

## MEMORANDUM

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**To:** Clients and Interested Parties  
**From:** James B. Christian  
**Date:** August 7, 2007  
**Subject:** Congress Completes Action on Lobby and Gift Reform

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On Tuesday, July 31, the House passed under Suspension of the Rules a negotiated substitute for S.1, a bill to provide transparency in the legislative process. The Senate agreed to the substitute on August 2, clearing the measure for the President's signature. The bill makes numerous changes to the Rules of the Senate regarding gifts, travel, and earmarks which substantially conform the Senate rules to changes previously adopted by the House at the beginning of the Congress. The bill also makes changes to post-employment restrictions for Members and staff of both Houses, places lobbying restrictions on firms whose employees serve as consultants to the House, and amends the Lobbying Disclosure Act ("LDA") to require more frequent reporting, to require new disclosures of campaign contributions, and to provide criminal penalties for violations of the LDA. This memo briefly describes the major provisions.

### **Revolving Door Provisions**

**House and Senate Restrictions** - The substitute amends Title 18 of United States Code, and the House and Senate Rules, to prohibit Senators for two years, and House Members and elected officers of the House for one year, from contacting, on behalf of another, Members or employees of either House of Congress with the intent to influence official action. The current restrictions on Senate staff, which prohibit for one year communications to a staff person's former office or committee with the intent to influence, are expanded to cover the entire Senate. Former Members and employees are to be notified of their restrictions by the Clerk of the House and Secretary of the Senate. The restrictions are effective the earlier of the adjournment of the first session of the 110<sup>th</sup> Congress or December 31, 2007.

**Executive Branch** - The current one year restriction on post-employment contacts by Very Senior Executive personnel restrictions is extended to two years. This new restriction is effective the earlier of the adjournment of the first session of the 110<sup>th</sup> Congress or December 31, 2007.

**Private Employment Decisions** - The legislation makes a criminal offense the interference, solely on the basis of partisan political affiliation, by Members or employees of Congress in the employment decisions or practices of private entities. Such interference is

punishable by a fine and/or imprisonment up to 15 years, and possible disqualification from holding public office. This provision is effective on the date of enactment.

### **Lobbying Disclosure Amendments**

**Criminal Penalties** – The bill amends the LDA to provide for increased civil penalties for failure to comply with the filing requirements of the LDA. New criminal penalties are provided for knowingly and corruptly failing to comply with any provision of the amended LDA. These penalties are effective on the date of enactment.

**Quarterly Filing and Miscellaneous Changes** – Lobbying reports are to be filed quarterly beginning with reports covering the first quarter of 2008. To conform to the new reporting period, the income thresholds are reduced by half. Reports are required to be filed electronically beginning with the first quarter of 2008. Lobbyists who formerly held covered official positions must disclose them for 20 years. Reports are to be publicly available in a searchable and sortable data base. A similar requirement is implemented for the Foreign Agents Registration Act (FARA). Entities that are controlled by State or local governments are to be identified. Referrals to the U.S. Attorney for non-compliance are to be made public. Quarterly filing is effective with the first quarter of 2008.

### **Campaign Contribution Disclosures**

**Reports and Certifications by Lobbyists and Organizations** - The bill requires organizations and persons required to register under the LDA and employees of organizations required to be listed as lobbyists to report the names of political committees established or controlled by the registrant and its employees. In addition, the names of candidates, officeholders, leadership PACs, or political party committees that receive contributions of \$200 or more from the registering entity and its employees must be reported. Furthermore, contributions to events honoring covered officials, entities established or controlled or designated by a covered official, or to pay the costs of an event held by or honoring a covered official must be reported. These reports are not required if the recipient is required to report the receipt of the funds to the FEC. Contributions to other entities such as Presidential library committees and inaugural committees are also required to be disclosed. Persons or organizations filing reports must certify that they are familiar with the Congressional Rules on gifts and travel and have not provided a gift to a Member or employee in violation of the Rules. The reports are initially semi-annual, effective with the first half of 2008. However, a Sense of the Congress provision calls for the reports to be made quarterly. This provision is effective with the report due for the first semi-annual period of 2008.

**Reports of Bundled Contributions** - Candidate committees, leadership PACs, and political party committees are required to disclose bundled contributions from LDA registrants, individuals registered as lobbyists, and political committees established or controlled by such persons. To be reported, bundled contributions must exceed \$15,000. The requirement is effective 3 months after the FEC issues final regulations to implement the requirement.

**Gift Ban** – A registered lobbyist may not make a gift or provide travel that the lobbyist knows may not be accepted by a Member or employee. Criminal penalties now apply to violating this and any other provision of the LDA. This change is effective on the date of enactment.

**Coalition Reporting** – LDA reports must disclose coalition members who contribute more than \$5,000 and who actively participate in the lobbying activities. This change is effective with the first quarter of 2008.

**Comptroller General Audits** – The Comptroller is to conduct annual random audits of publicly available registrations and reports of lobbyists, lobbying firms, and registrants. The Comptroller may request information from registrants. Annual reports are required. Audit authority applies to reports for the first quarter of 2008.

### **Changes to House Rules**

**Disclosure of Employment Negotiations** – A Member is prohibited from negotiating directly or having any agreement for future employment until his or her successor is elected, unless he or she notifies the Committee on Standards of Official Conduct within three days of the commencement of negotiations or agreement. Highly paid officers and employees of the House are similarly restricted. Similar restrictions apply to Senators. This provision is effective on date of enactment and applies to negotiations begun on or after that date.

**Spouse Restrictions** – Members whose spouses are lobbyists must prohibit their staff from making a lobbying contact with the spouse (House Rule XXV change). Effective on date of enactment.

**Consultant Conflict of Interest** – If an individual who is paid by the House as a consultant is also employed by a firm or business, the individual's firm or business may not lobby the committee that employs the individual (House Rule XXIII change). Effective on date of enactment.

**Travel Disclosure** – The Clerk of the House is required to post on the Clerk's public website the advance authorizations, certifications, and disclosures which are required in connection with privately funded travel under Rule XXV of the House. Members may omit certain personal information. The first report will be posted August 1, 2008 for information received by June 1 of 2008.

**Restrictions on Lobbyists During Conventions** - During the official dates of National Party Conventions, a Member may not participate in an event honoring a Member if the event is directly paid for by a registered lobbyist or an entity that employs a lobbyist, unless the Member is a candidate for President or Vice President. The Senate Rules are amended similarly. The change is effective on the date of enactment.

### **Changes to Senate Rules**

**Procedures Regarding Conference Reports** – The Rules of the Senate (Rule XXVIII) are amended to provide that if a matter which was agreed to by both Houses is stricken from a bill, a point of order lies and, if sustained, the bill is recommitted to conference. In the case of a new matter inserted in the report, a point order lies and, if sustained, the Senate may disagree and concur with a further amendment to the House amendment which is the portion of the conference report that was not stricken by the point of order. Conference reports must be available 48 hours before they may be considered. The leaders may jointly waive this requirement. Points of order may be waived by three-fifths vote. A ruling in favor of a point of order may be overturned by a three-fifths vote. Conferees may not include a matter not committed to them by either House but may make germane modifications. The change is effective on the date of enactment.

**Disclosure of Holds** – Members who object to proceeding to the consideration of a matter must notify their leader in writing. Not later than six days after such notification, the objection must be submitted for publication in the Congressional Record and placed on the Senate Calendar. This change also is effective on the date of enactment.

**Sunshine Provisions** - Transcripts of open committee and subcommittee proceedings must be available not later than 21 days after the meeting occurs. This provision is effective 90 days after the date of enactment. In addition, motions to recommit must be made in writing. The bill states that it is the Sense of the Senate that conference committees should hold regular and open meetings and that the text of the report shall not be changed after conferees have signed signature sheets.

**Earmark Reform** – The bill adds a new Senate Rule (XLIV), which provides that it is not in order to vote on a motion to proceed to a bill or resolution reported by a committee unless the Chairman or the Majority Leader identifies each directed spending item, limited tax benefit, or limited tariff benefit included in it, including the name of the Senator requesting the item, and the information is available 48 hours before the vote. Identical provisions apply to bills and resolutions not reported by a committee. If the manager of a conference report or the Majority Leader fails to comply with these disclosure requirements and a point of order is sustained, the report is set aside. With respect to amendments which contain directed spending, limited tax or tariff benefits, the sponsor of the amendment must make a disclosure report available as soon as practicable. Senators who request earmarks must identify the recipient and the purpose of the earmark, and certify that neither the Senator nor the Senator's immediate family has a pecuniary interest in the item. New directed spending in conference reports are subject to a point of order. Points of order may be waived by three-fifths vote, or by joint agreement of the two leaders for points of order against Committee reported bills, bills not reported by committee, and amendments. This change is effective on the date of enactment.

**Revolving Door Provisions** - See House and Senate Restrictions discussion above.

**Gift Ban** – Members and staff may not accept gifts from lobbyists and entities that employ lobbyists under the current \$49.99 per occasion provision. Members and staff may accept gifts under the specific exemptions currently in the Rules such as widely attended events, home state products, receptions and others specified in Rule XXXV. This change is effective on the date of enactment.

**Travel Reform** - Senate Rule XXXV is amended to conform substantially the Senate restrictions to those of the House. Travel may not be accepted from lobbyists, registered foreign agents, and entities that employ them except as provided in the Rule. The amended Rule permits reimbursement for one day events in connection with the official duties of the Member, and permits reimbursements from 501(c)(3) organizations. Trips under these exceptions require pre-approval. The Senate Select Committee on Ethics is directed to issue guidance and regulations as to minimum lobbyist involvement in arranging the trip, lobbyist accompaniment on travel, reasonable expenses, circumstances under which a trip may be extended, and for evaluating other aspects of requested travel. Reimbursement rates for charter aircraft are increased to the charter rate from the current comparable first class rate. Privately paid travel is to be disclosed on the website of the Secretary of the Senate for travel occurring after January 1, 2008. Travel restrictions are effective the later of 60 days after date of enactment or 60 days after Ethics Committee guidelines are issued.

**Attendance at Constituent Event** – The bill amends the Senate Rules to permit a Member to accept free attendance at home state events which are sponsored by constituents of the Member when the cost is less than \$50 and the Member participates as a speaker or performs a ceremonial function. Lobbyists may not attend the event.

**Spouse Restrictions** – Under revised Senate Rule XXXVII, Senators whose spouses are lobbyists must prohibit their staff from making a lobbying contact with the spouse. (The provision grandfathers spouses who lobbied prior to their marriage to a Member or one year prior to the Member's most recent election.)

### **Campaign Funds Restrictions**

**Private Aircraft** – A candidate for federal office or the candidate's campaign committee may not make an expenditure for air travel unless the aircraft is an FAA certified charter plane or the candidate or committee pays the charter rate, or pro rata rate if used by multiple candidates. This provision is effective for flights taken on or after the date of enactment.