

GOVERNMENT AFFAIRS UPDATE

The Honest Leadership and Open Government Act of 2007: New Lobbying Rules

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Congress recently passed the Honest Leadership and Open Government Act of 2007 (the Act). The bill is a far-reaching package of new ethics and lobbying reform rules that significantly change the system governing lobbyists and organizations that employ or retain lobbyists. Violations of some of the provisions of the Act will now become a federal crime. The President is expected to sign the bill into law by mid-September.

This summary is intended to make you aware of key portions of the bill as they relate to lobbyists and organizations that retain or employ lobbyists.* Official guidance from the House and Senate Ethics and Rules Committees is expected to be issued shortly after the bill becomes law.

Provisions Affecting Lobbyists and Organizations that Employ Lobbyists

GIFTS AND TRAVEL

The Act statutorily prohibits, for the first time, the giving of gifts by lobbyists or their employers to members of Congress or congressional staff, other than as permitted by House and Senate Rules. Affected gifts include free meals and tickets to entertainment or sporting events. Previously, the prohibitions relating to gifts and travel were effectuated through House and Senate rules and applied to members of Congress and congressional employees only. These new prohibitions are effectuated through an amendment to the Lobbying Disclosure Act (LDA) and impose increased civil and criminal liability

on the lobbyist, or organization that employs or retains the lobbyist, for failure to comply with the LDA.

Under the Act, travel for members of Congress or their staff that is arranged or funded by lobbyists, or organizations that retain or employ lobbyists, is severely restricted and in some cases prohibited.

The lobbying disclosure reports will now include a certification by registrants or individual lobbyists that they have read and are familiar with the Standing Rules of the Senate and the Rules of the House of Representatives relating to the provision of gifts and travel, and have made no gift that violates those rules. Official guidance from the Senate or House Ethics or Rules Committees on how the gift and travel bans will be applied and enforced has not yet been released. There are a number of exceptions to the gift rules that remain in place, allowing members of Congress and their staff to accept meals, gifts and travel under certain circumstances.

As discussed in the enforcement section below, the penalties for violation of the federal lobbying law—including the knowing violation of the gift and travel rules—now include criminal penalties.

Effective Date: Date of enactment.

REPORTING OF CONTRIBUTIONS OR PAYMENTS FOR THE BENEFIT OF MEMBERS AND EXECUTIVE BRANCH EMPLOYEES

Registered lobbyists and their employers will have a new obligation under the

LDA to report, on a semi-annual basis, contributions made to:

- Federal candidates or office holders, leadership PACs, or political party committees;
- Pay the cost of an event honoring or recognizing a covered executive or legislative branch official, as well as contributions to entities such officials establish, finance, control, or designate;
- An entity named for a covered executive or legislative branch official or a person or entity in recognition of such official;
- Pay the cost of a meeting, conference, or retreat held by or in the name of one or more covered executive or legislative branch officials;
- Contributions to Presidential Inaugural Committees or Library Foundations.

The reports disclosing contributions and payments to benefit covered executive or legislative branch officials will be due semiannually, while the standard disclosure reports will now be due quarterly.

Effective Date: Takes effect for the first semiannual period beginning after the date of enactment.

LOBBYING DISCLOSURE REPORTING CHANGES

Major changes to the LDA's disclosure provisions are summarized below:

- The schedule for reporting is changed from semi-annual to quarterly;
- Reporting thresholds based on income received from, or expenditures made for, lobbying activities in a quarter are \$2,500 and \$10,000, respectively;
- Disclosure of a lobbyist's prior executive and legislative branch employment must

include service any time in the preceding 20 years;

- Reporting thresholds for coalition members who financially support lobbying activities are reduced from \$10,000 to \$5,000;
- The disclosure of "foreign entity" support for lobbying clients has been amended to include any such entity that contributes more than \$5,000 in the quarterly reporting period to "fund lobbying activities" or that "actively participates" in the planning, supervision, or control of such activities;
- Electronic reporting is required.

Effective Date: Except as otherwise noted, January 1, 2008.

ENFORCEMENT FOR NON-COMPLIANCE WITH THE LOBBYING DISCLOSURE ACT

The Act amends or changes the LDA enforcement provisions as follows:

- Civil penalties are increased from \$50,000 to \$200,000 for failure to correct identified reporting errors;
- Criminal penalties, for the first time, are provided for in the case of persons who "knowingly and corruptly" fail to comply with any provision of the LDA. Penalties include imprisonment for up to five years;
- On a semiannual basis, the Attorney General will prepare an enforcement report for Congress;
- The Comptroller General will conduct random audits to determine the extent of compliance with the LDA and issue a report to Congress annually. The initial audit will cover reports filed in April 2008 and be issued within six months after the first quarter of 2008.

The Comptroller General's authority to investigate will include the right to request materials from registrants or individual lobbyists "if the material requested relates to the purposes" of the audit, i.e., to improve compliance and strengthen enforcement. The Comptroller General may notify Congress in the event of a registrant's failure to provide the requested materials within 45 days of the request;

- All registrations and reports filed as required by the LDA will be available at no cost to the public over the Internet, in a searchable, sortable, and downloadable format.

Effective Date: Takes effect for any violation committed on or after the date of enactment of this Act.

Changes to the Campaign Finance Laws

BUNDLING

Under the Act, lobbyists and organizations that employ or retain lobbyists are NOT required to independently report their bundling activities. However, federal candidate committees, leadership PACs and party committees will be required to report contributions "bundled" by persons "reasonably known" to be lobbyists, organizations that retain them, or political committees that lobbyists or their employers may control.

Contributions will be considered bundled if the lobbyist collects and forwards them to the committee, or if they are received by the committee but still credited as having been collected by the lobbyist.

The threshold for reporting these contributions is an aggregate amount greater than \$15,000 raised in a semiannual reporting period. The Federal Election Commission (FEC) is directed to promulgate implementing rules not later than six months from the date of enactment.

Effective Date: The reporting requirements take effect three months after the FEC has promulgated its final rules.

Endnote

*The bill also includes reforms to the Congressional process, i.e., disclosure of earmarks, as well as reforms that apply to lawmakers and other federal government employees. This summary does not address those reforms.

If you are interested in more information about the Honest Leadership and Open Government Act of 2007, please contact the following attorney:

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