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Employ Federal Lobbyists? New Civil and Criminal Sanctions Force Fresh Look at Compliance Programs

On Friday, September 14, 2007, President Bush signed into law the Honest Leadership and Open Government Act of 2007. For the first time, Congressional gift and travel rules apply not just to members of Congress and their staff, but also to companies and individual lobbyists. Violators could go to jail for up to five years and pay penalties of \$200,000.

Corporations, trade associations, and lobbying firms that register under the Lobbying Disclosure Act (LDA) should review their compliance programs to protect themselves against potential liability and provide a strong defense to allegations of wrongdoing. Some of the more significant changes for businesses are the following:

- ***Sarbanes-Oxley-type certification requirement*** -- Beginning in January 2008, one person must certify on behalf of the organization that its employees have read and are familiar with the gift and travel rules, and that no employee has “provided, requested, or directed” a gift (including travel) to a Member or employee of Congress in violation of the rules. Effective compliance policies and procedures are essential in providing a record for this certification.
- ***Violators can go to jail and pay large fines*** -- While lobbying disclosure violations have rarely been prosecuted in the past, the new law encourages prosecutors to be more aggressive. The law for the first time establishes criminal penalties for LDA violations, and it quadruples the potential fines. Moreover, the law requires that the Department of Justice disclose publicly, twice a year, the number of enforcement actions initiated under the LDA. It also authorizes the Comptroller General to conduct random audits of LDA filings and publish annual reports on compliance.
- ***More frequent and more detailed filings*** -- LDA reports must now be filed on a quarterly, rather than semiannual basis. Among other things, lobbyists and their employers must detail political contributions over \$200 to federal candidates, their leadership PACs, and party committees; payments for events honoring or recognizing an executive or legislative branch official; and contributions of \$200 or more to a presidential library or inaugural committee.
- ***No more \$50 lunch or entertainment ticket*** -- The longstanding exception to the congressional gift ban, which allowed a single gift valued at less than \$50 so long as gifts from a single source are less than \$100 in value in a calendar year, has been eliminated for lobbyists and their employers. Other exceptions are still in place, such as those for “widely attended” events and for reception-type food.

The lawyers in [Womble Carlyle's Political Law Group](#) can help companies and trade associations, as well as lobbying firms, implement effective compliance systems and navigate the complex exceptions to the gift and other prohibitions.

[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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