

House and Senate Issue Guidance on the New Federal Lobbying and Gift Law

In the wake of new federal lobbying and ethics legislation, signed into law in September 2007, the House and Senate issued guidance this week regarding the responsibilities of companies that employ federal lobbyists. The guidance covers the Sarbanes-Oxley-type certification, in which organizations employing lobbyists, as well as the individual lobbyists they employ, are required to certify under penalty of perjury their familiarity and compliance with Congressional gift and travel restrictions. This week, the House also issued important guidance affecting any company considering holding an event at the 2008 Presidential nominating conventions.

Sworn Certification Requirement and Semi-Annual Reporting

For every company or association that employs a federal lobbyist, one person in the organization must certify on behalf of the organization that it "has read and is 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 House and Senate rules. Each individual lobbyist must file a separate certification for himself or herself. These certifications must be filed semi-annually, with the first one due by July 30, 2008, covering the first six months of the year.

Even in light of this new guidance, it remains unclear whether the sworn certification must attest to compliance by every employee of the company, or just those employees whose activities are known to company executives, or just the activities of the company's lobbyists and senior executives. What is clear, however, is that companies that employ lobbyists may not reimburse any of their employees for a meal or other benefit provided to a Member or Congressional staff. Moreover, the House Committee on Standards previously announced that the new gift restrictions bar a non-lobbyist employee of a company that employs or hires an outside lobbyist from using personal funds to pay for a meal or other benefit for a Member of Congress or Congressional staff.

The stakes have been raised by the new law. Knowing violations may be prosecuted as a felony. Civil penalties may be imposed up to \$200,000 per violation. And the Comptroller General also has new authority to conduct random audits. Both the Justice Department and the Comptroller General are required to report publicly on their activity, which provides these agencies with significant incentive to exercise their new authority. Until further guidance, it is important to establish company policies and provide training for all employees, which can be tailored to the employee's position.

The newly-published guidance also discusses the new form registrants will use to make the semi-annual certification (LD-203). Though the form itself is not yet publicly available, the guidance provides some indication of its contents. Among other things, registrants must now disclose payments for events honoring Members (such as an event in which a Member appears as an "honored guest") and to organizations designated by Members (such as a donation to a charity, which the Member requests in lieu of honoraria).

Each filer must obtain an identification number and password so that all lobbying disclosure reports may be filed electronically with the Secretary of the Senate and Clerk of the House. These may be obtained online at www.disclosure.senate.gov. You should apply for them well in advance of a filing deadline; it will not be possible to activate a password the day before or the due date of a filing.

Presidential Nominating Conventions

Under the new law, a House or Senate Member is no longer allowed to attend a party or event held during a national political party nominating convention if the event is in honor of the lawmaker and is directly paid for by a registered lobbyist or an organization employing federal lobbyists. The newly-published guidance for House Members clarifies that the prohibition covers any event where the Member is named in any invitations or publicity, including as a "special guest". Participation is also prohibited if the event sponsor provides the Member, as a result of participating in the event, with some special benefit that is not available to all attendees.

House Members may, however, participate in events organized to honor a delegation or caucus, where the event (including invitations and publicity) does not name or provide any special benefit to a Member. A House Member may also participate in an event that takes place on a date other than the dates on which the national convention is held (i.e., the Sunday before the convention begins or the Friday after it ends).

This guidance does not change the requirement that for a Member to accept free attendance, the event must comply with one of the exceptions to the gift rules – that is, the event must be a "reception," "widely-attended event," or a "charity" event, as defined by the House and Senate ethics committees. These exceptions have very specific requirements and should be examined carefully. Failure to adhere to these exceptions can subject the company to civil and criminal liability.

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