



Pillsbury
Winthrop
Shaw
Pittman^{LLP}

***HONEST LEADERSHIP AND OPEN GOVERNMENT ACT OF 2007
AND
HOUSE AMENDMENTS***

What is the Honest Leadership and Open Government Act of 2007 (the "Act")?

The Act is an attempt to comprehensively overhaul Congressional ethics rules in reaction to the Congressional scandals of the last two years. Most of the changes in the rules are aimed at lobbyists, agents of foreign principals and private entities that employ lobbyists or agents of a foreign principal ("Restricted Persons"). In addition, the burden of compliance with the gift and travel rules which heretofore fell only on members and employees of Congress has now been expanded to include Restricted Persons. Civil and criminal penalties apply to violations.

How does the Act accomplish this?

The amendments set forth in the Act amend provisions of the Lobbying Disclosure Act of 1995 (the "LDA"), the Senate and House Ethics Rules, the Federal Election Campaign Act ("FECA"), the Ethics in Government Act, and the Foreign Agents Registration Act. The Act was signed by the President on Friday, September 14, 2007.

Didn't the House amend its rules earlier this year?

Yes, the House amended House Rule 25, clause 5 (the "gift rule") with respect to the acceptance of gifts and travel. The changes to the House rules on the acceptance of gifts became effective when passed on January 5, 2007, and the House provisions affecting the acceptance of officially-connected travel took effect on March 1, 2007.

This memorandum summarizes the changes affecting gifts to members and employees of Congress and reporting obligations under the LDA.

GIFTS: SENATE AND HOUSE

May a Restricted Person still give a Member or employee of Congress a gift of less than \$50 per occasion and less than \$100 per year?

No.

Members and employees of the House and Senate may not accept a gift from Restricted Persons. The so-called \$50 exception no longer applies to Restricted Persons. *Effective at date of enactment.*

May someone who is not a Restricted Person give a Member or employee of Congress a gift of less than \$50 per occasion and less than \$100 per year?

Yes.



Do the existing gift exceptions still apply notwithstanding the new Congressional gift prohibition?

Yes.

The 23 exceptions to the gift prohibition are still applicable (i.e. personal friendship, widely attended events, etc.) regardless of whether you are a Restricted Person.

Are there any new exceptions under the Act?

Yes.

“Constituent events” exception: A Member or employee of the Senate may accept an offer of free attendance in the Member’s home State at a conference, symposium, forum, panel discussion, dinner event, reception, or similar event, provided by a sponsor of the event, if

- A) the cost of meals provided is less than \$50 per attendee;
- B) the event is sponsored by constituents or a group comprised primarily of constituents, and the event will be attended primarily by a group of at least 5 constituents of the Member, provided that a registered lobbyist will not attend the event; and
- C) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member’s, officer’s, or employee’s official position; or attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

Do the new rules apply to nonprofit organizations?

Yes, although a special exception from the new travel rules (see below) applies to 501(c)(3) organizations (Senate) and institutions of higher education (House).

Our organization employs a lobbyist, hence we are a Restricted Person; may we give a Senator a pen?

No gifts, unless an exception applies.

Senate Gift Exception for Items of “Little Intrinsic Value”: A Member, officer, or employee of the Senate is permitted to accept items of little intrinsic value, such as a greeting card, baseball cap, or T-shirt. However, the Senate Ethics Committee will not assign a dollar value to the concept of “little intrinsic value”; instead, it will be left to the reasonable discretion of each supervising Member as to whether a gift to the Member, or to a staffer under his or her supervision, falls within this exception, giving due regard to the kind of items enumerated in the exception.



As a lobbyist, may I give a Member of Congress a coffee mug worth \$12?

No.

The coffee mug is not an enumerated item under the Senate “little intrinsic value” exception. It is also more than the \$10 threshold under the parallel House Rule (see below).

May a Restricted Person give a Member or employee of Congress a T-shirt valued at \$12?

Yes.

House Gift Exception for Items of a “Nominal Value”: Members and staff of the House may accept “items of a nominal value such as a greeting card, baseball cap, or a T-shirt.” The Committee interprets this provision to permit the acceptance of the items explicitly referred to in the rule having a reasonable value, *i.e.*, a T-shirt or a baseball cap (even if worth more than \$10), or other items that have a value of less than \$10.

A Member or employee of the Senate may also receive a T-shirt worth \$12 because a T-shirt is specifically listed in the “little intrinsic value” exception (discussed above on page 2).

Under the new rules, may a Restricted Person give a Member of Congress tickets to sports and entertainment events?

No.

If a non-Restricted Person gives a ticket to a sporting or entertainment event to a Member of Congress, how is the ticket valued under the new rules?

All tickets offered to Members of the Senate and House as gifts must be valued at the face value of the ticket, or the value most similar to another ticket sold by the issuer. In determining the proper cost of the ticket all features should be considered including access to parking, availability of food and beverages, and access to areas not open to the public. A ticket with no face value which is not similar to another ticket sold by the issuer to the public is valued at the highest face value ticket for the event.

TRAVEL: SENATE

May a Senator accept reimbursement for travel to a 2-day seminar from a Restricted Person?

It depends.

Generally, Senators and Senate employees may not accept travel from Restricted Persons. Senators and Senate employees cannot accept a reimbursement for travel that was planned, organized, or arranged by or at the request of a registered lobbyist or an agent of a foreign principal.



Exception: Senators and their staff, with pre-approval from the Select Committee on Ethics, may accept travel by entities that employ lobbyists if it is necessary to participate in a one-day meeting, speaking engagement, fact-finding trip or similar event.

The pre-approval process is currently unclear because the Select Committee on Ethics has 60 days from the date of enactment to develop guidelines on evaluating a trip proposal and judging the reasonableness of an expense or expenditure, including guidelines related to evaluating such items as: whether the length of the trip and the itinerary is consistent with the official purpose of the trip; whether there is an adequate connection between a trip and official duties; the reasonableness of an amount spent by a sponsor of the trip; whether there is a direct and immediate relationship between a source of funding and an event.

The Select Committee on Ethics may permit a longer stay when determined by the Committee to be practically required to participate in the event, but in no event may the stay exceed 2 nights.

Senators and their staff are required to disclose the expenses reimbursed by a private entity not later than 30 days after the travel is completed. The Select Committee on Ethics must also be provided with a written certification that the trip will not be financed, planned, organized, requested or arranged in any part by a registered lobbyist and that the traveler will not be accompanied on any segment of the trip by a registered lobbyist.

501(c)(3) nonprofit organizations may provide travel for more than one-day provided that it has been approved by the Ethics Committee. All travel must receive a written certification by the Ethics Committee.

(Takes effect 60 days after enactment or the date the Select Committee on Ethics issues new Guidelines, whichever is later.)

Reimbursement for Non-Commercial Air Travel: Senators and candidates for federal office (except House as stated below) must pay full charter fare when traveling on private airplanes. The charter rate for such flights shall be equal to the fair market value of the normal and usual charter fare or rental fare for a comparable plane of comparable size as determined by dividing such cost by the number of Members, officers, or employees on the flight.

TRAVEL: HOUSE

May a Member of the House be reimbursed for a 2-night stay at a hotel while participating in his/her official capacity at a seminar?

It depends.

Generally, under the House rules enacted earlier this year, Members and employees are prohibited from accepting travel reimbursement from Restricted Persons. Colleges and universities are not subject to this prohibition.



Members and employees are prohibited from accepting travel reimbursements or payments for a trip on which the traveler is accompanied on any segment by a lobbyist or foreign agent. Trips paid for by colleges and universities are exempt from this prohibition. Members and employees are prohibited from participation in officially-connected travel that is in any way planned, organized, arranged, or requested by a lobbyist or foreign agent except as discussed.

Exception: Entities that employ lobbyists or foreign agents may reimburse Member and employee travel to one-day events in connection with his/her official duties. A one-day event may include travel time and up to one overnight stay. Regulations may permit a two night stay when it's determined by the committee on a case-by-case basis to be practically required to participate in the one-day event. Except in the case of trips sponsored by colleges and universities, lobbyists or foreign agents may only play a "de minimis" role in Member travel to such one-day events.

Members and employees may accept up to business-class transportation on commercial air carriers or trains to participate in Committee-approved, privately-sponsored travel. Local area transportation expenses during trips must be reasonable. Lodging in connection with events organized without regard to Congressional participation should be commensurate with those customarily provided to other event attendees and cannot be enhanced because of the official position of the Member or employee. Meals related to the event that are similar to those provided to other event attendees may be accepted.

Lodging in connection with events organized specifically with regard to Congressional participation must be reasonable in terms of cost, location, and proximity. Meals that are reasonable and at appropriate facilities may be accepted. Other reasonable travel expenses necessary for the officially-connected purpose of the trip are permissible (i.e. transportation to and from airports, security costs, visa application fees, etc.)

Expenses may only be accepted from an entity or entities that have a major role in organizing and planning a trip and that have an apparent and defined organizational interest in the purpose of the trip or the location being visited. Expenses may not be accepted from an entity that has simply donated monetary or in-kind support to the trip but does not have a major role in planning and conducting the trip.

Travel Authorization and Public Disclosure Requirements: Prior to accepting reimbursed travel from private entities not connected with lobbying, Members and employees must obtain a written certification from the entity paying for the trip declaring, among other things, that, except as permitted for colleges and universities and one-day travel, lobbyists and foreign agents did not plan, organize, request, arrange, or finance travel, and that the traveler will not be accompanied on any segment of the trip by a registered lobbyist or agent of a foreign principal. A private sponsor is *urged* to complete this form and submit it along with the invitation to the invitee(s) at least 30 days before travel is to begin. Members and employees must submit the certification to the Ethics Committee and receive approval from the Ethics Committee before taking the trip.



These certifications, advance authorizations and other travel disclosure materials must be submitted to the Clerk of the House within 15 days of travel being complete (this rule used to be 30 days).

I am a candidate for the House. My brother owns a private plane; may I travel on it?

Yes.

Private Planes (Candidates): A candidate for the House of Representatives may not make any expenditure for a flight on an aircraft unless the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules; or the aircraft is operated by an entity of the Federal government or the government of any State. There is an exception for aircrafts owned or leased by a Member and/or his/her immediate family members.

“*Immediate family member*” means, with respect to a candidate, a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law.

Private Planes (Members): House Members are prohibited from flying on any privately owned aircrafts. There is an exception for aircrafts owned or leased by a Member and/or his/her immediate family members.

REPORTING, DISCLOSURE and CERTIFICATION UNDER THE LDA

Is the test for qualifying as a lobbyist under the LDA still measured over a 6-month period?

No.

Under the Act a “lobbyist” is any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact and lobbying activities constitute 20 percent or more of the time engaged in the services provided by such individual to that client over a three month period.

As a registrant am I required to file quarterly reports electronically?

Yes.

Increased Lobbying Reporting Requirements: Increased lobbying reporting requirements under the Lobbying Disclosure Act will require reporting on a quarterly basis rather than semi-annually. All disclosure forms must be filed electronically. *Effective January 1, 2008.*



Are there any additional lobbying reports required?

Yes.

Additional Reporting Requirements: Each registrant as well as persons who are required to register or to be listed, must file a semi-annual report describing the following information:

(1) The name of each Federal candidate or officeholder, leadership PAC, or political party committee, who received aggregate contributions equal to or exceeding \$200 from the filer or from a political committee established and controlled by the filer. This includes the date and amount of each contribution;

(2) The date, recipient, and amount of funds contributed, disbursed, or arranged by the filer or its political committee to pay for events in honor of the recipient; to an entity named for a legislative branch official; to an entity established, financed, maintained, or controlled by a legislative branch official; or to pay the costs of a meeting, retreat, or conference held by, or for the benefit of, 1 or more legislative or executive branch officials. These reports are to be filed semi-annually, but an exception applies if the recipient is required to report the receipt of the funds to the FEC.

Contributions to other entities such as inaugural committees and Presidential library committees are also required to be disclosed.

Effective January 1, 2008 for first semi-annual statement due July 30, 2008.

Employer Filing (Limits Changed): Any organization that has one or more employees who are lobbyists must file a single registration under the LDA on behalf of such employees for each client on whose behalf the employees act as lobbyists. ***Exemption:*** A person or entity whose (i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed \$2,500; **or** (ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed \$10,000 (as estimated below), in the quarterly period during which the registration would be made, is not required to register with respect to such client.

Estimates of Income or Expenses (limits changed): Estimates of income or expenses must be made as follows: (1) Estimates of amounts in excess of \$5,000 are rounded to the nearest \$10,000. (2) In the event income or expenses do not exceed \$5,000, the registrant will include a statement that income or expenses totaled less than \$5,000 for the reporting period.

Changes to Required Listing of Past Covered Executive/Legislative Branch Positions on Registration: Lobbyist employers are required to list all of the past covered executive and legislative branch positions held by their listed lobbyists in the past 20 years (this used to be 2 years).



Disclosure of Funds from Associations and Coalitions for Lobbying: Each registration under the LDA must contain the name, address, and principal place of business of any organization, other than the client, that contributes more than \$5,000 toward the lobbying activities of the registrant in a quarterly period and in major part plans, supervises, or controls such lobbying activities.

Certifications: Persons required to file reports under the LDA must file a certification with each report certifying that the registered lobbyist has complied with congressional gift and travel rules. The certification must officially state that the lobbyist has read and understands the gift and travel rules and has not given improper gifts, under penalty of criminal prosecution.

Bundling: The FECA has been amended to require that a candidate committee, a leadership PAC, or a political party committee disclose the identity of a current registrant under the LDA, an individual who is listed on a current registration or report under the LDA, or a political committee established or controlled by such a registrant or individual who or which have bundled and provided two or more contributions to the committee in a semi-annual period. The applicable threshold for reporting bundled contributions is in excess of \$15,000. *Effective January 1, 2008.*

ADDITIONAL RESTRICTIONS

Party Conventions: Members of the House and Senate are not permitted to participate in any event honoring themselves at a national convention when that event is directly paid for by any registered lobbyist or private entity that retains or employs a registered lobbyist.

Lobbying Restrictions on Employees of the House: A Member, Delegate, or Resident Commissioner shall prohibit all staff employed by that Member, Delegate, or Resident Commissioner (including staff in personal, committee, and leadership offices) from making any lobbying contact (as defined under the LDA) with that individual's spouse if that spouse is a lobbyist under the LDA or is employed or retained by such a lobbyist for the purpose of influencing legislation.

Lobbying Restrictions on Employees of the Senate: If a Member's spouse or immediate family member is a registered lobbyist, or is employed or retained by such a registered lobbyist or an entity that hires or retains a registered lobbyist for the purpose of influencing legislation, the Member must prohibit all staff employed or supervised by that Member (including staff in personal, committee, and leadership offices) from having any contact with the Member's spouse or immediate family member that constitutes a lobbying contact (as defined under the LDA).

The prohibition does not apply to the spouse of a Member of the Senate who was serving as a registered lobbyist at least 1 year prior to the most recent election of that Member to office or at least 1 year prior to his or her marriage to that Member.

Effective at date of enactment, September 14, 2007.



REVOLVING DOOR PROVISIONS

House and Senate Revolving-Door Restrictions: Prohibit former House Members and former elected officers of the House for one year, and former Senators for two years, from contacting, on behalf of another, Members, officers, or employees of either House of Congress or any employee of any other legislative office of the Congress, with the intent to influence official action. Restrictions also prohibit former elected officers of the Senate and former Senate employees for one year, from contacting any Senator or any officer or employee of the Senate, on behalf of any other person in connection with any matter on which such former elected officer or former employee seeks action by a Senator or an officer or employee of the Senate, in his or her official capacity. *Effective on the 60th day after the date of enactment, September 14, 2007.*

PENALTIES FOR NONCOMPLIANCE WITH THE LDA

Increased Civil Penalties: Civil penalties are increased from \$50,000 to \$200,000.

Institution of Criminal Penalties: Criminal penalties are now included for “knowingly and corruptly” failing to comply, which may result in fines and/or imprisonment.

Effective at date of enactment, September 14, 2007.

Comptroller General Audit and Report: The LDA is amended to require that on an annual basis, the Comptroller General will audit the extent of compliance or noncompliance with the requirements of the LDA by lobbyists, lobbying firms, and registrants through a random sampling of publicly available lobbying registrations and reports filed under this LDA during each calendar year. The Comptroller General may request information from and access to any relevant documents from any person registered under the LDA and each employee who is listed as a lobbyist.

EXERCISE OF RULEMAKING AUTHORITY

SENATE: The Senate adopted the provisions of S. 1: (1) as an exercise of the rulemaking power of the Senate; and (2) with full recognition of the Constitutional right of the Senate to change those rules at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

HOUSE OF REPRESENTATIVES: The provisions of S. 1 were adopted by the House of Representatives: (1) as an exercise of the rulemaking power of the House; and (2) with full recognition of the constitutional right of the House to change those rules at any time, in the same manner, and to the same extent as in the case of any other rule of the House.



Pillsbury
Winthrop
Shaw
Pittman^{LLP}

PREPARED BY: Fred Lowell (415/983-1585) & Emily Barrett (415/983-1347)