any relevant documents from any person registered if the material relates to the filing. The Comptroller General may notify Congress if a person from whom information has been requested refuses to comply within 45 days of the request being made.

Sense of Congress

The Act includes a sense of Congress that “the use of a family relationship by a lobbyist who is an immediate family member of a Member of Congress to gain special advantages over other lobbyists is inappropriate.”

The Act also encourages the lobbying community to create their own standards, provide training for the lobbying community, provide disclosure to clients regarding fee schedules and conflict of interest rules.

National Party Conventions

The Act prohibits Members from participating in events honoring that Member at the national party conventions, if the event is paid for by a lobbyist or a private entity that retains or employs a registered lobbyist.

Provisions pertaining Exclusively to the House of Representatives

Prohibition on Lobbying Contacts with Spouse of Member who is a Registered Lobbyist

House Rule XXV is amended by adding a prohibition of all staff employed by a Member (including staff in a personal, committee, or leadership office) from making any contact with that individual’s spouse if that spouse is a lobbyist.

Prohibition of Lobbying Firms from Lobbying Committees

House Rule XXIII is amended by restricting the ability of an individual employed by a firm, or the firm itself, from lobbying the Committee that employs a member of the lobbying firm as a consultant.

Posting of Travel & Financial Disclosure Forms on Public Website

The Clerk is required to post advance travel authorizations, certifications, and disclosure forms filed with the Clerk pertaining to transportation, lodging, and related expenses for travel, as well as Member and staff financial disclosure forms.

Loss of Pension for a Member of Congress

A Member convicted of a felony offense described under the Act (bribery, perjury, etc) shall not be eligible to participate in the civil service retirement system.

Provisions Pertaining Exclusively to the U.S. Senate

Amendments to Senate Rule XXVIII (Conference Committees).

Conferees shall not insert in their report matters not committed to them by either House, nor shall they strike from the bill matters agreed to by both Houses. Various points of order are created if the conferees violate the rule.

Conference reports are to be publicly available (by website) at least 48 hours before the Senate votes on it. This requirement can be waived by three-fifths vote on a motion debatable for one hour equally divided between the Majority Leader and the Minority Leader.

Notice of Objecting to Proceeding (Holds)

Once a Senator has notified their leadership of their intent to object to a unanimous consent to proceed, such objection shall be submitted to the Congressional Record within not later than six days following the notice to object.

Public Availability of Senate Committee and Subcommittee Proceedings

Senate Committee and Subcommittees must make available through the internet a video recording, audio recording or transcript of any meeting within 21 days of the meeting.

Earmark Reform

New Senate Rule XLIV, Congressional Directed Spending and Related Items

Before the Senate can vote on a motion to proceed to consider a bill or joint resolution, the chairman of the committee of jurisdiction or the Majority Leader or his designee must certify --

(1) "that each congressional directed spending item, limited tax benefit, and limited tariff, if any, in the bill or joint resolution, or in the committee report accompanying the bill or joint resolution, has been identified through lists, charts, or other similar means including the name of each Senator who submitted a request to the committee for each item so identified; and

(2) that the information in clause (1) has been available on a publicly accessible congressional website in a searchable format at least 48 hours before such vote."

Gift and Travel Reform

Senate Rule XXXV is modified to state that a Member, officer, or employee may not knowingly accept a gift from a registered lobbyist, an agent of a foreign principal, or a private entity that retains or employs a registered lobbyist, or an agent of a foreign principal, except as provided in Senate rules.

Ticket Valuation

Senate Rule XXXV is amended to define the market value of a ticket as the face value or, in the absence of a face value, the value of the highest ticket for the event.

Restrictions on Registered Lobbyist Participation in Travel and Disclosure

A Member or employee of the Senate may not accept reimbursement from a lobbyist or an entity that employs a lobbyist for transportation, lodging, or related expenses for travel. The lobbyist cannot be involved in planning, organizing, or arranging a trip and may not accompany any part of it.

Before a Member or employee can accept travel otherwise permissible, they must certify to the Senate

Ethics Committee that the trip will not be financed in any part by a registered lobbyist or foreign agent, the funding source does retain or employ registered lobbyists or an agent of a foreign principal, and that the trip was not in any part planned, organized, requested, or arranged by a registered lobbyist or agent of a foreign principal.

The Secretary of the Senate must make all advanced travel authorizations, certifications and disclosures publicly available.

Free Attendance at a Constituent Event

A Member, or employee may accept an offer of free attendance in the Member's home state at a conference, symposium, forum, panel discussion, dinner event, site visit, viewing, reception or similar event provided by the sponsor if -- the cost of meals is less than \$50; the event is sponsored by constituents; the event will be attended by at least 5 constituents of the Member; a registered lobbyist does not attend the event; the Member participates in the event as a speaker, panelist, performs a ceremonial function, or the appearance is appropriate for representational purposes.

Prohibitions on Official Contact with Spouse or Immediate Family Member who is a Registered Lobbyist

If a Member's spouse or immediate family member is a registered lobbyist or employed by an entity that employs a registered lobbyist, the Member must prohibit all staff employed or supervised by that Member from having any contact with the Member's spouse or immediate family member for purposes of lobbying.

Restrictions on Use of Noncommercial Aircraft

Candidates for federal office must pay the fair market value of the normal charter fare for a noncommercial flight. However, House candidates may not fly on private aircraft other than their own.

For further details, please feel free to attend our seminar titled "Congress Finalizes Ethics & Lobbying Reforms Compliance and Disclosure Under the Honest Leadership and Open Government Act of 2007" on September 12, 2007, at the Washington Office of McKenna Long & Aldridge LLP.

For more information or to register for this event please [click here](#).

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