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Client Alert

August 2007

Businesses That Employ Lobbyists Face New Federal Rules, Stiffer Penalties

Just days before the August recess, Congress passed sweeping lobbying and ethics reforms which seek to address activities – by Members of Congress and by lobbyists – that were at the heart of the Abramoff-era of scandals. Many of the dramatic changes in the new ethics legislation, known as the "Honest Leadership and Open Government Act of 2007," impact individual lobbyists, corporations that employ lobbyists, and lobbying firms (collectively "lobbyists"). These changes present many pitfalls for lobbyists and their employers, including potential criminal sanctions for violators.

The new ethics legislation, which awaits the President's signature, increases lobbyists' obligations under the Lobbying Disclosure Act ("LDA"), tightens existing Senate and House Rules regarding Members' contacts with lobbyists, and extends the federal campaign finance laws to cover certain fundraising activity by lobbyists. Moreover, in contrast to Congressional efforts earlier this year to make changes through internal rules, these reforms have been enshrined in legislation and will have the force of law. The summary below highlights some of the new requirements.

Increased Lobbying Disclosure Requirements

Under the new ethics legislation, lobbyists will have to file LDA reports quarterly, rather than semiannually. Also, special semiannual reports have to be filed for certain contributions to candidates, leadership PACS, party committees, Presidential library foundations and inaugural committees, as well as for contributions for events honoring or recognizing Members.

In addition, the Comptroller General is required to conduct annual audits of lobbying registration filings, and can request additional information from registrants and individual lobbyists. If they fail to comply, the Comptroller General must report that to Congress, which presumably could lead to a referral to the U.S. Attorney's office.

Congress has also added enforcement muscle to the LDA by increasing potential civil penalties from $50,000 to $200,000 per violation. The new ethics legislation further creates criminal liability for certain knowing violations of the LDA, with a conviction resulting in jail terms of up to 5 years.

New Bundling Disclosure Obligations

The new ethics legislation for the first time requires disclosure of bundling by lobbyists – activity that is central to campaign fundraising. Candidates, leadership PACs, and parties will be required to report to the Federal Election Commission ("FEC") the identity of each lobbyist who makes two or more bundled contributions exceeding $15,000 in a six-month period. This includes contributions a lobbyist personally delivers to a candidate, as well as those a lobbyist never touches, but for which a lobbyist receives "credit." Congress has left it to the FEC to implement this new provision through regulations that must be in place within six months, and the bundling restriction will become effective three months thereafter.

Prohibitions on Paying Members' Expenses

The new ethics legislation generally prohibits lobbyists from making gifts to Members or paying for their travel. While there are exceptions, even some of those have strings attached. For example, an exception to the travel ban would require a lobbyist's employer to submit a signed certification before it could pay for a Member's travel. Presumably an individual who executes an erroneous certification would be subject to the penalties governing false statements. In addition, Members will no longer be able to attend events honoring them at national party conventions that are paid for by

lobbyists, unless the Member is a candidate for President or Vice President. The new ethics legislation also requires Presidential and Senatorial candidates to pay a pro rata share of the charter rate when traveling on private aircraft, and prohibits House candidates from using private planes altogether.

Some have criticized Congress for failing to create an independent body to enforce these new restrictions. These critics overlook the FEC's new authority over bundling disclosure and candidates' use of noncommercial aircraft. The FEC has ample enforcement capabilities, including the power to subpoena records and testimony, seek fines and injunctions, and go to federal court, if necessary. In addition, the new ethics legislation establishes criminal penalties for LDA violations. Our experience is that the Department of Justice is not hesitant to exercise such new powers, particularly in the area of pubic corruption.

The new ethics legislation presents many perils for lobbyists individually and the organizations that employ or retain them. The lawyers in the Political Law Group of Womble Carlyle can help lobbyists and their employers with their compliance needs. Please contact the attorney with whom you usually work or any of the following attorneys if you have questions.

Lawrence H. Norton and James A. Kahl served as General Counsel and Deputy General Counsel, respectively, of the Federal Election Commission, spanning the period from September 2001 to March 2007. As leaders of the FEC's legal team, Larry and Jim played a critical role in every aspect of implementation and enforcement of the landmark McCain-Feingold law. Larry and Jim also have extensive experience providing training for, and working with, state and local officials who oversee campaign finance, gift, and lobbying laws. Larry and Jim are frequent speakers on corporate political activities and related compliance issues.

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