



## New Sheriff in Town: The New Lobbying and Ethics Rules

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## Today's Presenters



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## New Sheriff in Town: The New Lobbying and Ethics Rules

- Filings are now required by not only the entity/firm employing lobbyists (in the case of a lobbying firm), but also individual lobbyists must file separate report
- Different effective dates for different parts of the bill
- Some activities are *prohibited*, others are *disclosed*
- Slightly different rules for House and Senate, in some instances – must know both

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## Triggers for Lobbying Registration

- Revenues of \$2,500\* in a three-month (quarterly) period (in the case of firm or individual)
- Expenses of \$10,000\* in a three-month (quarterly) period (in the case of an organization)
- Individual spends 20% of time during quarter engaged in lobbying activities
- Individual makes more than one lobbying contact
- Within 45 days of making the lobbying contact

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\* Indexed for inflation



## LD-2 Filings

- Beginning January 1, 2008 – quarterly rather than semi-annual filings
- Due 20 days after close of period, rather than 45 days
- Filing dates are April 20, July 20, October 20, January 20 (2009) (unless the 20<sup>th</sup> falls on a weekend or holiday, in which case it is the next business day)
- Minimum of \$5,000 (instead of \$10,000)

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## LD-2 Filings (cont'd)

- Rounded to nearest \$10,000 (not \$20,000)
- Must identify if client is state or local government or some entity thereof
- Go back 20 years (not two) – for previously covered officials (executive or legislative)
- Certain additional foreign entity disclosures

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## Disclosure of Lobbying Activities by Coalitions and Associations

- Must register the name, address, principal place of business of any organizations, other than the client that:
  - Contributes more than \$5,000 to the registrant or client during quarter to fund lobbying activities of registrant and
  - Actively participates in the planning, supervision, or control of lobbying

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## Disclosure of Lobbying Activities by Coalitions and Associations (cont'd)

- No disclosure if organization to be identified lists client on Web site as being a member of, or contributor to, client *unless* the organization in whole or major part plans, supervises, or controls lobbying activities
  - Organization must disclose internet address on its registration
  
- No disclosure of individuals under this section



## New Additional Semi-Annual Individual Lobbyist & Firm Filings

- Beginning January 1, 2008, first filing due July 30, 2008 for period through June 30, 2008
  - Contributions of \$200 or more by individual lobbyist *or* the organization *or* any PAC established or controlled by the organization to any political committee (candidate, party committee, or leadership PAC), including recipient, date, amount
  - Names of all political committees established or controlled by person or organizations



## New Additional Semi-Annual Individual Lobbyist & Firm Filings (cont'd)

- Payments by the person or organization or PAC established or controlled by organization/person:
  - For costs of event honoring/recognizing covered legislative or executive branch official
  - Entity named for legislative official/or to entity in recognition of official
  - To entity established, financed, maintained, or controlled by legislative or executive official or entity designated by official;
  - Pay costs of meeting, retreat, conference, or other similar event held by or in name of one or more legislative/executive official

*Unless funds are provided to political committee reporting to FEC*



## New Additional Semi-Annual Individual Lobbyist & Firm Filings (cont'd)

- Contributions of \$200 or more from person or organization to presidential library and inaugural committees
- **Major Point:** A certification by the person or organization filing the report that the person or organization has:
  - Read the House and Senate Rules related to gifts and travel *and* has not provided, requested, or directed a gift, including travel, to a member, officer, or employee of House or Senate with knowledge that receipt of the gift would violate Senate Rule XXXV or House Rule XXV



## New Section in LDA

- Prohibits / makes illegal for lobbyist or entity to give a gift, including travel, to a member, office, or employee of House or Senate in violation of the House or Senate rules
  - *Effective Immediately*



## Increased Civil and Criminal Penalties

- \$200,000 civil penalty
  - Up from \$50,000
- Knowingly and corruptly failing to comply
  - 5 years in prison
- Effective Date
  - *Immediately upon enactment*
- Random audits of filed reports by Controller General
- CG authorized to request information and documents from any registrant



## Bundling

- Federal Election Commission – directed to promulgate regulations by 12/31/07
  - Each political committee must report
    - Name, address, and employer of each ‘person’ reasonably known to provide two or more bundled contributions to committee who is ‘bundler’
    - During semi-annual period
    - Threshold of \$15,000, indexed for inflation
    - Aggregated by ‘bundler’



## Bundling (cont'd)

- “Bundler” is:
  - Registered lobbyist
  - Person listed on registration by an organizations
  - A political committee established or controlled by individual or registrant
- “Bundled contribution” is:
  - Forwarded from the contributor to committee by the person *or*
  - Received by the committee or candidate, but credited to the person



## Post-Employment Restrictions on Lobbying

- **Very Senior Executives (Schedule C's, Vice President)**
  - 2 years – Executive Branch
- **Senate**
  - 2 years for Senators – entire Congress
- **Senate staff**
  - 1 year – all Senate
- **House Members**
  - 1 year – entire Congress

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## Post-Employment Restrictions on Lobbying (cont'd)

- **House staff**
  - 1 year – staff person's Member or office
- **Effective date**
  - Earlier of December 31, 2007 or *sine die* adjournment of 1<sup>st</sup> Session, 110<sup>th</sup> Congress
- **Notice given/posted regarding dates of restrictions, searchable publicly by name**

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## Ethics and Rules Changes

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## Post-Employment Negotiations by Members & Staff

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### House

#### Members

- Within 3 days of negotiations or contract, must notify House Ethics Committee in writing
- Statement must include name of entity/date negotiations commenced
- Recusal required for matters of legislative interest to private entity; recusal notice publicly filed

#### Staff

- Officer or employee making 75% of member salary notifies House Ethics within 3 days of commencing negotiations for future employment
- Must recuse from any matter in which private entity has legislative interest; recusal notice publicly filed

*Effective Date:* Immediately

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## Post-Employment Negotiations by Members & Staff (cont'd)

### Senate

#### Members

- Must notify Senate Ethics within 3 days of commencing negotiations for private employment if prior to time successor is elected
- Prohibited from negotiating prospective private employment as lobbyist until after successor is elected

#### Staff

- Earning 75% of member salary notifies Senate Ethics within 3 days of negotiations
- Must recuse from communications with prospective employer on issues of legislative interest and any legislative matter and notify Senate Ethics of recusal



## Spouses/Family Members Who are Lobbyists

#### House

- Members are to instruct staff no to have “lobbying contacts” with spouse who is registered lobbyist

#### Senate

- Spouse and immediate family member who is registered lobbyist prohibited from having ‘lobbying contact’ with Senator’s staff
- Members and staff prohibited from lobbying contact with spouse who is registered lobbyist
- Grandfather’s spouse who is lobbyist 1 year prior to Senator’s most recent election or was lobbyist for at least 1 year prior to marriage



## Party Conventions

### House

- Member can't participate in event honoring Member other than as candidate if event is directly paid for by registered lobbyists or private entity that retains or employs lobbyists

### Senate

- Member can't participate in event honoring Senator *other* than as presumptive nominee or nominee for President or Vice President, if paid for directly by registered lobbyist or entity that employs or retains lobbyists



## Travel by Members and Candidates on Private Aircraft

### House

- Members and staff are prohibited from flying in any aircraft unless it is commercial, government or owned or leased by Member

### Senate

- Senators and staff may pay charter or fair market value rental rate for private aircraft
- Exceptions: If member or spouse owns airplane or has ownership in a non-public entity that owns plane
- Candidates – subject to Senate provision re: rates



## Senate Procedural Changes

- Earmarks – 48 hour notice, sponsor disclosed
- Holds/objections to proceedings disclosed publicly
- Conference Committees – no new matter, 48 hour advance posting of report
- Transcripts, audio, video of all committee meetings posted on Internet within 21 days



## New Restrictions on Travel

- No travel paid by registered lobbyist, foreign agent or entity that employs or retains registered lobbyist(s), unless approved and within specific time & other limits
- No lobbyist or foreign agent may arrange, plan, organize or request Member/staff travel
- No lobbyist may accompany Members on any segment of trip
- Ethics Committees are to issue guidelines on *de minimis* participation in Member/staff travel paid by outside sources, including entity that retains/employs lobbyists
- Must certify in advance that no lobbyist involved in the planning or implementation of trip; source must verify that no funds accepted from lobbyists for costs/expenses of trip



## Gifts Rules

- No gifts from:
  - Registered lobbyist
  - Registered foreign agent or
  - Entity that employs or retains lobbyist(s)
  
- Exceptions in House and Senate Rules *still* apply



## House Rules – 23 Exceptions to Gift Ban

- Gifts based on personal friendship:
  - History of exchange of gifts
  - No reimbursement or deduction for costs
  - If over \$250, requires House Ethics committee approval
  - If valued over \$250, must report on personal financial disclosure report, even if approved by House Ethics
- Widely-attended events:
  - More than 25 non-Hill persons are in attendance
  - Open to wide variety of persons from an industry or general public invited
  - Event is in conjunction with official duties
  - Invitation is extended by sponsor of event

A meal is permitted at a widely attend event, not subject to cost restrictions if other factors met



## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Charity events:
  - Sponsor must be a 501(c)(3) entity
  - Sponsor (not donor) must extend invitation  
[NOTE: Purchasing a table does not qualify as being a 'sponsor' of a charity event]
  - May accept meals, token prizes as part of the event
  - May accept prize of skill if 'legitimate' and non-Hill allowed to compete for prize
- Fundraising/campaign events sponsored by political organization
  - Can only accept tickets from event sponsor, not donor to event



## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Educational events
  - Seminars, lectures, educational programs
  - Sponsored by non-advocacy organizations (universities, think tanks, etc.)
  - No meals allowed if sponsored by lobbyists or lobbying organizations
  - Legislative briefings not counted as part of the 'educational' exception



## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Constituent events (House)
  - Regularly scheduled
  - Related to official duties
  - Open to entire constituent organization or substantial portion

Can not be meal with just one constituent where constituent pays *unless* constituent is not a lobbyist, doesn't work for an entity that retains or employs a lobbyist and the meal must be valued at less than \$50



## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Food or refreshments of nominal value
  - Receptions – hors d'oeuvres, no “sit down” meals
  - Breakfast meetings – bagels and juice, etc.

Even low cost meals (hot dogs, sandwiches, salads, etc.) are prohibited under this exception



## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Meals or local transportation incident to a site visit
  - A meal offered in conjunction with a meeting at a location outside of Washington
  - Travel to a location outside of Washington for a site visit

However, see new prohibitions / restrictions on payments for travel by a lobbyist, foreign agent or entity that employs or retains lobbyist

- Items of nominal value
  - T-shirts, baseball caps, pens
  - Items valued at less than \$10

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## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Commemorative items
  - Presented to member or staff by entity, in-person
  - Substantially commemorative in nature (engraved, inscribed, etc)
  - No significant artistic or utilitarian value
  - If significant value, must obtain Ethics approval and be reported on PFD gift schedule

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## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Books, periodicals and other similar materials
  - Sent to official office, not home
  - Sent from publisher or author
  - Doesn't require periodic updating
  - If multiple copies, cannot have been produced for particular member
  - Software only on limited basis – see specific rules for software



## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Things paid for by federal, state or local government
  - Amtrak, Indian tribes are not divisions of government under House rules
- Gifts from foreign governments and international organizations
  - Must be authorized by Foreign Gifts and Decorations Act [or Mutual Educational and Cultural Exchange Act, which is covered by travel rules]
  - Constitution prohibits gifts from foreign governments
  - May only be accepted from the embassy, the government or similar international organization, not by a registered foreign agent or lobbyist
  - Disclosed to House Ethics Committee



## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Gifts from outside interests, activities of member/staff
  - Not associated with or related to duties
  - Permissible outside interests, business, family interests, etc.
  - Bona fide employment negotiations from prospective employer
- Personal hospitality of an individual
  - Not a lobbyist
  - Not a business purpose
  - Not reimbursed or deducted as business expense
  - In the home or personal premises owned by host

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## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Home state products
  - Tangible items
  - Produced/grown in the home state of member
  - If to be distributed free, must be of nominal value
  - Available to office visitors, not just members and staff
- Widely available opportunities and benefits
  - Available to persons not associated with Congress (frequent flyer miles, hotel discounts, etc.)
  - Available to all federal employees in a geographic region
  - Doesn't distinguish or discriminate on basis of congressional employment

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## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Gifts from relatives
  - Includes relatives specifically identified in rules
  - Includes fiancés and fiancées (but not dates or “significant others”)
- Gifts from other members
  - Reasonable value
  - Generally, no gifts from staff to superior/employers



## House Rules – 23 Exceptions to Gift Ban (cont'd)

- Miscellaneous
  - Loans
  - Honorary Degrees and Non-monetary Public Service Awards
  - Legal defense funds
  - Training in the interests of the House
  - Awards and prizes
  - Gifts for which Ethics Committee grants a waiver



## Senate Rules – 24 Exceptions to Gift Ban

- Same as House gift exceptions *except*:
  - Personal hospitality/personal friendship
    - Note: Senate rules historically allowed gifts of personal friendship from lobbyists, but not personal hospitality
- New exception for *bona fide constituent event*:
  - In the home state, invited by sponsor
  - Cost of meals is < \$50
  - Event is sponsored by constituents or primarily constituents of Member
  - Event attended by at least 5 constituents and no lobbyist is present
  - Member, officer, employee is a speaker or panelist or performs ceremonial function related to office or
  - Attendance is appropriate to duties of office

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## Increased Penalties for False Filings of Personal Financial Disclosure Reports

- Members and staff filing annual personal financial disclosure reports must report gifts
- Even illegal gifts must be reported
- Failure to disclose gifts = false filing
- Penalties for knowing and willful false report:
  - \$50,000 fine (up from \$10,000)
  - One year in jail

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## Most Common Myths/Mistaken Understandings About Gift Rules

- “If I hand a member a campaign contribution at lunch or dinner, then everything is fine”
  - That converts the meal/meeting to a fundraising event which must comply with FEC regulations
  - Corporation can’t pay costs of the event (illegal corporate contribution)
  - Individual payment for meal costs must be reported as in-kind contribution from individual and reported on FEC reports and also on the new lobbying disclosure reports filed by individual lobbyists

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## Most Common Myths/Mistaken Understandings About Gift Rules (cont'd)

- “If I have a pre-existing relationship or friendship with staffer, then the gift rules don’t apply”
  - Personal friendship exception requires several factors
  - All required in order to fall within this exception
  - Gifts from personal friends must be reported on staffer/member’s personal financial disclosure reports or to House/Senate Ethics committee
  - Lobbyists must also certify that they have not given an *illegal* gift which places burden on lobbyists to be sure all factors are present re: no reimbursement, no deduction for costs of ‘gift’ (includes meals, etc.)

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## Most Common Myths/Mistaken Understandings About Gift Rules (cont'd)

- “Personal hospitality and personal friendship rules are exactly the same”
  - Even under existing Senate ethics rules, gifts of personal hospitality from registered lobbyists are/were prohibited



## Contact Us with Questions...

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