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Lobbying Disclosure and Ethics Proposals Related to Lobbying Introduced in the 109th Congress: A Comparative Analysis

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Summary

The regulation of lobbying activities by lobbyists, and the actions that certain members of the executive branch and legislative branch may take in their interactions with lobbyists, are governed by laws and congressional Rules. Several proposals to revise these laws and congressional Rules with regard to lobbying activities and the disclosure of such activities by lobbyists and Members of Congress have been introduced in the 109th Congress.

Measures introduced include H.Res. 81, introduced by Representative Mark Green, directing the Clerk of the House to post on the Internet all lobbying registrations and reports; H.R. 1302 and H.R. 1304, both entitled the Stealth Lobbyist Disclosure Act of 2005, introduced by Representative Lloyd Doggett; H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act of 2005, introduced by Representative Martin Meehan; S. 1398, the Lobbying and Ethics Reform Act of 2005, introduced by Senator Russell Feingold; S. 2128, the Lobbying Transparency and Accountability Act of 2005, introduced by Senator John McCain; H.R. 4575, the Lobbying Transparency and Accountability Act of 2005, introduced by Representative Christopher Shays; H.R. 3177, the Lobby Gift Ban Act of 2005, introduced by Representative George Miller; H.R. 3623, introduced by Representative Robert Andrews to amend 18 U.S.C. 207, to increase the period during which former Members of Congress may not engage in certain lobbying activities; and S. 1972, the Terrorist Lobby Disclosure Act of 2005, introduced by Senator Rick Santorum.

It has been reported that other measures may be introduced when Congress reconvenes later in January, including proposals by the majority and minority leadership in the House and Senate.

This report, which will be updated as events warrant, provides context, comparison, and discussion of the issues addressed in the various legislative proposals addressing lobbying and lobbying-related laws and congressional Rules introduced thus far in the 109th Congress. For further background and discussion of the current proposals, please consult CRS Report RL33065, *Lobbying Disclosure Reform: Background and Legislative Proposals, 109th Congress*, by R. Eric Petersen; CRS Report RS22317, *Congressional Gifts and Travel, Legislative Proposals for the 109th Congress*, by Mildred Amer; and CRS Report RS22226, *Summary and Analysis of Provisions of H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act of 2005*, by Jack Maskell.

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Lobbying Disclosure and Ethics Proposals Related to Lobbying Introduced in the 109th Congress: A Comparative Analysis

Introduction

The regulation of lobbying activities by lobbyists, and the actions that certain members of the executive and legislative branches may take in their interactions with lobbyists, are governed by laws and congressional Rules. These include

- the Lobbying Disclosure Act of 1995 (LDA),¹ as amended by the Lobbying Disclosure Technical Amendments Act of 1998.² LDA requires lobbyists who are compensated for their actions, whether an individual or firm, to register and to file with the Clerk of the House and the Secretary of the Senate semiannual reports of their activities.
- House Rule XXV, Limitations on Outside Earned Income and Acceptance of Gifts. Sections of the Rule govern the acceptance of gifts by Representatives, Delegates, the Resident Commissioner of Puerto Rico, their staffs, and other employees of the House.
- Senate Rule XXXV, Gifts. The Rule governs acceptance of gifts by Senators, their staffs and Senate employees.
- 18 U.S.C. 207, which specifies limitations on lobbying activities by former executive branch officials, Members of Congress, and congressional staff.

Several proposals have been introduced in the 109th Congress to revise these laws and congressional Rules regarding lobbying activities and the disclosure of those activities by lobbyists and Members of Congress. These measures include

- H.Res. 81, introduced by Representative Mark Green;
- H.R. 1302 and H.R. 1304, both entitled the Stealth Lobbyist Disclosure Act of 2005, introduced by Representative Lloyd Doggett;

¹ P.L. 104-65, Lobbying Disclosure Act of 1995 (109 Stat. 691, 2 U.S.C. 1601).

² P.L. 105-166, Lobbying Disclosure Technical Amendments Act of 1998 (112 Stat. 38, 2 U.S.C. 1601 note).

- H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act of 2005, introduced by Representative Martin Meehan;
- S. 1398, the Lobbying and Ethics Reform Act of 2005, introduced by Senator Russell Feingold;
- S. 2128, the Lobbying Transparency and Accountability Act of 2005, introduced by Senator John McCain;
- H.R. 4575, the Lobbying Transparency and Accountability Act of 2005, introduced by Representative Christopher Shays;
- H.R. 3177, the Lobby Gift Ban Act of 2005, introduced by Representative George Miller;
- H.R. 3623, introduced by Representative Robert Andrews; and
- S. 1972, the Terrorist Lobby Disclosure Act of 2005, introduced by Senator Rick Santorum.

It has been reported that other measures may be introduced when the second session of the 109th Congress convenes at the end of January, including proposals by the respective majority and minority leadership of the House and Senate.³

This report provides context, comparison, and discussion of the proposals contained in the various legislative proposals introduced thus far in the 109th Congress. For further background and discussion of the current proposals, please consult CRS Report RL33065, *Lobbying Disclosure Reform: Background and Legislative Proposals, 109th Congress*, by R. Eric Petersen; CRS Report RS22317, *Congressional Gifts and Travel, Legislative Proposals for the 109th Congress*, by Mildred Amer; and CRS Report RS22226, *Summary and Analysis of Provisions of H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act of 2005*, by Jack Maskell.

Issues that Could be Addressed Under Current Proposals

In the 109th Congress, legislative proposals related to lobbying disclosure and related ethics rules focus on external and internal participants in the public policy-making process. External groups include lobbyists, their clients, and affiliated

³ Paul Kane, "Democrats' Plan Could Ban All Gifts," *Roll Call*, Jan. 12, 2006, available at [http://www.rollcall.com/issues/1_1/breakingnews/11730-1.html]; Jeffrey H. Birnbaum, "Hill Weighs Curbs on Lobbying; More Disclosure, Ban on Sponsored Trips Under Consideration," *Washington Post*, Jan 12, 2006, p. A4; Carl Hulse, "House G.O.P. Considers Ban on Lobby-Paid Travel," *New York Times* Jan. 11, 2006, p. A19, and Kenneth P. Doyle and Nancy Ognanovich, "Hastert Pushes for New Lobbying Reform to Cope With Fallout From Abramoff Plea," *BNA Daily Report for Executives*, Jan. 10, 2006, p. A-18.

political committees that might have a peripheral role in lobbying activities through campaign finance activities. Legislative approaches to address external groups include proposals to amend lobbying disclosure laws to require lobbyists to identify themselves, their clients, and activities on behalf of those clients in a more comprehensive manner than currently required by LDA. Internal groups include executive branch officials, Members of Congress, their staffs, and other legislative branch officials who might interact with lobbyists in the course of their official duties. Legislative proposals addressing internal groups include amendment of House and Senate Rules regarding interactions with lobbyists by Members and congressional staff, as well as increased waiting periods on certain types of employment these officials may undertake after they leave office or public service.

Legislation affecting current law or congressional Rules have been proposed to address the following issues:

- specification of lobbying participants and certain lobbying activities subject to disclosure law and rules;
- lower thresholds at which lobbying activities or the receipt of contributions or other considerations must be disclosed;
- increased disclosure requirements, requiring more frequent reports and more detailed information; and
- increased oversight of lobbying activities.

Specific details of current laws or rules, and legislative proposals addressing underlying lobbying and ethics issues are provided in subsequent sections of this report. The issues described are based on at least one pending legislative proposal, as described in each section.

Definition of Client

Under LDA, a “client” is defined as any person or entity that employs and compensates another person to conduct lobbying activities on their behalf. The law also requires that groups that carry out lobbying activities on their own behalf must also register with the Clerk of the House (the Clerk) and the Secretary of the Senate (the Secretary).

H.R. 1302 would amend LDA to redefine the term “client” as any person or entity that employs a lobbyist on behalf of that person or entity. The measure would require members of coalitions or associations that employ a lobbyist, and not the coalition or association, to be listed as the clients of the registrant lobbyist. H.R. 1302 would provide an exception for tax-exempt associations and for some members of a coalition or association if those members expect to contribute less than \$1,000 per any semiannual period to the lobbying activities of the coalition.

H.R. 2412 and S. 1398 would amend LDA to redefine the term “client” as any person or entity that employs a lobbyist on behalf of that person or entity. The measures would require that firms and other entities that are members of coalitions

or associations that employ a lobbyist are to be considered clients, along with the coalition or association, if their total contribution related to lobbying activities is greater than \$10,000. The proposals would treat nonprofit entities that are tax exempt under Section 501(c) of the Internal Revenue Code as clients. Entities that contribute less than \$500 to the coalition would be exempt from disclosure.

S. 2128 and H.R. 4575 would amend LDA to redefine the term “client” as any person or entity that employs a lobbyist on behalf of that person or entity. The measures would require that firms and other entities that are members of coalitions or associations that employ a lobbyist are to be considered clients, along with the coalition or association, if their total contribution related to lobbying activities is greater than \$10,000. Finally, the proposals would treat nonprofit entities that are tax exempt under Section 501(c) of the Internal Revenue Code as clients.

Discussion. Concern has been expressed that entities that use anonymous lobbying activities and public relations campaigns might circumvent the process of public consideration of lawmaking and regulatory activities. Observers suggest that the current LDA definition of a client might allow interested entities to shield their lobbying activities through the use of ostensibly separate, independent coalitions and associations.⁴ Clarifying the responsibilities of coalition participants as lobbying clients could afford greater transparency of government activity and greater accountability in the political system. Others have noted that anonymous or indirect lobbying efforts are not new, and that expanding disclosure could have a potential adverse impact on constitutionally protected rights of assembly, association, and to petition the government, particularly the longstanding tradition of carrying out these activities without the necessity of self-identification. Moreover, under guidance issued by the Clerk of the House and Secretary of the Senate, members of informal coalitions who each pay at least \$5,000 in lobbying or membership fees to be a part of a coalition or association may be viewed as separate clients for disclosure purposes.⁵

Tax Treatment of Lobbying Coalitions and Associations

The treatment of lobbying coalitions and associations is not specified or considered in LDA.

H.R. 1304 would amend the Internal Revenue Code to treat any coalition or association that is identified as a client on an LDA registration as a tax-exempt political organization. Any such coalition or association would be required to notify the Secretary of the Treasury of its existence within 72 hours after one of its lobbyists makes an initial contact, and to report any change in its membership within 72 hours. Reports to the Secretary of the Treasury would include a general description of the business or activities of each member of the coalition or association, and the amount

⁴ Josephine Hearn, “Dems Want to Change Congressional Rules,” *The Hill*, July 14, 2004, p.3; and Alison Mitchell, “Loophole Lets Lobbyists Hide Clients’ Identity,” *New York Times*, July 4, 2002, p. A1.

⁵ Office of the Clerk of the House of Representatives and Office of the Secretary of the Senate, *Lobbying Disclosure Act Guidance and Instructions*, undated, p.11.

each coalition member is expected to contribute to influencing legislation. H.R. 1304 would exempt from the disclosure requirements public charities and other tax-exempt organizations which have substantial exempt activities other than lobbying, and coalition or association members who contribute less than \$2,000 per year for lobbying activities. Finally, the measure would impose a penalty tax for failure to give the required notices.

Broader and More Frequent Disclosure

Grassroots Lobbying. Grassroots lobbying, lobbyists, firms, or activities are not specified or considered in LDA.

Under S. 2128 and H.R. 4575, LDA would be amended to define the term “grassroots lobbying” as any attempt to influence the general public to engage in lobbying contacts, whether or not those contacts were made on behalf of a client. The measure would exclude any lobbying effort directed to its members, employees, officers or shareholders, unless such attempt is financed with funds received from by a retained registrant.

The measures also propose that

- the term “grassroots lobbyist” would mean any individual who is retained by a client for financial or other compensation for services to engage in grassroots lobbying;
- the term “grassroots lobbying firm” would mean a person or entity with one or more employees who are grassroots lobbyists on behalf of a client, or a self-employed individual who is a grassroots lobbyist; and
- the term “grassroots lobbying activities” would mean grassroots lobbying and related support efforts, including preparation and planning activities, and coordination with the lobbying activities or grassroots lobbying activities of others.

S. 2128 and H.R. 4575 would require good faith estimates of the proportion of the total amount spent on grassroots lobbying activities, and within that amount, an estimate of the total amount specifically relating to grassroots lobbying through paid advertising. When a grassroots lobbying firm receives income of, or spends an aggregate amount of, \$250,000 or more on grassroots lobbying activities for a client or group of clients, it would be required to file a report within 20 days; and additional reports within 20 days after each subsequent time an aggregate amount of \$250,000 is spent on grassroots lobbying activities.

In the disclosure of a grassroots lobbying firm, S. 2128 and H.R. 4575 would require

- a list of the specific issues upon which the registrant engaged in grassroots lobbying activities, including, to the maximum extent

practicable, a list of bill numbers and references to specific executive branch activities;

- the total disbursements made for grassroots lobbying activities, and a subtotal for disbursements made for grassroots lobbying through paid advertising;
- identification of each person or entity who received a disbursement of funds for grassroots lobbying activities of \$10,000 or more during the period and the total amount each person or entity received; and
- if such disbursements are made through a person or entity who serves as an intermediary, identification of each such intermediary, identification of the person or entity who receives the funds, and the total amount each received.

H.R. 2412 and S. 1398, which do not define grassroots activities, would require the disclosure of grassroots lobbying communications by paid lobbyists and itemized disclosure of expenditures on grassroots lobbying activities.

Timing of Registration and Frequency of Disclosure Reports. LDA requires lobbyists to register with the Secretary of the Senate and Clerk of the House within 45 days of an initial lobbying contact with a covered official,⁶ to make semiannual reports of their activities until that registration is terminated. S. 2128 and H.R. 4575 would reduce the registration period to 20 days following an initial lobbying contact. H.R. 1304 would require any coalition or association identified as an LDA client to notify the Secretary of the Treasury of its existence within 72 hours after its lobbyists make an initial lobbying contact. H.R. 2412, S. 1398, S. 2128 and H.R. 4575 would amend LDA to require quarterly disclosure.

Lobbying Disclosure Expense Thresholds and Estimates. If the total income for matters related to lobbying activities on behalf of a client represented by a lobbying firm exceeds \$5,000, or total expenses in connection with the lobbying

⁶ Legislative branch officials covered under LDA include Members of Congress; elected officers of either chamber; any employee of a Member, committee, leader or working group organized to provide assistance to Members; and any other legislative branch employee serving in a position that is compensated at a rate of 120% of the basic pay for GS 15 of the General Schedule.

Executive branch covered officials include the President; the Vice President; any officer or employee in the Executive Office of the President; any officer or employee serving in a position compensated through the Executive Schedule; any member of the uniformed military services whose pay grade is at or above O-7 under 37 U.S.C. 201 (In the United States Army, Air Force, and Marine Corps, this is a brigadier general. In the United States Navy and Coast Guard the equivalent rank is rear admiral.); and any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy advocating character that the Office of Personnel Management has excepted from the competitive service under 5 U.S.C. 7511(b)(2)(b).

activities by an organization whose employees engage in lobbying activities on its own behalf exceeds \$20,000, then LDA registration and disclosure are required.

S. 2128 and H.R. 4575 would reduce expense thresholds requiring LDA registration and disclosure to \$2,500 for a lobbying firm and \$10,000 for an organization that lobbies in its own behalf.

In semiannual disclosure reports, LDA requires a good faith estimate, by broad category, of the total amount of lobbying-related income from the client, or expenditures by an organization lobbying in its own behalf. Expenditures may be estimated at less than \$10,000 or in increments of \$20,000.

H.R. 2412, S. 1398, S. 2128 and H.R. 4575 would amend LDA to reduce estimated expense increments to less than \$5,000 and \$10,000, respectively.

Contact with a Covered Official. LDA requires the identification of each executive branch official, Member of Congress, and other covered legislative branch official with whom lobbying contacts are made.

H.R. 2412 and S. 1398 would require identification of each executive branch official and Member of Congress with whom lobbying contacts are made, on an issue by issue basis, for each covered official contacted.

Electronic Filing of Lobbying Registration and Disclosure Reports. LDA does not require electronic filing of registration and disclosure reports. In the House, the Office of the Clerk in December 2004 inaugurated a voluntary electronic filing system for those required to file under LDA. Pursuant to a directive issued by Representative Bob Ney, chairman of the Committee on House Administration, the Clerk required all registrants to file LDA materials electronically after January 1, 2006.⁷ For some time, the Senate Office of Public Records has maintained a voluntary program of electronic filing “for the purpose of minimizing the burden of filing” LDA materials.⁸

H.R. 2412, S. 1398, S. 2128 and H.R. 4575 would amend LDA to require electronic filing.

Making LDA Disclosure Information Available Via the Internet. Neither LDA nor chamber rules require the provision of LDA disclosure information via the Internet.

H.Res. 81 would require the Clerk of the House to post on the Internet lobbying registration and reports filed with the Clerk under LDA. The Senate makes LDA

⁷ Bob Ney, chairman, Committee on House Administration, “Electronic Filing of Disclosure Reports,” dear colleague letter, June 29, 2005, at [<http://www.house.gov/cha/dearcolleaguejune29-05.htm>]; see also the Clerk’s website at [<http://clerk.house.gov/pd/index.html>].

⁸ Senate Office of Public Records, “Frequently Asked Questions,” at [<https://opr.senate.gov/faq.html>].

registration and disclosure reports available through the Internet at [<http://sopr.senate.gov/>].

Discussion. For many years, observers have noted a steady increase in the number of interest groups using direct mail, public relations, newspaper advertisement, and other marketing techniques to generate public interest. These activities can include engaging citizens to lobby on their behalf to persuade a government official regarding legislation or executive agency action. Some of these organized efforts, which are not currently subject to disclosure under LDA, are also accompanied by sophisticated media campaigns to advance the causes of a group.⁹ Widespread lobbying campaigns may be targeted to citizens, journalists, lawmakers, executive agency personnel, and other groups with interests similar to those of the organization on whose behalf the campaign is mounted.¹⁰ This practice is sometimes referred to as “grassroots” advocacy to identify its appeal to the general public. Some observers, noting the use of marketing techniques and alleging that a bona fide connection to the general public is lacking, sometimes refer to such efforts as “astroturf” lobbying.¹¹

Those supporting more detailed disclosure through more frequent or detailed disclosure, or the inclusion of grassroots lobbying efforts under LDA might argue that such efforts could afford greater transparency and a broader understanding of the effects of private interests in the public policy making process. From their perspective, such a change might also instill greater accountability. Those opposing changes to current lobbying disclosure practices might maintain that expanding disclosure could have a potential adverse impact on constitutionally protected rights of assembly, association, and to petition the government. Additionally, opponents might assert that such a change could increase the administrative burden associated with reporting on their lobbying efforts under LDA, or lead to imposition of greater penalties for noncompliance should registrants fail to disclose every contact on every issue.

Linking Lobbying Disclosure Information with Federal Election Commission Reports

Neither LDA nor the Federal Election Campaign Act of 1971¹² (FECA) requires the linking of information collected under either law.

⁹ Darrell M. West and Burdett A. Loomis, *The Sound of Money: How Political Interests Get What They Want* (New York: W. W. Norton and Company, 1998), pp. 16-20; and R. Kenneth Godwin, “Money Technology and Political Interests: The Direct Marketing of Politics,” in Mark P. Petracca, ed., *The Politics of Interests: Interest Groups Transformed* (Boulder, CO: Westview Press, 1992), pp. 308-325.

¹⁰ West and Loomis, *The Sound of Money*, pp. 45-64.

¹¹ Nicholas Confessore, “Meet the Press,” *Washington Monthly*, Dec. 2003, available at [<http://www.washingtonmonthly.com/features/2003/0312.confessore.html>].

¹² 2 U.S.C. 431.

H.R. 2412, S. 1398, S. 2128 and H.R. 4575 would require the Secretary of the Senate and Clerk of the House to establish and maintain lobbying disclosure information in an electronic data base which directly links that information to the information disclosed in reports filed with the Federal Election Commission (FEC) under FECA. The measures would also require that the linked information be made available to the public free of charge through the Internet. Finally the measures authorize appropriations to cover the expenses of these activities.

Discussion. Under LDA, registrants must register and files reports with the Secretary and the Clerk, maintain independent, parallel intake procedures, and separate electronic databases. The linking of information maintained by FEC, and the Clerk and Secretary, could raise data administrative, and data management concerns. These concerns might include consideration of the relative costs and benefits of linking parallel databases containing essentially similar information with another database system, or the technical challenges of linking potentially incompatible datasets.

Disclosure of Past Executive Branch or Legislative Branch Employment, “Cooling Off” Periods and Employment Negotiations

LDA requires registrants to disclose whether they have served as a covered legislative branch or executive branch official in the two years preceding their registration. Relatedly, 18 U.S.C. 207 requires that a Member of Congress may not communicate with or appear before a Member, officer or employee of either chamber, or any legislative branch office, with intent to influence official action on behalf of anyone else for a period of one year after leaving office. Similarly a “very senior staff member” of the legislative branch¹³ may not communicate with or appear before the individual’s former employer or office with intent to influence official action on behalf of anyone else for a period of one year after terminating

¹³ “Very senior staff member,” or “highly paid staff” appear to be generic terms that are sometimes used by the House Committee on Standards of Official Conduct to identify individual congressional and legislative branch staff who are subject to outside income limitations, required to file under financial disclosure regulations, or subject to post employment restrictions due to their level of compensation. According to guidance issued in 2005 by the committee, an employee is subject to post employment restrictions if, for at least 60 days during the one-year period preceding the termination of employment, a staffer was paid at a rate equal to or greater than 75% of the basic rate of pay for Members. The basic rate of pay for Members is \$162,100. They are scheduled to receive a 1.9% increase in January 2006, to \$165,200. The 2005 post-employment threshold for employees who leave their congressional jobs is \$121,575. See Joel Hefley, Chairman, and Alan B. Mollohan, Ranking Minority Member, “The 2005 Outside Earned Income Limit, and the Salary Levels at which the Outside Earned Income and Employment Limits, the Financial Disclosure Requirement, and the Post-Employment Restrictions Apply in 2005,” memorandum issued by the House Committee on Standards of Official Conduct, Feb. 10, 2005, available at [http://www.house.gov/ethics/m_salary05.htm].

congressional employment. Similar prohibitions apply to officials and senior level employees of the executive branch.¹⁴

LDA and House and Senate Rules are silent on the discussion of employment negotiations by Members of Congress.

H.R. 2412, S. 1398, S. 2128 and H.R. 4575 would require registered lobbyists to disclose all of their past executive branch and congressional employment. The measures would also require a Member of Congress to file with the Clerk of the House or Secretary of the Senate, as appropriate, a statement for public disclosure that he or she is negotiating or has any arrangement concerning prospective employment if a conflict of interest or the appearance of a conflict of interest may exist. The disclosure would be required to file a disclosure within three days of commencing such negotiation or arrangement.

H.R. 2412, S. 1398, S. 2128 and H.R. 4575 would increase the cooling off period during which former senior executive personnel, former Members of Congress, and legislative branch personnel, would be prevented from lobbying the entity in which they previously served to two years. H.R. 3623 would prohibit Members of Congress and chamber officers¹⁵ from engaging in currently proscribed lobbying activities for a period five years after they leave office.

Discussion. LDA disclosure requirements and 18 U.S.C. 207 “cooling off” prohibitions were designed to bring attention to, and reduce the effect of, what some called the “revolving door,” through which legislators and public officials could leave positions of authority and influence in government only to return immediately to the same circles as lobbyists or other representatives seeking favorable action on behalf of private interests.

Efforts to curb the effects of lobbying by former public officials appear to grow out of a widespread belief that lobbying activities advance special interests at the expense of a more general public interest. Lobbying activities carried out by individuals with special access to government decision makers due to previous professional interaction, are sometimes said to exacerbate this perceived problem. Proponents of lobbying activities counter that lobbying is “a legitimate activity protected by the First Amendment to the Constitution,” and that all interests are represented.¹⁶ Some maintain that further efforts to extend the duration of the lobbying ban could have the effect of keeping individuals who might wish to pursue lobbying as a career from entering public service, and may deprive the public (as well

¹⁴ Similar prohibitions apply to officials and senior level employees of the executive branch. See CRS Report 97-875, “*Revolving Door*,” *Post-Employment Laws for Federal Personnel*, by Jack Maskell.

¹⁵ Officers in the House are the Clerk, Sergeant at Arms, Chief Administrative Officer and Chaplain. In the Senate the Sergeant at Arms and Secretary are officers. Each officer is elected by the respective chamber.

¹⁶ Web site of the American League of Lobbyists, “Resources,” at [<http://www.alldc.org/resources.htm>], visited Jan. 13, 2006.

as Congress) of access to and the availability of the particular expertise of former legislators and staff.

Penalties for LDA Noncompliance

Whoever knowingly fails to rectify an incomplete disclosure report following notification of the error by the Clerk of the House or Secretary of the Senate, or who otherwise does not comply with the requirements of LDA, may be liable for a civil fine of up to \$50,000.¹⁷

H.R. 2412, S. 1398, S. 2128 and H.R. 4575 would increase the maximum penalty to a \$100,000 civil penalty.

Discussion. The increase in potential penalties for noncompliance with LDA could increase the level of compliance. Those supporting the approach might argue that a more comprehensive and detailed disclosure process could afford more openness of government activity and greater accountability. Due in part to the lack of publicly available information regarding the number of penalties assessed since LDA became effective on January 1, 1996, however,¹⁸ it may not be possible to assess the benefits of increasing the penalty. Those opposing changes to the current statute might maintain that there would be a negative impact on constitutionally protected rights of assembly, association, and petition of the government, particularly the longstanding tradition of carrying out these activities without the necessity of self-identification. Additionally, opponents might assert that if other changes to LDA relating to clients are enacted, increasing the potential penalties for noncompliance could potentially subject registrants to liability in the event that the client association or coalition withholds complete membership information.

Disclosure of Contact with Lobbyists Representing State Sponsors of Terrorism

Contact with lobbyists representing any client are subject to the same disclosure requirements under LDA or the Foreign Agents Registration Act of 1938, as amended,¹⁹ as appropriate.

S. 1972 would amend LDA to require to require Members of Congress and legislative branch employees to disclose to the Secretary of State any contacts with representatives or officials of governments that have been designated as state sponsors of terrorism by the Department of State. S. 1972 would require the

¹⁷ For further discussion of LDA and other laws, rules, and regulations affecting those who lobby Congress, see CRS Report RL31126, *Lobbying Congress: An Overview of Legal Provisions and Congressional Ethics Rules*, by Jack Maskell.

¹⁸ Kenneth P. Doyle, "DOJ Refuses to Disclose Settlements With Those Who Violate Lobbying Law," *BNA Daily Report for Executives*, June 20, 2005; and Kenneth P. Doyle, "Justice Department Reveals First Cases Settled Under Lobbying Disclosure Statute," *BNA Daily Report for Executives*, Aug. 16, 2005, retrieved from the BNA website.

¹⁹ 22 U.S.C. 611.

Secretary to issue a report listing those who have had such contacts to the Senate Committee on Foreign Relations, the Senate Subcommittee on State, Foreign Operations, and Related Programs of the Committee on Appropriations, the House Committee on International Affairs, and the House Subcommittee on Foreign Operations, Export Financing, and Related Programs of the Committee on Appropriations.

Disclosure of Lobbyist Contributions and Payments

The disclosure of campaign contributions is governed by FECA. The acceptance of gifts, travel, or other considerations by Members of Congress are governed by House Rule XXV, Limitations on Outside Earned Income and Acceptance of Gifts, and Senate Rule XXXV, Gifts.

Campaigns. S 2128 and H.R. 4575 would require each LDA registrant, their employees, and any affiliated political committee, as defined in FECA,²⁰ to disclose the name of each federal candidate, officeholder, leadership PAC, or political party committee to whom a contribution was made, or for whom fund raising event was held, including the date and amount of such contribution.

Travel.²¹ H.R. 2412 and S. 1398 would require that congressional travel be certified as not having been planned, organized, arranged, or financed by a registered lobbyist or foreign agent. The measure would impose a series of escalating civil fines for first and subsequent offenses. Finally, the measures would require the ethics committees of the respective chambers to establish guidelines regarding reasonable travel expenses.

S. 2128 and H.R. 4575 would require each LDA registrant, its employees, and any affiliated political committee, as defined in FECA, to disclose the name of each covered legislative branch official or covered executive branch official for whom the registrant provided any payment or reimbursements for travel and related expenses in connection with the covered official's duties. For each covered official the registrant would be required to disclose

- an itemization of the payments or reimbursements provided to finance the travel and related expenses for the covered official, and to whom the payments or reimbursements were made;
- the purpose and final itinerary of the trip, including a description of all meetings, tours, events, and outings attended;
- the names of any registrant or individual employed by the registrant who traveled on any such trip;

²⁰ 2 U.S.C. 431(4). FECA defines political committee. FECA, LDA, S. 2128, and H.R. 4575 do not specify or define "affiliated."

²¹ See CRS Report RL33047, *Restrictions on the Acceptance of "Officially Connected" Travel Expenses From Private Sources Under House and Senate Ethics Rules*, by Jack Maskell.

- the identity of official or listed sponsor of travel; and
- the identity of any person or entity, other than the listed sponsor of the travel, which directly or indirectly provided for payment of travel and related expenses at the request or suggestion of the registrant or the employee.

The measures would also amend House Rule XXV and Senate Rule XXXV to require Members and congressional staff to disclose such travel, including the date, destination, passenger manifest, and purpose of the trip, and would require reimbursement of the full cost of such air travel. Finally, like H.R. 2412 and S. 1398, S. 2128 and H.R. 4575 would also require the ethics committees of the respective chambers to establish guidelines regarding reasonable travel expenses.

Honors. S. 2128 and H.R. 4575 would require each LDA registrant, its employees, and any affiliated political committee, as defined in FECA, to disclosure of the date, recipient, and amount of funds contributed or arranged to pay the costs of an event to

- honor or recognize a covered legislative branch official or covered executive branch official;
- contribute to any entity that is named for a covered legislative branch official or covered executive branch official, or to a person or entity in recognition of such an official;
- contribute to any entity established, financed, maintained, or controlled by a covered legislative branch official or covered executive branch official, or an entity designated by such official; or
- pay the costs of a meeting, retreat, conference or other similar event held by, or for the benefit of, one or more covered legislative branch officials or covered executive branch officials.

Gifts.²² S. 2128 and H.R. 4575 would require each LDA registrant, its employees, and any affiliated political committee, as defined in FECA, the disclosure of the date, recipient, and amount of any gift,²³ that, under the rules of the House of Representatives or Senate counts towards the \$100 cumulative annual limit prescribed in each chamber, is valued in excess of \$20 given by a registrant to a covered legislative branch official or covered executive branch official. The

²² See CRS Report RS22231, *The Acceptance of Gifts of Free Meals by Members of Congress*, by Jack Maskell.

²³ S. 2128 and H.R. 4575 would define gift would include a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term would also encompass gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

measures would require tickets for sporting and entertainment events that are given as gifts to covered officials to be valued at face value. Tickets without a face value would be valued at the highest published rate.

S. 1398 and H.R. 3177 would prohibit lobbyists from giving gifts to Members of Congress with certain exemptions, and would amend the Rules regarding the acceptance of gifts in the chambers in which the measures originated. S. 1398 would also impose a civil penalty of up to \$50,000 for noncompliance.

Discussion. Proposals to link campaign finance and lobbying activities, and to enhance current Rules regarding the interactions between Members of Congress and lobbyists could serve to provide a clearer picture of who participates in public affairs and the scope of the activities that characterize that participation. Proponents of such efforts might argue that such efforts could afford greater transparency and a broader understanding of the effects of private interests in the public policy making process. From their perspective, such a change might also instill greater government accountability, and help to maintain the integrity and legitimacy of the broader political system. Those opposing changes to current lobbying disclosure practices might maintain that expanding lobbying disclosure to include those who make campaign contributions, but who may not have any direct participation in lobbying activities, could have an adverse affect on the accuracy of LDA disclosure data due to a potential increase in registrants who conduct no lobbying but who must register due to affiliations with entities that retain lobbying services. Additionally, opponents might assert that such a change could increase the administrative burden associated with reporting on their activities under LDA, or curb rights of participation through giving campaign donations, or the right of association, due to the increased burden of LDA disclosure.

Other issues that Congress might address include consideration of the meaning of “affiliated” in the context of FECA political committees and their interactions with entities that secure lobbying services that must be disclosed under LDA.

Other Employment Rights

LDA and Chamber Rules confer no employment rights.

S. 2128 and H.R. 4575 would amend the Indian Self-Determination and Education Assistance Act²⁴ to ensure that an individual who was formerly a government official and who is an employee of an Indian tribe employed to perform services formerly performed for the United States, may communicate with and appear before any department, agency, court, or commission on behalf of the Indian tribe with respect to any matter, upon providing notification to the head of the appropriate entity of the extent of their previous involvement with the matter as a government official.

²⁴ 25 U.S.C. 450i.

Oversight of Ethics and Lobbying

There are no explicit oversight requirements in LDA. Ethics in Congress are overseen by the House Committee on Standards of Official Conduct and the Senate Committee on Ethics.

H.R. 2412, S. 1398, S. 2128 and H.R. 4575 would require the Comptroller General to review semiannually the activities of the Clerk and Secretary under Section 6 of LDA, emphasizing their effectiveness in securing compliance by lobbyists with the requirements of LDA and whether the Clerk and the Secretary have the resources and authorities needed for effective oversight and enforcement of the act. H.R. 2412 would also authorize and direct the Committee on House Administration and the House Committee on the Judiciary to conduct hearings on each semiannual report.

H.R. 2412 would create in the House a bipartisan ethics task force with equal representation of the majority and minority parties. The panel would make recommendations on strengthening ethics oversight and enforcement in the House, and on providing the resources necessary to accomplish that goal.

Further Reading

CRS Report RL33065. *Lobbying Disclosure Reform: Background and Legislative Proposals, 109th Congress*, by R. Eric Petersen.

CRS Report RS22317. *Congressional Gifts and Travel, Legislative Proposals for the 109th Congress*, by Mildred Amer.

CRS Report RS22226. *Summary and Analysis of Provisions of H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act of 2005*, by Jack Maskell.

CRS Report RS22231. *The Acceptance of Gifts of Free Meals by Members of Congress*, by Jack Maskell.

CRS Report RS22209. *Executive Lobbying: Statutory Controls*, by Louis Fisher.

CRS Report RL31126. *Lobbying Congress: An Overview of Legal Provisions and Congressional Ethics Rules*, by Jack Maskell.

CRS Report 96-809. *Lobbying Regulations on Non-Profit Organizations*, by Jack H. Maskell.

CRS Report RS20725. *Lobbyists and Interest Groups: Sources of Information*, by Mari-Jana "M-J" Oboroceanu.

CRS Report 97-875. *"Revolving Door," Post-Employment Laws for Federal Personnel*, by Jack Maskell