

# PUBLICATION

---

## Lobbying & Ethics Reform Legislation

August 28, 2007

### OVERVIEW

Congress recently passed the Honest Leadership and Open Government Act (HLOGA) of 2007. The legislation likely will be presented to the President for signature after the August Congressional recess. The main purpose of the measure is to guard against the undue influence of private or political interests on elected officials. The Act makes changes to House and Senate rules and numerous Federal laws, including the Lobbying Disclosure Act of 1995 and the Federal Election Campaign Act.

While the new law will not expand the number of lobbying "activities" or number of lobbying "contacts" triggering current law registration and reporting requirements, it will significantly increase reporting responsibilities by shifting from a semi-annual to a quarterly reporting system. The Act will enhance civil penalties and add new criminal penalties for non-compliance with the law, impose a new semi-annual reporting requirement on lobbyists relating to certain contributions, and require increased oversight by the Government Accountability Office (GAO) regarding compliance with the law.

Of note, by exposing lobbyists to civil and criminal penalties for knowing violations of House and Senate gift and travel rules, the Lobbying Disclosure Act, as amended by HLOGA, is no longer simply a disclosure statute.

What follows is a brief discussion of relevant points of the new law.

### LOBBYIST REGISTRATION AND REPORTING

The new law significantly changes current lobbying registration and reporting requirements in many respects. One of the major changes is a shift from semi-annual to quarterly reporting. There are also important changes to lobbying registration requirements, and the addition of a new semi-annual report on certain contributions. Moreover, the new law requires electronic filing of lobbying reports. For purposes of this discussion, "lobbyist" also refers to entities employing registered lobbyists.

#### Lobbyist Registration

The Lobbying Disclosure Act defines lobbyist as "any individual employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a six month period."

*Percentage of Time Dedicated to Lobbying.* HLOGA would amend the current law definition of lobbyist by applying the 20 percent test over a three month, rather than six month, period.

*Necessary Information.* Under current law, a person meeting the definition of lobbyist must register within 45 days after making an initial lobbying contact with a covered legislative or executive branch official or being hired or retained to make such contact, whichever is first. The 45-day registration requirement will not change under the new law.

Current law requires lobbying registrations include the client name, the general issues to be lobbied, the names of the registered lobbyist's employees expected to engage in lobbying activities and the name and address of any organization, other than the client, contributing more than \$10,000 during a six month period and "in whole or in major part plans, supervises, or controls" the lobbying activities of the client. Current law also requires the registrant to disclose whether he or she served as a covered legislative or executive branch official in the two years prior to the date he or she first acted as a lobbyist for the client.

These disclosure requirements remain largely unchanged by the new law with three exceptions. First, it replaces the phrase "in whole or in major part plans, supervises or controls lobbying activities of the client" with the phrase "actively participates in the planning, supervision, or control of such lobbying activities." Second, to conform to the quarterly reporting requirement, the \$10,000 threshold for organizations that plan, supervise or control the lobbying activities of the client is reduced to \$5,000. Third, it requires the registrant to disclose whether he or she served as a covered legislative or executive branch official in the *twenty* years before the date he or she first acted as a lobbyist for the client.

*Lobbying Income and Expenses.* Under current law, a person does not have to register as a lobbyist if he or she does not receive more than \$5,000 or has incurred no more than \$20,000 in lobbying expenses over the six month reporting period. The new law reduces these amounts to \$2,500 and \$10,000 respectively, to reflect the shift from the semi-annual reporting system to the new quarterly reporting system. When calculating income and expenses, current law requires rounding to the nearest \$20,000 for amounts in excess of \$10,000, and reporting income and expenses not exceeding \$10,000 as "less than \$10,000." Under the new law, these estimates are rounded to the nearest \$10,000 and reported as "less than \$5,000" to reflect the transition to quarterly reports.

*Effective Date.* Changes to the lobbyist registration requirements take effect on January 1, 2008.

#### Quarterly Activity Reports

*Filing Deadlines.* Under current law, lobbyists must file a semi-annual "activity" report on lobbying activities during the preceding six months on the 45th day after January 1 and the 45th day following July 1 of each year. The new law's quarterly reporting system requires reports filed on the 20th day after January 1, April 1, July 1 and October 1 (if the day falls on a weekend or Federal holiday, they are due the next business day).

*Information Disclosed.* Current law requires disclosure of certain information in lobbyist activity reports including the name of the registrant, the name of the client, the issues being lobbied, a statement on the houses of Congress or Federal departments and agencies contacted, and names of any employees of the lobbying firm engaged in lobbying semi-annual activity reports. The new law requires that lobbyists file this same information quarterly rather than semi-annually. In addition, the new law requires lobbyists to disclose whether the client is a "State or local government or a department, agency, special purpose district, or other instrumentality controlled by one or more State or local governments."

*Effective Date.* Changes to current reporting requirements take effect on January 1, 2008. Hence, lobbyists must still file the last semi-annual report required under current law covering July 1, 2007, through December 31, 2007, by the 45th day after January 1, 2008. The first quarterly report required by the new law covering the period January 1, 2008, through March 31, 2008, is due the 20th day after April 1, 2008.

#### New Semi-Annual Reporting Requirement for Certain Contributions

*Disclosure.* In addition to the quarterly activity report, HLOGA creates semi-annual reporting requirements relating to certain contributions by registered lobbyists. Under these new disclosure requirements, a lobbyist must disclose the following on a semi-annual basis:

- campaign contributions of \$200 or more to any Federal candidate, officeholder, leadership PAC or political party committee;
- contributions of \$200 or more to Presidential libraries and inaugural committees;
- the names of all political committees established or controlled by the lobbyist;
- payments for events honoring or recognizing Federal officials (unless the recipient "is required to report the receipts of the funds" to the FEC);
- payments to an entity named in honor of a covered legislative or executive branch official or to a person or entity in recognition of such official (unless the recipient "is required to report the receipts of the funds" to the FEC);
- payments made to organizations (including charities) controlled by a covered legislative or executive branch official (unless the recipient "is required to report the receipts of the funds" to the FEC); and
- payments made to pay the costs of retreats, conference, or similar events held by or in the name of one or more covered legislative or executive branch officials (unless the recipient "is required to report the receipts of the funds" to the FEC).

*Gift and Travel Certification.* Lobbyists required to file this new semi-annual report must certify in their filing they have read and are familiar with the Standing Rules of the House and Senate regarding gifts and travel. They must also certify they are not providing, requesting, or directing a gift, including travel, to members of Congress or their staff with knowledge that receipt of such gift and travel would violate the Standing Rules of the House and Senate.

*Effective Date.* The first semi-annual campaign contribution report is due 30 days after July 1, 2008, covering the preceding six month period. The Clerk of the House and the Secretary of the Senate are also to study the feasibility of making this new reporting requirement a quarterly instead of a semi-annual requirement.

## BUNDLED CONTRIBUTIONS

*Disclosure.* HLOGA imposes a new semi-annual disclosure requirement on candidate campaign committees, PACs and political party committees (not registered lobbyists) with respect to "bundled" contributions. The new law compels disclosure of contributions "bundled" by individuals "reasonably known" to be lobbyists, organizations known to retain them, or political committees controlled by lobbyists or their employers.

Bundled contributions are those contributions forwarded from a contributor or contributors to the candidate or committee by the lobbyist or received directly by the candidate or committee but "credited" to the lobbyist through "records, designations or other means of recognizing a certain amount of money has been raised" by the lobbyist.

The threshold for reporting is two or more bundled contributions exceeding in aggregate \$15,000 received from registered lobbyists during the semi-annual reporting period. The law specifically excludes contributions from the lobbyist or the lobbyist's spouse in the bundling calculation.

*Effective Date.* The FEC is required to issue final regulations implementing the bundling disclosure provisions within six months of enactment. The bundling reporting requirement will take effect three months following the issuance of final regulations by the FEC implementing the provision.

## GIFTS AND TRAVEL

The new law prohibits lobbyists and organizations employing one or more lobbyists from giving a gift or providing travel to members of Congress and their staff if the lobbyist has knowledge a covered legislative branch official may not accept the gift or travel under House and Senate rules.

These changes to statute govern lobbyist conduct with respect to gifts and travel bans while House and Senate rules govern the conduct of Congressional members, officers and staff. *It is important to remember the new semi-annual contribution report requires lobbyists to certify they have read and, more importantly, are familiar with those provisions of House and Senate rules pertaining to gifts and travel. Additionally, the new law makes lobbyists independently liable for knowing violations of these rules.*

### Gifts

The Senate rule changes bar Senators and their staff from accepting gifts from lobbyists and entities employing or retaining lobbyists (the House passed similar rules in January). As a general rule, lobbyists may no longer give gifts to those serving in the legislative branch. But there are some specific exceptions to this rule including free admission to widely-attended events, home State conferences, dinner events and receptions subject to certain requirements.

HLOGA also changes Senate rules to require Congressional members, officers, and employees pay fair market value for tickets to sporting and entertainment events (the House made a similar change in January).

*Effective Date.* The gift provisions take effect on the date of enactment.

### Travel

HLOGA significantly tightens up permissible travel reimbursement by private entities employing lobbyists, but it does not end the practice altogether. With prior approval of the Ethics Committee, a private entity (even one employing lobbyists) may reimburse for "necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, fact-finding trip in connection with the duties of the Member, officer, or employee" so long as the event lasts only one day (exclusive of travel time and an overnight stay). A trip may extend to two nights with prior approval from the Ethics Committee. Organizations qualifying as 501(c)(3) entities may exceed the one-day rule.

But members, officers and employees of the Senate may not accept reimbursement if a registered lobbyist plans, organizes or arranges the trip or if the registered lobbyist accompanies the member on any segment of the trip. The Senate Ethics Committee will issue regulations identifying de *minimus* activities by lobbyists that would not violate this prohibition.

HLOGA also changes Senate rules to require payment of charter rates (fair market value) for use of private planes.

While the House adopted similar rules in January for permissible reimbursement, it did not adopt the Senate rule on charter fares.

*Effective Date.* The travel provisions take effect on the later of 60 days after date of enactment or the date the Ethics Committee issues new guidelines.

### ENFORCEMENT

Civil and Criminal Penalties

Under current law, the Clerk of the House and Secretary of the Senate are to notify lobbyists of noncompliance with the law. If, after 60 days, a lobbyist has taken no action to comply with the law, the Clerk and the Secretary are to refer noncompliance to the U.S. Attorney's Office in the District of Columbia for civil action. The new law would require the Justice Department to submit an enforcement report on January 1 and July 1 of each year to the Senate Committee on Homeland Security and Governmental Affairs and House and Senate committees on the Judiciary.

Under current law, civil penalties of up to \$50,000 per violation may apply for failure to correct a defective filing within 60 days of written notice by the Clerk of the House or the Secretary of the Senate. Under the new law, the civil penalties are increased to \$200,000 per violation. In addition, persons who "knowingly and corruptly" fail to comply with the law will be subject to criminal penalties of up to five years' imprisonment.

*Effective Date.* The effective date of the new civil and criminal penalties is on or after the date of enactment.

#### Annual GAO Audit

HLOGA would require GAO to conduct an annual audit of the extent of compliance and noncompliance with the Act through a random sampling, and to report to Congress on the audit results.

The new law also directs GAO to provide recommendations improving compliance and on providing the Justice Department the necessary resources and authorities for effective enforcement of the Act. Additionally, HLOGA would permit GAO to request information, including information in writing, "from and access to any relevant documents from any person" registered under the Act "if the material requested relates to the purpose" of the audit. GAO may notify Congress of persons who refuse to comply with GAO's request within 45 days of such information request.