

Lobbying and Campaign Finance Reform

The last two weeks have seen significant developments in the areas of lobbying and ethics reform and campaign finance law. This alert describes these developments and includes a brief discussion of the Internet regulations recently promulgated by the Federal Election Commission.

IN BRIEF

Lobbying and Ethics Reform

The Senate overwhelmingly passed a reform bill (S. 2349) that includes new lobbying, gift, earmark, and travel restrictions. The legislation seeks to amend the law and Senate rules, although the entire bill, including the rule changes, must pass the House and be signed into law by the President before taking effect. The House Republican Leadership's lobbying reform bill (H.R. 4975), opposed by most Democrats, is expected to reach the floor of the House after the spring recess period (week of April 24).

Campaign Finance Reform

Last week the House narrowly passed legislation that would regulate "527" political committees. The legislation faces an uncertain future in the Senate where it is expected to be opposed by most Democrats. Through the Office of Management and Budget, the Bush Administration issued a "Statement of Administration Policy" strongly supporting the House bill.

FEC Internet Regulations

The Federal Election Commission (FEC)

unanimously passed long anticipated Internet regulations, which left unregulated all Internet political activity except for paid political advertisements. The rules also permit an employee to make unlimited use of an employer's computer for individual, volunteer political activity, provided the activity takes place when the employee is off-the-clock.

LOBBYING AND ETHICS REFORM

Senate Passes Lobbying Reform

Last month the Senate passed lobbying and ethics reform legislation (S. 2349) by a vote of 90 to 8. The bill contained many, but not all, of the reform measures that had been the subject of extensive committee debate. The legislation seeks to amend the law and Senate rules. It should be noted, however, that although the Senate can amend its own rules with the vote of 60 Senators, in this case, the entire bill, including the Senate rule changes, must be signed into law by the President before taking effect.

Ban on Gifts or Travel by Lobbyists

The legislation would prohibit lobbyists from knowingly making a gift to Members or employees of the Senate, even if the gift is valued less than \$50, or providing travel to a Member or employee, unless the gift is subject to a specific exception to the current gift rules, such as the personal friendship exception. The legislation also seeks to change the law to include House Members and staff in the ban.

Travel Restrictions and Disclosure

Before accepting privately-funded travel, Senators and staff would be required to obtain a certification from the trip sponsor that the trip was not planned, organized, or arranged by a lobbyist. Senators and staff must also provide a detailed itinerary and rationale for the trip and receive written approval for it by the Ethics Committee.

Senators and staff would be required to disclose flights on private aircraft taken in connection with official duties and file a report with the Secretary of the Senate, which identifies the owner of the aircraft, the purpose of the trip, and the persons on the trip.

Lobbying Disclosure

The legislation would lower the financial thresholds for lobbying registration from \$5,000 to \$2,500 and reporting of lobbying expenses from \$20,000 to \$10,000 (these figures will be adjusted for inflation).

The legislation also would require lobbyists to:

- File electronically and quarterly, as opposed to semiannually
- Report to the Senate and the House, on an annual basis, the name of each Federal candidate or officeholder, leadership PAC, or political party committee to whom a contribution exceeding \$200 was made within the past year
- Report to the Senate and the House, on an annual basis, the name of each Federal candidate or officeholder, leadership PAC, or political party for whom a fundraising event was hosted, co-hosted, or otherwise sponsored within the past year

- Disclose the name of any Congressional or covered Executive Branch official for whom the lobbyist provided, or directed or arranged to be provided, any payment or reimbursements for travel, including:
 - An itemization of the payments or reimbursements provided to finance the travel
 - The purpose and final itinerary of the trip
 - Names of all other lobbyists employed by the lobbyist who traveled on the trip
 - The identity of the sponsors of the travel
 - The identity of any person or entity, other than the listed sponsors of the travel, which directly or indirectly provided for payment of travel and related expenses
- Disclose any funds the lobbyist contributed or disbursed, or arranged to disburse:
 - To pay the costs of an event to honor a Legislative or covered Executive Branch official
 - To, or on behalf of, an entity that is named for a Legislative or covered Executive Branch official
 - To an entity established, financed, maintained, or controlled by a Legislative or covered Executive Branch official
 - To pay the costs of a meeting, retreat, conference, or other similar event held by Legislative or covered Executive Branch official
- Disclose any gift (that under the House or Senate rules counts towards the \$100

cumulative, annual limit) valued in excess of \$20 given to a Legislative or covered Executive Branch official

Disclosure of Lobbying Activities by Coalitions and Associations

The legislation would require lobbyists to disclose the name of any organization or business that “participates in a substantial way in the planning, supervision, or control of such lobbying activities.” However, no disclosure is required under this provision if “it is publicly available knowledge that the organization that would be identified as affiliated with the client, or has been publicly disclosed to have provided funding to the client, unless the organization, in whole or in major part, plans, supervises, or controls such lobbying activities.”

Earmarks and Conference Committees

A Senator would be permitted to raise a point of order against an earmark not in the original House or Senate version of a bill but later added in conference, allowing the removal of the earmark from the bill unless a supermajority (60 senators) vote to retain it.

Any Senate bill or Senate amendment, or conference report on any bill, including an appropriations bill, revenue bill, or authorizing bill, must list all earmarks, including an identification of the Member who proposed the earmark and an explanation of the essential governmental purpose of the earmark.

This information, and all conference committee reports, must be made available on the Internet to the general public at least 48 hours before consideration by the full Senate.

Elimination of Secret Holds

The Senate ended the practice of using secret

“holds” by a single Senator to block legislation. Now public disclosure is required if a Senator objects to proceeding to floor action.

Post Employment Restrictions

The legislation would prohibit Senate staff earning equal or greater than 75% of the rate of pay of a Senator from lobbying any Senator, Senate staff, or committee for a period of one year. The previous rule only prohibited such Senate employees from lobbying the specific Senator, Senate office, or Senate committee for whom they worked.

The ban on senior Executive Branch personnel and Congressional employees, officials, and Members on lobbying their former employers or offices would be increased from one year to two years. Violating this rule would be punishable by up to one year in prison. Willfully violating this rule would be punishable by up to five years in prison.

Employment Negotiations

Senators would be required to file a public disclosure statement within three days of negotiating, or having any arrangement concerning, prospective private employment.

Influence of Hiring Decisions

The legislation would prohibit taking or withholding, or threatening to take or withhold, an official act, or influencing, or offering or threatening to influence, the official act of another, with the intent to influence, on the basis of partisan affiliation, an employment decision or employment practice of any private entity.

Registered Lobbyists' Family Members

If a Senator's immediate family (son, daughter, husband, wife, in-laws, brother, sister, step-

parent, or stepsibling) is a registered lobbyist, the family member may not have “any official contact” with that Senator’s office or staff.

Disclosure of Paid Efforts to Stimulate Grassroots Lobbying

The legislation would:

- Require “grassroots lobbying firms” to register with the House and Senate. “Grassroots lobbying” is defined as the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same
- Define “grassroots lobbying firm” as a person or entity that is retained by one or more clients to engage in paid efforts to stimulate grassroots lobbying on behalf of such clients and receives income of, or spends or agrees to spend, an aggregate of \$25,000 or more for such efforts in a quarterly period
- Define “paid efforts to stimulate grassroots lobbying” as any paid attempt on behalf of a client to influence the general public to lobby covered legislative or executive branch officials. It specifically exempts member communications or communications directed at less than 500 people

Disclosure of Past Executive or Legislative Branch Employment

The legislation would require lobbyists to disclose prior Executive or Congressional employment.

Elimination of Floor Privileges

Floor privileges would be eliminated for former Senators turned-lobbyists and former Senators that represent any party or orga-

nization for the purpose of influencing the passage, defeat, or amendment of any legislative proposal.

Increased Penalties for Disclosure Noncompliance

The legislation would increase penalties for noncompliance with lobbying disclosure laws have increased to \$100,000 from \$50,000.

Foreign Agents Registration Act (FARA)

The legislation would require agents of foreign principals to file FARA reports electronically.

House Lobbying Reform Legislation

Last week the House Government Reform Committee and the House Administration Committee approved H.R. 4975, the House Republican Leadership’s lobbying and ethics reform bill, though many Democrats have stated that the bill is inadequate. This action came just a day after the House Judiciary Committee and the House Rules Committee voted to approve separate sections of the bill under their respective jurisdictions. The House Committee on Standards of Official Conduct (also known as the House Ethics Committee) is the final committee with jurisdiction that has yet to act on the bill, although the Rules Committee has said the bill could move to the floor without action by the Ethics Committee. The bill is expected to reach the floor after the spring recess period (week of April 24).

The legislation would:

Disclosure

- Require electronic and quarterly filing of lobbying disclosure reports
- Require campaign contribution “bundlers” to disclose to the House and Senate

- Require lobbyists to disclose amounts paid to help defray costs of events honoring Members and covered Executive branch officials and to organizations established, maintained, or controlled by Members and covered Executive branch officials
- Call for the Office of Inspector General of the House to randomly audit lobbyists' disclosure information
- Require more specific reporting of lobbying contacts
- Require Members to disclose private employment negotiations
- Require lobbyists to disclose political contributions and fundraisers hosted, co-hosted, or sponsored
- Require lobbyists to disclose all gifts that would count towards the \$100 cumulative annual limit

Travel

- Suspend for approximately one year all privately funded travel for Members and staff pending a recommendation on travel and gifts from the House Ethics Committee
- Prohibit registered lobbyists from traveling on flights as passengers of aircraft not licensed by the Federal Aviation Administration to operate for compensation or hire if a Member, officer, or employee is a passenger or crew member on such flights

Employment

- Prohibit wrongfully influencing an entity's employment decisions or practices on a partisan basis
- Require the House to notify former Members and employees of the beginning

and end date of their postemployment restriction

Gifts

- Amend the House rules to declare that a gift of a ticket to a sporting or entertainment event shall be the face value of the ticket

Pensions

- Require Members to forfeit pension benefits if convicted of certain crimes

Earmarks

- Require appropriations measures to list any earmarks and the name of the member requesting the earmarks

CAMPAIGN FINANCE REFORM

The House narrowly approved campaign finance legislation (H.R. 513) by a largely party-line 218-209 vote on April 5 (only seven Democrats supported the bill). The legislation faces an uncertain future in the Senate where it is expected to be opposed by most Democrats.

The legislation is aimed primarily at so-called "527" political committees, though it also rolls back party committee coordinated spending limits.

Major provisions of the legislation include:

- Bringing unregulated "527" political committees under FEC jurisdiction. All political committees that do not engage exclusively in state or local political activity would come under the jurisdiction of the FEC, effectively ending the raising and spending of huge amounts of "soft money" by these committees. These committees would now be subject to the Federal "hard

dollar” contribution limits and prohibitions, including being:

- Limited to accepting no more than \$5,000 from each contributor and limited to giving \$5,000 to each federal candidate or PAC
- Prohibited from accepting corporate or labor union donations
- Required to register and report to the FEC
- Permitted to maintain a non-federal account into which an individual could contribute up to \$25,000 annually. Subject to allocation rules, these funds could be used, in combination with “hard dollars,” to finance generic, party-building activities, as well as get-out-the-vote and voter registration activities.

The bill would also eliminate the limitation on the amount party committees can spend in coordination with Federal candidates.

FEC INTERNET REGULATIONS

By a unanimous vote, the FEC promulgated rules which left unregulated virtually all political activity on the Internet, except for paid political advertisements.

Significantly, Internet “bloggers” remain exempt from regulation.

The FEC also revised its rules regarding the use by employees of an employer’s computers for individual political activity. Under the revised rules, an employee may make unlimited use of an employer’s computer and Internet service for individual volunteer

political activities, provided the activity takes place when the employee is off-the-clock and does not result in increased overhead costs to the employer. Under these circumstances, the employee’s unlimited use of an employer’s computer and Internet access would still be considered “occasional, isolated, or incidental,” and, thus, permissible.

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The Government Relations and Public Policy Practice Group helps clients interpret and shape governing laws, enabling them to achieve and maintain market leadership. The varied backgrounds of its government relations lawyers and lobbyists enable the team to handle a variety of clients needs, including representation and strategic planning.

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