

## POLICY ALERT

### CONGRESS PASSES LOBBYING AND ETHICS REFORM LEGISLATION



Late last week, both houses of Congress passed lobbying and ethics reform legislation. The final bill, which incorporates provisions from prior legislation, was drafted by Senate Majority Leader Harry Reid and House Speaker Nancy Pelosi after efforts to form a formal conference committee were blocked in the Senate. This legislation is in addition to the changes adopted to the House rules in January.

The Reid/Pelosi bill mirrors provisions found in the bills passed by the House and Senate on January 18, 2007, and May 24, 2007, respectively, and includes the ban on gifts from registered lobbyists, foreign agents, and the entities that employ or retain them. The bill is awaiting the president's signature for final enactment. Key provisions include—

- extension of the lobbying ban for senators
- elimination of the K Street Project
- quarterly Lobbying Disclosure Act (LDA) reports
- contribution reports by lobbyists
- disclosure of bundled contributions
- increased penalties for noncompliance
- loss of pension for members convicted of wrongdoing
- prohibition on convention events paid for by lobbyists honoring members
- restrictions on payment of noncommercial flights
- earmark reform
- spouse and family restrictions.

## **REVOLVING DOOR REFORM**

In an effort to slow the revolving door from Congress to K Street, the new lobbying reform legislation extends the one-year lobbying ban on former senators, senior personnel of the executive branch and independent agencies to a two-year restriction. The one-year restriction remains for members of the House and senior congressional staff; however, senior Senate staffers are prohibited from lobbying the entire Senate – not just their former employing office – for one year after their departure. The employment restrictions become effective for those leaving federal office on or after the date of adjournment of the first session of the 110th Congress or on January 31, 2007, whichever is earlier.

## **K STREET PROJECT**

The new legislation eliminates the K Street Project by prohibiting members of Congress and their staffs from attempting to influence the employment decisions or practices of a private entity on the basis of partisan political affiliation in exchange for political advantages. A violation of this provision could result in a fine or imprisonment for no more than 15 years, or both, and may lead to disqualification from holding office. However, this section is not meant to prevent members from providing references or letters of recommendation for job candidates.

## **LOBBYING DISCLOSURE**

The new legislation significantly broadens disclosure of lobbying activities. For example, the new legislation requires quarterly, rather than semiannual, LDA reports; reporting of contributions by lobbyists; disclosure of bundling activities; and lengthens the amount of time a former covered official must disclose their past employment.

## **QUARTERLY FILING**

The new law requires that lobbyists report expenses quarterly rather than semiannually. Reports are due 20 days after the reporting period closes, unless the 20th falls on a weekend or holiday, in which case the report will be due on the next business day. The new reporting schedule begins on January 1, 2008.

In addition to the change in the reporting schedule, the reporting and registration thresholds were adjusted to accommodate the more frequent reporting deadlines. Under the new reporting requirements, income and expenses on the report in excess of \$5,000 must be rounded to the nearest \$10,000, and if income and expenses do not exceed \$5,000 then a statement must be included for verification. Lobbyists must also disclose if their client is a state or local government. The new registration thresholds are triggered when—

- total income for a particular client exceeds or is expected to exceed \$2,500, or
- total expenses in connection with lobbying activities exceed or are expected to exceed \$10,000.

Additionally, registrations must disclose any organization that contributes more than \$5,000 to fund lobbying activity of the registrant and who actively plans, supervises and controls such activities.

## **CONTRIBUTION REPORTS**

Under the new law, each person or organization registered or required to register under the LDA and all employees listed as lobbyists are required to report all political contributions that exceed \$200 during the calendar year to federal

candidates or officeholders, leadership PACs, political party committees, presidential library foundations and presidential inaugural committees on a semiannual basis.

A registered person, organization or political committee established by such person or organization may be required to disclose additional contributions when such contributions or disbursements are made—

- for the cost of an event to honor or recognize a covered legislative or executive branch official
- to an entity named for a covered legislative or executive branch official or to a person or entity in recognition of such official
- to an entity established, financed, maintained or controlled by a legislative or executive branch official or an entity designated by such official
- to pay the costs of a meeting, retreat, conference or similar event held by, or in the name of, one or more legislative or executive branch officials.

A lobbyist is also required to certify on the disclosure report that he/she has not provided, requested or directed a gift to a member, officer or employee of Congress that would violate House or Senate rules.

This provision takes effect the first semiannual period beginning after the date of enactment.

## **BUNDLING DISCLOSURE**

The new law amends the Federal Election Campaign Act (FECA) to require the disclosure of bundled contributions and, for the first time, provides a formal definition of the term “bundled.” Under the new rules, the term “bundling” is defined as “a contribution which is forwarded from the contributor(s) by the registered person or received by the committee from the contributor(s) but credited by the committee or candidate involved to the person through records, designations, or other means of recognizing that a person has raised a certain amount of money.”

In addition to defining the term bundling, the law amends FECA to require that all authorized committees of candidates, leadership PACs and political party committees electronically file reports semiannually that disclose each person reasonably known by the committee to be a registered lobbyist, an individual listed on a lobbying registration, or a political committee established or controlled by such registrant or individual who provided two or more bundled contributions in an aggregate amount greater than \$15,000 (excluding those contributions made by the person or the person’s spouse).

The Federal Election Commission (FEC) has six months to implement the regulations, which will become effective three months after the FEC promulgates such rules. In practical terms, this provision will most likely take effect during the second quarter of 2008.

## **ADDITIONAL DISCLOSURE**

Registered lobbyists or employees listed as lobbyists must disclose any past executive or legislative branch employment for 20 years after leaving government service. This new provision amends the previous law requiring disclosure only if the lobbyist was an official two years before acting as a lobbyist on behalf of a client.

## **INCREASED PENALTIES**

Increased penalties are another new aspect of the law. The penalty for knowing or willful falsification or noncompliance is increased from \$10,000 to \$50,000 and/or imprisonment up to one year.

## **LOSS OF PENSION**

Under the new rules, members of Congress who are convicted of certain criminal offenses in the course of carrying out their official duties will not receive their pension earned while serving in Congress.

## **CONVENTIONS**

The new rules prohibit members from participating in events held in their honor at national party conventions if the event is directly paid for by a registered lobbyist or a private entity that employs or retains a lobbyist. There is an exception to this prohibition when the event is being held for a member in his or her capacity as a candidate for president or vice president.

## **RESTRICTIONS ON USE OF CAMPAIGN FUNDS FOR NONCOMMERCIAL FLIGHT**

The new law also amends FECA to restrict the use of campaign funds for noncommercial flights by members of Congress and candidates for Congress. Effective upon enactment, members of Congress and candidates for the House and Senate may use campaign funds on flights or aircraft if the aircraft is operated by an air carrier or commercial operator certified by the FAA and the flight is required to be conducted under air carrier safety rules. In addition, senators and candidates for Senate may use campaign funds for noncommercial flights if they pay the full fair-market charter/rental rate for the flight. On the other hand, House members and candidates for the House may not use noncommercial flights at all unless the aircraft is operated according to the terms outlined above or operated by an entity of state or federal government. House members and candidates may avail themselves of an exception permitting use of an aircraft owned or leased by the candidate or the candidate's family.

## **HOUSE OF REPRESENTATIVES RULES ONLY**

There are some provisions in the new legislation applicable only to House members. First, the new rules prohibit a House member's staff from having lobbying contacts with the spouse of the member, if the spouse is a registered lobbyist or employed or retained to influence legislation. Secondly, House members are prohibited from negotiating or making an agreement for future employment until after his or her successor has been elected, unless the member discloses the name of the private entity and the date the negotiations began. In addition, senior staff of the House must disclose employment negotiations. Members and senior staff of the House must also recuse themselves from any matter that may create a conflict of interest with regard to their private employment negotiations.

## **SENATE RULES ONLY**

The new legislation makes several changes to the rules of the Senate. One of the procedural reforms that received much attention was the earmark reform that was included in the legislation. The new rules require the disclosure of the sponsor of an earmark. If an earmark is included in a conference report without being included in an original bill, then it may be stricken by a point of order on the Senate floor.

Similar to the House rules, the Senate rules prohibit gifts from lobbyists and the entities that employ or retain them, require the disclosure of employment negotiations, and prohibit contact between senators' spouses who are lobbyists and that senator's staff members. The Senate rules, however, also prohibit contact between Senate staff and a senator's immediate family members who are lobbyists. The prohibition does not apply if the spouse was a lobbyist one year before the member's most recent election or one year prior to marriage.

The Senate rules also prohibit registered lobbyists or persons registered as agents under the Foreign Agent Registration Act from having any floor privileges, using member parking or having access to the members' gym. The new rules also clarify the rules regarding the value of tickets. If a ticket has a face value then the ticket is valued at face value, but if the ticket does not have a face value then the ticket is valued at the highest face value for the event.

## **CONCLUSION**

The new legislation contains many obligations and restrictions on lobbyists and the entities that employ or retain them. The 23 exceptions to the gift rule have been left intact so that the exceptions dealing with receptions, widely attended events, gifts given on the basis of personal friendship, gifts of a nominal value such as t-shirts and baseball caps, etc. may still be relied upon. The newly passed legislation has many areas of ambiguity that will necessarily need to be addressed by the House Committee on Standards of Official Conduct and the Senate Committee on Ethics.

## CONTACT INFORMATION

If you have questions about the lobbying and ethics reform legislation recently passed by Congress, please contact:

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