

Congress Passes Ethics and Lobbying Reform Bill

Before the August Congressional recess, the U.S. House and Senate both passed an amended comprehensive ethics and lobbying reform bill (S.1), by wide margins. The legislation changes the Senate rules and the law, and also supplements the rules changes the House passed in House Resolution 6 in January. The ethics reforms contained in S. 1 will not take effect unless and until President Bush signs the legislation into law, which he is expected to do shortly. Congress will submit the legislation to the President when it returns from its August recess after Labor Day.

INTRODUCTION

The “Honest Leadership and Open Government Act of 2007” is a comprehensive ethics and lobbying reform bill that makes substantive changes to both House and Senate rules and the law. The final bill that passed both Houses of Congress was negotiated by House and Senate leadership. The bill combines the previous House and Senate passed pieces of legislation into one comprehensive package, with compromises relating principally to the “bundling,” earmark, and “revolving door” provisions.

PART I

This chart outlines the changes to House and Senate rules, as well as the law as amended by recent Congressional action:

CHANGES TO HOUSE & SENATE RULES		
	HOUSE OF REPRESENTATIVES	SENATE
Gifts	<ul style="list-style-type: none"> Bans gifts to House Members and staff from lobbyists and agents of foreign principals, and private entities that retain or employ lobbyists or such agents, unless the gift falls within one of the exceptions to the House gift rule. Retains existing exceptions from gift rule, such as attendance at widely attended events and food and refreshments of nominal value offered other than as part of a meal.¹ 	<ul style="list-style-type: none"> Bans gifts to Senators and staff from lobbyists, agents of foreign principals, and private entities that retain or employ lobbyists or such agents, unless the gift falls within one of the exceptions to the Senate gift rule. Retains existing definition of “gift” in Senate rules and accordingly, retains the exceptions such as attendance at widely attended events and food and refreshments of nominal value offered other than as part of a meal. Includes a new exception for “bona fide constituent events” (discussed below).

¹. The House and Senate Rules also exempt Federal campaign contributions and attendance at a “fundraiser” from the rules. However, those active in the political process should be aware that the contributions must be made lawful under the Federal Election Campaign Act (2 U.S.C. § 431) and the event must be sponsored by a political committee organized under section 527(e) – such as a PAC. Any food or beverage consumed incident to the “fundraiser” are in-kind contributions that must be reported by both the Member’s campaign committee and the political committee making the contribution.

	HOUSE OF REPRESENTATIVES	SENATE
National Party Committee Events	<ul style="list-style-type: none"> Prohibits House Members from attending a party at a national convention that is directly paid for by a lobbyist or entity that retains or employs a lobbyist. Exempts from the general prohibition, attendance at events where the House Member is being honored "in his capacity as a candidate." 	<ul style="list-style-type: none"> Same as House rule change, except: Exemption from general prohibition is more narrow. Senators will be permitted to attend an event if the Senator is being honored as "the party's presidential or vice presidential nominee or presumptive nominee."
Privately Funded Travel	<ul style="list-style-type: none"> Privately funded travel must be pre-approved by the Committee on Standards of Official Conduct. House Members and staff may not accept travel that exceeds one day from a private entity that employs or retains lobbyists, except for colleges and universities. Requires case-by-case review to allow two day trips. Requires certification from the sponsor of the trip that a lobbyist did not plan, organize, request, finance, or arrange the travel. Prohibits lobbyists from accompanying Members/staff on any segment of the trip. House members are banned from using personal, official, or campaign funds for airfare on private aircrafts not licensed by the Federal Aviation Administration. 	<ul style="list-style-type: none"> Same as House, except: Senate bill exempts pre-approved 501(c)(3) organizations; No specific exception for colleges or universities; and Senators must pay market value for travel on private aircrafts not licensed by the Federal Aviation Administration.
Valuation of Tickets (provided by non Lobbyists)	<ul style="list-style-type: none"> Value of entertainment/sports tickets is the face value; if no face value, then value is the cost of a ticket with the highest face value for the event. 	<ul style="list-style-type: none"> Generally, same as House. However, S.1 permits a tickets holder to try, in advance, to persuade the Select Committee on Ethics that the no-face-value ticket is worth less than the highest face value.

	HOUSE OF REPRESENTATIVES	SENATE
Earmarks/ Limited Tax and Tariff Benefits	<ul style="list-style-type: none"> Requires public disclosure of the sponsors of earmarks, limited tax benefits, and limited tariff benefits. Defines earmarks, limited tax benefits, and limited tariff benefits. Prohibits trading earmarks for votes. 	<ul style="list-style-type: none"> Same as House, except: Requires public disclosure of an earmark 48 hours prior to consideration of a bill containing such a provision. The Majority Leader or relevant Committee Chairman must certify that the earmark list is complete and publicly available 48 hours in advance of the vote. Failure to do so will make a conference report subject to a point of order. Also subject to a point of order are items added during the Conference Committee but previously approved by neither chamber of Congress. Such items can be struck individually on points of order; Prohibits a Senator from using his/her official position to request/aid in the passage of an earmark that benefits the Senator or the Senator's family, if there is a pecuniary interest; and No prohibition on trading an earmark for a vote.
Post Employment Restrictions	<ul style="list-style-type: none"> House Members are prohibited from lobbying the House for one year. No new restrictions on House staff. 	<ul style="list-style-type: none"> Prohibits Senators from lobbying the Senate or House for two years. Prohibits senior Senate staff from lobbying for one year any Member or staff person of the entire Senate.
Employment Negotiations	<ul style="list-style-type: none"> Bars negotiations on private employment by House Members, until a successor is named, unless the Member files a statement with the Committee on Standards of Official Conduct within 3-business days of the negotiations. Senior staff making at least 75 percent of salary paid to House Members (or \$123,900) must notify the Committee on Standards of Official Conduct within 3 days that he or she is negotiating outside private employment. Members and staff must recuse themselves on matters for which there appears to be a conflict of interest. 	<ul style="list-style-type: none"> Bars negotiations on private employment by Senators until a successor is named, unless the Member files a statement with the Select Committee on Ethics within 3 business days of the negotiations. Absolutely prohibits Senators from negotiating for lobbying employment until after the election of the Senator's successor. Senior staff making at least 75 percent of salary paid to Senators (\$123,900) must notify the Select Committee on Ethics within 3-days that he or she is negotiating outside private employment.

	HOUSE OF REPRESENTATIVES	SENATE
Ethics Training	<ul style="list-style-type: none"> Requires “appropriate” staff to undergo training, but training is not required for Members. Required for new staff. 	<ul style="list-style-type: none"> Requires Senators and staff to complete ethics training.
Secret Holds	<ul style="list-style-type: none"> Not applicable. 	<ul style="list-style-type: none"> If a Senator objects to a unanimous consent agreement to pass a bill, the Senator must put his/her name in writing and the reason for the objection. The written objection must be placed in the Congressional Record within 6 days of the objection first being lodged.
Partisan Influencing of Hiring Decisions	<ul style="list-style-type: none"> Prohibits influencing the employment decision of a private entity by taking, withholding, offering, or threatening to take or withhold, an official act, on the basis of partisan political affiliation. 	<ul style="list-style-type: none"> Same as House.

CHANGES TO THE LAW	
Reporting Lobbyists Contributions & Certifying Compliance with House and Senate Rules	<ul style="list-style-type: none"> Registered lobbyists, and those required to register, will now be required to file semiannual reports with the Secretary of the Senate and Clerk of the House which disclose the name of each federal candidate or officeholder, leadership PAC, or political committee to whom the lobbyist (and related entities) gave aggregate contributions of \$200 or more, with dates and amounts. Lobbyists will be required to certify, in these reports, to their familiarity and understanding of the House and Senate Rules and further that they have: <i>“not provided, requested, or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress with knowledge that receipt of the gift would violate rule XXXV of the Standing Rules of the Senate or rule XXV of the Rules of the House of Representatives.”</i>
Gifts	<ul style="list-style-type: none"> Applies gift rules via the law to lobbyists not directly subject to congressional rules and, makes it a crime for lobbyist or entity that employs or retains a lobbyist to knowingly provide a gift or travel in violation of House or Senate rules.
Lobbying Disclosure	<ul style="list-style-type: none"> Vastly expands disclosure requirements, including of lobbyist political contributions, fundraisers. Requires quarterly and electronic filing of reports. Requires increased disclosure of lobbying coalition or association activities. Requires increases civil penalties for non-compliance to \$200,000 and criminal penalties to up to 10 years in prison. Requires auditing of lobbying disclosure reports.

CHANGES TO THE LAW	
Bundling Provision	<ul style="list-style-type: none"> Requires campaigns to report “bundled” contributions of more than \$15,000 within a 6 month period. FEC to promulgate rules to implement this new requirement.
Revolving Door	<ul style="list-style-type: none"> Extends the ban from one to two years on senior Executive branch employees from engaging in communications with former colleagues and other officials with intent to influence official action.
Private/Corporate Flights	<ul style="list-style-type: none"> Amends the Federal Election Campaign Act to extend the House and Senate rules on private planes to the House and Senate candidates, respectively. Applies the equivalent of the Senate rule via legislation to Presidential candidates.

PART II - DISCUSSION

GIFTS

Members of Congress and staff are prohibited from accepting a gift from a lobbyist, an agent of a foreign principal (“agent”), or from a private company or organization that employs or retains a lobbyist or agent, unless the gift falls within one of the existing House or Senate exceptions to the gift rules. Accordingly, lobbying staples such as providing meals or sports tickets are now prohibited. (Travel is treated separately, but also significantly limited.)

S. 1 also, by statute, makes it a crime for a lobbyist or a private entity that retains or employs a lobbyist to provide a gift or travel to a House or Senate Member or staff person, with the knowledge that the gift or travel may not be accepted under the rules.

S. 1 creates a new exception to the Senate gift rules for “bona fide constituent events.” Under this exception, a Senator or staff person may accept an offer of free attendance in the Senator’s home state at a convention, conference, symposium,

forum, panel discussion, dinner event, site visit, viewing, reception, or similar event if:

- The cost of the meal does not exceed \$50;
- The event is sponsored by bona fide constituents of the Senator;
- The event will be attended by a group of at least five bona fide constituents of the Senator, provided that a registered lobbyist shall not attend the event; and
- The Senator or staff person participates as a speaker or panel participant or attendance is appropriate to the performance of official duties.

VALUATION OF SPORTING TICKETS

The value of a ticket to a sporting or entertainment event is the face value of the ticket, or in the case of a ticket without a face value, the value of the most similar ticket sold by the issuer to the public. “Similar” includes all features of the ticket, including access to parking, food, and beverages. A ticket with no face value and for which no similar ticket is sold by the issuer shall, in general, be valued at the cost of a ticket with the highest face value for the event.

TRAVEL

Limitations on Payments or Reimbursements for Privately Funded Travel. The new ethics rules prohibit Members of Congress or staff from accepting reimbursement or payments for travel from a private entity that retains or employs a lobbyist or agent of a foreign principal, except for one day events (exclusive of travel and an overnight stay). The Senate rules contain an exception for trips sponsored by a pre-approved 501(c)(3) organization, while the House rules provide an exception for travel sponsored by a university or college. Both Houses require pre-approval from the respective ethics committees for any travel reimbursement. A lobbyist may only have de minimis role in organizing the trip.

When deciding whether to pre-approve a 501(c)(3) as a sponsor of travel, the Senate Ethics Committee will consider:

- The organization's stated mission;
- The organization's prior history of sponsoring Congressional trips;
- Whether any trips previously sponsored led to an investigation by the ethics committee; and
- Any other factors deemed relevant.

Ban on Lobbyist or Agent of Foreign Principal Planning, Arranging, or Organizing Travel.

S. 1 amends the Senate rules to prohibit a Member or staff person from accepting travel or reimbursement for travel that was planned, organized, arranged by or at the request of a registered lobbyist or agent of a foreign principal, or on which a lobbyist accompanies a Senator or staff person on any segment of the trip. House rules contain the same prohibition.

Travel Certification. The ethics rules require Members of Congress or staff in both Houses to obtain from the sponsor of the privately funded travel a certification from the sponsor that:

- The trip will not be financed in any part by a lobbyist or agent of a foreign principal;
- That the sponsor either:
 - Does not employ or retain a lobbyist or agent and is not itself a lobbyist or agent; or
 - Certifies that the trip is either a one day event or the sponsor is an approved 501(c)(3) organization in the Senate or a university or college in the House;
- That the sponsor did not accept any funds directly or indirectly earmarked for the trip;
- That the trip will not in **any part** be planned, organized, requested, or arranged by a lobbyist or agent; and
- That the Member of Congress will not be accompanied on any segment of the trip by a lobbyist or agent.
- The new rule requires that these certifications be made publicly available as soon as possible after they are received.

The Senate Ethics Committee is required to issue guidance on many of these travel-related rules within 60 days of the legislation's enactment. (House guidance is already available).

LOBBYING DISCLOSURE

Thresholds. The legislation lowers the financial threshold for lobbying registration from \$5,000 to \$2,500 and reporting of lobbying expenses from \$20,000 to \$10,000. It does not change the two contacts rule under previous law.

Disclosure. The legislation also requires more prompt, increased disclosure, including:

Quarterly - Lobbying Disclosure Reports

- (Increased from twice yearly). Electronic lobbying disclosure filing, must now be made within 20 days (decreased from 45 days) of the end of the quarter.

New Semiannual Contribution Reports

- A requirement that each employee who is listed as a lobbyist on a current registration or disclosure report file semiannual reports (within 30 days of the end of the semiannual period), which include:
 - The names of all political committees established by the registrant;
 - The name of each federal candidate or officeholder, leadership PAC, or political party committee to which aggregate contributions exceeding \$200 were made by the lobbyist, the registrant, or a registrant's political committee.
- The date, recipient, and amount of funds contributed or disbursed by the lobbyist, the registrant, or registrant's political committee:
 - To pay the costs of an event to honor a covered legislative or executive branch official;
 - To an entity that is named for a covered legislative official, or to a person or entity in recognition of such official;
 - To an entity established, financed, maintained, or controlled by a covered legislative or executive branch official, or an entity designated by such official; or

- To pay the costs of a meeting, retreat, conference, or other similar event held by, or in the name of, one or more covered legislative or Executive branch officials.

- A certification that the lobbying firm, or registrant, and each employee listed as a lobbyist for that lobbying firm or registrant, has not provided, requested, or directed a gift, including travel, to a Member of Congress or congressional staff person in violation of House or Senate rules.

Penalties. Civil penalties for non-compliance with lobbying disclosure laws increase to \$200,000 (from \$50,000). In addition, “knowingly, willfully, or corruptly” failing to comply with the Lobbying Disclosure Act can now subject a violator to up to 10 years in prison.

BUNDLING OF CAMPAIGN CONTRIBUTIONS

A campaign must report “bundled” contributions aggregating of more than \$15,000 received from an individual or entity within a 6 month period. The report shall include the name, address, and employer of the person responsible for the bundling.

A bundled contribution is defined as contribution(s) forwarded from the contributor(s) to the political committee by the bundler. In addition, bundled contributions include those contributions for which a bundler will get “credit” with the candidate through records, designations, or other tracking measures.

The legislation also requires that the House and Senate make all of the above information publicly accessible via the Internet, and that the information be in a searchable format with direct links to Federal Election Commission campaign finance reports. The FEC will develop regulations clarifying what actions are considered bundling.

LOBBYING ACTIVITY BY COALITIONS AND ASSOCIATIONS

The ethics bill requires increased disclosure on lobbying reports relating to certain coalitions and associations. Specifically, the legislation requires disclosure of the name of any organization or business that actively “participates in a substantial way in the planning, supervision, or control of such lobbying activities.” An organization must donate at least \$5,000 to such a coalition and meet the participation and planning requirement to trigger the disclosure requirements. However, no disclosure is required if the organization or business is listed on the coalition’s or association’s “publicly available” Internet website as being a member or contributor to the client, unless the organization or business in whole or in major part, plans, supervises, or controls such lobbying activities.”

AUDITING OF LOBBYING REPORTS

The ethics bill requires that the Comptroller General audit lobbying registration and reports on an annual basis. The legislation does not specify whether all registrations and disclosure reports will be audited, or whether audits will be merit based or random.

EARMARK AND TAX/TARIFF BENEFIT REFORM

Disclosure. The legislation does not amend the existing House rules on earmarks, implemented in January. The legislation amends the Senate rules to require any bill reported by a committee to list any earmark, limited tax benefit, or limited tariff benefit (including the name of the Member requesting the earmark or benefit) in the committee report, and that the committee publish the list in a database, available to the public, of special projects 48 hours before the Senate votes on the bill.

In the case of a conference report, the joint explanatory statement prepared by the House and Senate conference managers must list any earmarks or limited tariff or tax benefits, including the name of the Member requesting the earmark or benefit. Importantly, the lists must be made available on the Internet in a searchable format to the general public for at least 48 hours before consideration of the final bill. The House requires similar disclosure requirements, but it does not have the 48 hour rule.

Definitions. “Earmark” means a provision or report language included primarily at the request of a Member or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

“Limited tax benefit” means:

- Any revenue provision that—
 - Provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and
 - Contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or
- Any Federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.

“Limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

Both the House and Senate rules changes bar Senators and Representatives from conditioning the inclusion of language to provide funding for an earmark, limited tax benefit, or limited tariff benefit on any vote cast by another Member.

In addition, both rules changes require that any Senator or Representative who requests an earmark or limited benefit in a bill (or accompanying report), or in any conference report, be required to provide a written statement to the chairman and ranking minority Member of the committee of jurisdiction, which includes:

- The name of the Senator or Representative;
- In the case of an earmark, the name and address of the intended recipient or, if there is no specifically intended

recipient, the intended location of the activity;

- In the case of a limited benefit, the entity or entities reasonably anticipated to benefit, to the extent known to the Member;
- The purpose of the earmark or limited benefit; and
- A certification that the Senator or Representative or spouse has no pecuniary interest in the earmark or limited benefit.

Both chambers’ rules changes require that the relevant committees maintain the lists for public inspection. The Senate rules changes specifically require that the information be published in a searchable format on the committee’s or subcommittee’s website not later than 48 hours after receipt of such information.

POST-EMPLOYMENT RESTRICTIONS

The ethics rules extend the ban on Senators lobbying former colleagues or Senate staff or House Members and staff from one year to two years, and House Members are banned from lobbying the any Member or staff of the House for one year.

The ethics rules prohibit senior Senate staff (those making 75 percent or more of a Senator’s salary) who become registered lobbyists, or are employed or retained by a registered lobbyist for the purpose of influencing legislation, from lobbying any Senator or Senate staff for one year. Non-senior Senate staff and all House staff are still prohibited from lobbying their former offices for one year, pursuant to pre-existing law.

The law now extends the ban from one year to two years on senior Executive branch staff engaging in communications with intent to influence official action with: (1) any employee of any department or agency in which the former staff person served (within a period of 1 year before the former staff person's employment with the government terminated); or (2) other very senior Executive branch officials (cabinet secretaries, deputy secretaries, under secretaries, agency commissioners, and others referenced in 18 U.S.C. § 207(d)(2)(B)).

DISCLOSURE OF PAST CONGRESSIONAL AND EXECUTIVE BRANCH EMPLOYMENT

S.1 changes the requirements for lobbyists to disclose previous employment in the Executive branch or Congressional offices. Prior to S. 1, a lobbyist had to disclose previous Congressional or Executive employment that occurred within the last two years. Now a lobbyist must disclose Congressional or Executive employment that occurred within twenty years of when the lobbyist first lobbied for the client.

CORPORATE AIRCRAFT

The Senate ethics rules do not ban the use of private or corporate aircraft, but Senators or staff, or candidates for the Senate, must pay the charter rate and may not be reimbursed by a private source. The ethics rules also require that Senators and staff file detailed disclosures regarding any flights taken on private or corporate aircraft.

The House ethics rules completely prohibit Representatives or staff, or

House candidates, from accepting travel on private or corporate aircraft.

CONVENTION PARTIES

Members of Congress are prohibited from participating in an event honoring that Member at a national party convention if the event is paid for by a person or entity required to register under the Lobbying Disclosure Act. An exception is provided under Senate rules for a Senator who is being honored in his/her capacity as "the party's presidential or vice-presidential nominee or presumptive nominee." A similar but broader exception is provided under the House rules for events honoring representatives, merely in their capacity as a candidate.

ELIMINATION OF FLOOR AND GYM PRIVILEGES

Floor and Congressional gym privileges are eliminated for former Representatives or Senators-turned lobbyists or agents of foreign principals, and for those who are in the employ of or represent any organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal.

EMPLOYMENT NEGOTIATIONS

The House ethics rules require disclosure of employment negotiations by House Members and senior staff (those earning more than 75 percent of a Member's salary), and prohibit negotiations for lobbying employment by a House Member until after the election of the Member's successor, unless the Member files a disclosure or the staff notifies the ethics committee.

The Senate ethics rules prohibit a Senator from negotiating for employment involving lobbying activity prior to the naming of a successor. For other non-lobbying private employment, a Senator may not negotiate for a new job until a successor is named, unless the Senator files a statement within three days of commencement of negotiations with the Secretary of the Senate (which will be publicly disclosed) regarding the negotiations. Senior Senate staff must notify the Ethics Committee of any negotiations for private sector employment.

LOBBYING BY MEMBERS' SPOUSES OR IMMEDIATE FAMILY MEMBERS

House rules prohibit a House Member from allowing his or her spouse, who is a registered lobbyist or who is retained by a registered lobbyist, from having any official contact with the Member or his or her staff.

Senate rules bar a spouse or “immediate family member” from lobbying the Senator, as well as other Senators and staff. An exception in the Senate rules only applies for spouses (not for immediate family members) if the spouse was serving as a registered lobbyist at least one year prior to the election of the Senator to office, or at least one year prior to his or her marriage to the Senator.

Immediate family member includes: son; daughter; step-children, siblings, or parents; son-in-law; daughter-in-law; mother; father; brother; or sister.

INFLUENCING HIRING DECISIONS BASED ON PARTISAN AFFILIATION

Both House and Senate rules now prohibit a Member of Congress from influencing the employment decision of a private entity by taking or withholding, or offering or threatening to take or withhold, an official act, on the basis of a partisan political affiliation. S. 1 also amends the law to make a violation of this provision subject to imprisonment of up to fifteen years. Any such prior conduct is subject to a safe harbor.

FOREIGN AGENTS REGISTRATION ACT

Agents of foreign principals must file FARA reports electronically.

ELIMINATION OF SECRET HOLDS

The Senate ethics rules limit somewhat the practice of using secret “holds” by a single Senator to block legislation by requiring disclosure of the Senator’s name if he or she objects to proceeding to floor action by unanimous consent. All objections must be in writing and placed in the Congressional Record within 6 days of the raising of the objection. Critics of this rule change have claimed it is too weak because a 6-day secret hold is still available and because “rolling” holds, where Members change who is objecting prior to the six day reporting requirement, are still possible.

ETHICS TRAINING

The Senate ethics rules require Senators and staff to complete ethics training after commencing service, including for Senators and staff already serving. House

ethics rules require ethics training for “appropriate” staff, but there are no requirements for Congressmen. New House staff must receive ethics training within 60 days of beginning employment. The legislation also encourages self-regulation by the lobbying community.

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