

PERKINS COIE LLP
POLITICAL LAW GROUP

TO: Interested Parties
RE: The New Lobbying and Government Ethics Reform Bill

Congress recently enacted the Honest Leadership and Open Government Act of 2007—a government reform bill that addresses, from various angles, conflicts of interest, with the principal exception of a provision to compel the reporting of lobbyists' bundled contributions to federal candidates.

Certain of the provisions amend House and Senate rules, others add or change requirements applicable under the Lobbying Disclosure Act, the Federal Election Campaign Act, the Foreign Agents Registration Act, the Ethics in Government Act and the "Revolving Door" prohibitions and limitations of the United States Criminal Code. The theme uniting the different reforms is to protect against the effect of private or political interests on elected officials' obligation to act broadly—and to appear to act broadly—in the public interest, on the merits of the matters before them.¹

As the provisions accomplish this goal in various ways, regulating the actions of lobbyists in some cases and elected officials and other government employees in others, this memorandum organizes the relevant law by the subjects of the action. The first section discusses the new rules that lobbyists must observe; the second considers those that apply to officeholders and government employees; and the last deals with those provisions applicable to political organizations under the Federal Election Campaign Act. It is noted that the House enacted a similar set of gift and travel rules changes earlier this year: for reference purposes, an Appendix to this memorandum contains a summary of those changes.

¹ In the course of floor debate, Senator Lieberman described the bill's purpose as one of "attempt[ing] to build a broader wall between what we do here in serving the public and the lobbying world." 126 CONG. REC. S1069, daily ed. Aug. 2, 2007 (Statement of Sen. Lieberman).

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A last section addresses provisions for enforcement of the various requirements, restrictions and prohibitions of the new law. Enforcement is to be accomplished by adding penalties, including criminal penalties and increasing ones already on the books. Public disclosure is another mechanism for enforcement found throughout the new legislation.

Finally, the new law includes reforms of Congressional process, such as the requirements for the disclosure of "earmarks." This memorandum does not address those reforms, which will be treated in an additional memorandum to be distributed in the near future.

I. Lobbyists (and Organizations or Firms that Employ Them).

Scope. By and large, the new rules apply to registered lobbyists and the companies or firms that employ one or more lobbyists. Where this is not the case, it is so indicated.

Gifts. Prior to passage of this law, congressional gift and travel rules only regulated the conduct of Congressional Members, offices and employees. Under this new law, a lobbyist, or an organization employing a lobbyist (and registered under the Lobbying Disclosure Act) is now independently liable for violations of the congressional gift and travel rules. In addition, as discussed below, lobbying disclosure reports will now include a sworn certification of compliance with the gift and travel rules.

This prohibition is effected through an amendment to the Lobbying Disclosure Act. Its significance is two-fold: it imposes liability on the lobbyist for violations of Senate or House rules binding in the first instance on Members of Congress and not private parties. It is also a significant step toward utilizing the LDA to impose substantive limitations in addition to the disclosure requirements that are its primary focus.

As discussed in the enforcement section below, the penalties for violation of the federal lobbying law—including the provision of knowing violation of the gift rules—now includes criminal penalties, for the first time. Below, where rules of the Senate or House are discussed, it should be kept in mind that a Member's violation of the House or Senate rules would constitute a separate statutory violation by the lobbyist found to have "knowingly" made the prohibited gift.

Effective Date: Date of enactment.

Spouse and Immediate Family Involvement in Lobbying. The House and the Senate have each approved rules prohibiting Member contact on lobbying matters

with a spouse (or immediate family member, in the case of the Senate), including contacts with any personal, leadership or Committee staff. The bill contains a "Sense of the Congress" provision, expressing the view that lobbyists should not use a family relationship "to gain special advantages over other lobbyists."

Restrictions on Participation in Travel. New rules for the Senate, similar to those promulgated by the House, would condition Member acceptance of travel from organizations that employ lobbyists, on compliance with restrictions on participation on what the firm and the individual lobbyist-employee can do. The organization funding the trip cannot arrange for a trip longer than one day, with no more than one night (an additional night with special Committee approval), for Member participation in an official capacity. An individual lobbyist cannot organize, plan or arrange the proposed travel, except to a *de minimis* degree to be specified by rules of the Senate Ethics Committee, and the lobbyist cannot accompany the Member on any segment of the trip.

Effective Date: The later of a) 60 days after the date of enactment, or b) the date that the Ethics Committee issues new guidelines.

Non-Lobbying Organizations (and 501(c)(3)s, Regardless of Whether They Employ Lobbyists). These restrictions do not apply in all material respects to trips sponsored by organizations that do not employ lobbyists, nor to 501(c)(3)s, even if they have lobbyists in their employ. For example, these other organizations that do not employ lobbyists may sponsor trips of longer duration than those of one-day-and-one-night permitted to lobbying organizations. At the same time, however, Members may not participate in these trips without the prior approval of their ethics committee. And Members may not participate in any trip, regardless of whether the sponsor employs lobbyists, if a lobbyist is involved other than to a *de minimis* extent in requesting, planning, arranging, or organizing such event, or if a lobbyist accompanies the member or staff "at any point throughout the trip." Each trip sponsor must certify that this requirement has been satisfied.

The Senate's principal authors expect that "de minimis" should be taken to mean "negligible or inconsequential." 126 CONG. REC. at S10713. A lobbyist can suggest, upon request from the organizational sponsor, the Members or staff with an interest in the subject of a proposed trip. The lobbyist cannot initiate a proposal for a trip, or an exchange about it, with the sponsor, and he or she cannot exercise "ultimate control" over the invitations or the itinerary. *Id.* at S10713.

The Senate principal authors have declared their intent that this limitation on lobbyist accompaniment of Member and staff, "at any point" of a trip sponsored by non-lobbying organizations, should be construed broadly—more broadly even than

the restriction prohibiting Members on lobbying organization-sponsored trips from having a lobbyist accompany them on any "segment of the [paid] trip." *Id.* at S10713. Yet, the *de minimis* exception for the two cases is apparently to be considered, in scope, the same. Lobbyist attendance at a "widely attended event" would constitute "*de minimis*" accompaniment; so would travel to the event on the same commercial carrier if the scheduling of the travel on the same flight was not coordinated by the Member or staff, and the lobbyist.

*Reporting of Contributions or Payments for the Benefit of Members.*²

Registered lobbyists and their employers would have a new obligation under the LDA to report, on a semi-annual basis, *political contributions* made to Member controlled or affiliated committees, including party committees; *payments made to events in their honor*; contributions to *entities they control or designate*; contributions to *Presidential Inaugural Committees or Library Foundations*; or contributions to *conferences, retreats or meetings held by or in the name of one or more Members*. For contributions, the reporting threshold is \$200 or more.

The lobbying disclosure reports will now include a certification by lobbyists that they have read and are familiar with Congressional rules and have made no gift in violation of them.

Effective Date: Takes effect for the first semi-annual period beginning after the date of enactment.

While, as discussed below, disclosure reports will now be due quarterly, the disclosure of contributions and payments to benefit Members remains semi-annually. However, Congress directs a study of the feasibility of quarterly rather than semi-annual reporting, to be supplied by the Clerk of the House and the Secretary of the Senate no later than a year from the date of the first reports. Congress also expresses a "sense" of the desirability, if practicable, of instituting quarterly reporting after two years of semi-annual reporting.

Other LDA Reporting Changes. A series of changes are made in the LDA's disclosure provisions:

- the schedule for reporting is changed from semi-annual to quarterly;
- electronic reporting required;

² This prohibition on certain payments applies also to payments to executive branch officials.

--the thresholds for triggering reporting, based on income received from or expenditures made for, lobbying activities, are halved—to \$2500 in the first case and \$10,000 in the second.

--reporting of coalition members who financially support lobbying activity is amended to lower the threshold from \$10,000 to \$5,000, so that the report would identify any contributor who gives this much to "fund lobbying activities" and who "actively participates" in planning, supervising or controlling the registrant's activities. Note: An exception is made for an affiliate of or contributor to a client if the affiliate or contributor is listed on the client's "publicly accessible" website as a member or contributor—unless in whole or in part it plans, supervises, or controls the lobbying activities of the client. According to the principal author's statement of legislative intent, this provision "closes a loophole that allowed so-called 'stealth coalitions,' often with innocuous-sounding names, to operate without identifying the interests engaged in the lobbying activities." *Id.* at S10709.

--disclosure of lobbyists' prior government service, in registration statements, must include service anytime in the preceding twenty (20) years.

--the disclosure of "foreign entity" support for lobbying clients has been amended to include any such entity that contributes more than \$5,000 in the quarterly reporting period to "fund lobbying activities" (and not, as currently, paid "toward" such activities), or that "actively participates" in the planning, supervision or control of such activities. This standard of active participation replaces the stricter version that captured only those entities that "directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the client." The statement of intent identifies as organizations not "actively participating" in lobbying activities, those "that have only a passive role—e.g. mere donors, mere recipients of information, reports, etc." *Id.*

--lobbying law disclosure is liberalized in one instance: an organization need not be listed as an affiliate of a client if it appears on the publicly accessible website of the client—unless the affiliate in whole or in major part plans, supervises, or controls the lobbying activities. Individual members of or donors to a client affiliate need not be reported.

Effective Date: Except as otherwise noted, January 1, 2008.

Self-regulation. Congress also expresses the "sense" that the lobbying community should "develop proposals" for self-regulatory organizations which could establish or create a) lobbying standards; b) training on law, ethics, and disclosure

requirements; c) educational materials for the public on the lobbyist hiring; d) standards for reasonable fees; and e) client disclosures on fees and conflict of interest rules.

II. Members of Congress and Their Staff³

Statutory Change:

Influencing Private Employment Decisions. No Member or office or employee may attempt to influence, "solely on the basis of partisan political affiliation," a private entity's employment practices or decisions. This is criminally enforceable. However, according to a statement of intent, filed by the Senate's principal authors (Senators Feinstein, Lieberman and Reid), the Senators are not prohibited by this section from writing letters of recommendation or "speak[ing] to the credentials of an individual" under consideration for a private sector position. *See* Section by Section Analysis and Legislative, 126 CONG. REC. S10708, daily ed. Aug. 2, 2007. (Note: the Senate also adopts through this legislation a rule, as did the House in January, that prohibits this conduct for its own internal disciplinary purposes.)

Effective Date: Date of enactment

Extending "Revolving Door" Limits. These are amended for Senators, Congressmen, and employees of the House and the Senate restricting their lobbying contacts after the conclusion of their Congressional service.

--For Senators, in lobbying both Houses, the disqualification has been extended to two years.

--For House Members, lobbying both Houses, the disqualification is one year.

--For certain of the Senate staff and for Senate officers, the disqualification is one year, and it applies to the lobbying of all Members and staff of the Senate; those covered are staff compensated at 75% or more of a Senator's salary and employed for more than 60 days in the calendar year.

³ While the focus here, as in the bill, are the reforms governing lobbying and operation of Congress, the bill also provides that senior executive branch personnel, including Cabinet secretaries, are prohibited from lobbying their former departments for a period of two years. More generally, the bill expresses the "sense of the Congress" that restrictions on legislative branch employees should apply also to the executive and judicial branches.

--For the House staff, the disqualification is one year, and it applies to the Member and his or her office that formerly employed the staff.

--For the House's elected officers, the disqualification is one year, applicable only to its lobbying of the House.

Effective Date: For staff who leave after the earlier of a) the date of adjournment of the first session of the 110th Congress *sine die*, or b) December 31, 2007.

Rules Change: Senate

Ban on Knowing Acceptance of Lobbyist Gifts. The Senate rules would prohibit a Member from the knowing acceptance of a gift from a lobbyist, or employer of lobbyist, or the agent of a foreign principal, in violation of its rules. This has the affect of lowering the general gift allowance from registered lobbyists from \$49.99 per gift to \$0.

"Revolving Door" Restrictions. The Senate also amended conflict of interest rules to extend the "revolving door" disqualification period to two years, consistent with the change also made to the federal conflict of interest provision, and the prohibition applies where the Member is a registered lobbyist, or has been employed or retained by a lobbyist for the purpose of influencing legislation. For staff: the disqualification rules are different for staff paid at 75% of Member salary and for other staff. In the case of the higher-paid staff, the disqualification reaches all contacts with any member and staff for a period of one year, whereas in the latter, it applies for that year only to contacts with the office of the former employing Member (and that Member).

Effective Date: For staff who leave after the earlier of a) on or after the date of adjournment of the first session of this Congress *sine die*, or b) December 31, 2007.

Privately Paid Travel. The Senate follows House rules, adopted in January, that would impose restrictions on lobbyist or lobbying organization financing of officially related travel. The restrictions would limit any such travel paid by the lobbying organization to one day and one night, with an extended day available only with specific Committee authorization. In addition:

--the Senator would have to approve such travel for staff; and

--the Senator would have to file certifications that his or her own travel satisfied the applicable conditions, including certification that no lobbyist had "earmarked" funds in payment of the trip.

As noted previously, the travel sponsored by a lobbyist or lobbying firm would not be organized, requested, planned by a lobbyist, and the lobbyist could not accompany the Member (or staff) on any segment of the trip.

The Senate Ethics Committee will develop guidelines for the approval of trips and is directed to consider, among other factors, the nature of the sponsor and its prior history in sponsoring trips; the connection between the trip and official duties; the reasonable of the amount spent for the trip; and "any other factor [that] it deemed relevant."

As noted, the specific requirements for lobbyist-sponsored trips do not apply in full to organizations without lobbyists in their employ. Their travel remains subject in material respects to the rules in place prior to the new reform, which have included more liberal limits on the duration of privately paid travel and related expenses for domestic and international travel (3 days for domestic and 7 days for international travel). Yet *all* such paid travel, sponsored by lobbying or non-lobbying organizations, must be pre-approved by the relevant ethics committee, which will consider, among other factors, the connection to official business and the reasonableness of the expenses paid for the participating Member or staff, and lobbyists may not have planned, organized, supervised or arranged the trip (other than to a *de minimis* extent. And, also as noted, 501(c)(3) organizations that employ lobbyists are exempted under Senate rules from the restrictions, specifically on the duration of sponsored travel, that apply to all other organizations with lobbyists in their employ.

Events at Party Conventions. Senators could not participate in national party convention events held in their honor, except if they participate as Presidential or Vice Presidential nominee (or presumptive nominee), when such events are paid "directly" by a lobbyist or lobbying firm. [Note that the House rule on this same subject is written differently and it is not entirely clear whether House members can escape the prohibition if honored in their capacity as House candidates or only, as in the Senate, as candidates for President or Vice President. But the latter reading seems the better and the safer one, until such time as the Committee on Standards says otherwise.]

Lobbying by Spouses and Immediate Family Members. Senators must prohibit their staffs, personal and committee, from lobbying contact with the spouse of an elected official or by an immediate family member. An exception applies for spouses engaged in lobbying for one year prior to marriage or prior to the most recent election of the Member. The Members and staff are prohibited from having lobbying contacts with the spouse: no mention is made within this prohibition of contacts with immediate family members.

Note: The prohibition applies to the spouse or family member acting as a lobbyist, or when employed or retained for the purpose of lobbying.

Valuation of Tickets. Tickets provided to Senators or Senate staff are valued at face value, or at the value of the highest ticket for the event, unless the Member demonstrates to the Ethics Committee in advance, on the basis of specific features of the ticket (access to parking, food or refreshments, that another valuation applies). The principal authors stated it to be their intent that the Ethics Committee, in making its determination, "may accept information obtained on the Internet from venues and third-party ticket vendors." *Id.* at S10712.

Negotiation for Private Sector Employment. Senators may not negotiate while in office any position in the private sector that involves lobbying, until after his or her successor has been elected. For all other employment, the negotiation is permitted so long as it disclosed publicly, within three days of commencement of the negotiations, and to the Ethics Committee.

Staff earning 75% or more of Member compensation may negotiate if there is a disclosure to the Committee and, in appropriate cases, must recuse themselves from actions giving rise to actual or apparent conflicts. The recusals must be noted to the Ethics Committee, but they are not made public.

Use of Private Air Transportation. Senators may not fly for officially connected purposes on private—*i.e.*, not commercial aircraft—unless they pay a *pro rata* share of the "normal and usual" charter or rental charge, calculated by dividing the total charter cost by the number of Senators, Senate officers, or employees, on board. An exception is provided for aircraft owned or leased by a Member or a Member's immediate family member (including ownership through a nonpublic corporation in which the Member or immediate family member has an interest, but any exempt use must be proportionate to the ownership interest). The Senate's principal authors have indicated that a 60-day transitional period, through the date that implementing rules have been enacted, may be allowed for Members to develop processes for or experience with calculating the relevant charter rate, allowing them in the meantime and for this two-month period to pay the rates in effect under current (pre-reform) rules.

Meals Provided at Constituent Events. This is a new allowance for the Senate, authorized attendance at a constituent event in the Member's home state, sponsored by constituents or a group consisting primarily of constituents. The meal cost for the Member must be less than \$50; the Member must speak or participate in an official capacity, or perform a ceremonial function. No registered lobbyist may attend.

Use of Floor and Facilities by Former Member or Officers. Those former Members and officers who are lobbyists, or employed for the purpose of lobbying, or agents of a foreign principal, may not use floor privileges while the Senate is in session. Similar restrictions apply to use of Member-only parking spaces and exercise facilities.

Rules Change: House

The House enacted a series of rule changes in January, a summary of which is attached as an Appendix. Additional changes were made in the bill passed this week.

Negotiation for Private Sector Employment. House Members may not "directly" negotiate for private employment opportunities without notice to the House Standards of Official Conduct and, if on particular issues recusal from participation in official business is required, public notice of the recusal. Notice must be provided within three business days of commencement of any negotiation.

Staff paid at 75% or more of Member salary must also disclose private sector negotiations to the Committee: all staff, at whatever salary level, must recuse themselves from any matter giving rise to an actual or apparent conflict that stems from the employment negotiation or agreement. Staff notices do not appear to be public, but instead are provided only to the Committee.

Effective Date: Date of enactment (*i.e.*, negotiations or agreements commenced or entered into on or after that date).

Events Honoring a Member at National Party Conventions. As noted, the bill contains for both Senators and House members a prohibition on participating in events held in their honor during the national party convention period, unless they are honored as candidates for President and Vice President.

Lobbying by Spouses. House Members must prohibit staff, both committee and personal staff, from lobbying contact with spouses. Unlike the Senate, the House does not impose a similar prohibition on contact with immediate family members. The prohibition applies to spousal contact on lobbying matters whether the spouse is the lobbyist or is employed for lobbying "purposes."

Consultants to House Committee. The prohibition on the lobbying of House Committees by consultants to those committees is made applicable as well to other members and employees of the consultant's firm, partnership, or other business organization.

III. Changes to the Campaign Finance Laws

A. Bundling

One of the most significant changes is made to the disclosure requirements for candidates, leadership PACs and parties. The new law compels them, on a semi-annual basis, to report contributions "bundled" by persons "reasonably known" to be lobbyists, organizations that retain them, or political committees that lobbyists or their employers may control.⁴ The FEC is authorized to provide for quarterly reporting for committees now filing monthly.

Two or more contributions will be considered bundled if the lobbyist collects and forwards them to the committee, or if they are received by the committee which, by some means of "recognizing" that the monies have been raised in a certain amount by the lobbyist, gives the lobbyist "credit" for the fundraising effort.

The threshold for a committee's reporting of these contributions is an aggregate amount raised of \$15,000.01 in any semiannual reporting period (that is, in either the first six months or the last six months of the calendar year), and the aggregate amount of the contributions received must be included on the report, along with the name and address of the bundler, and if applicable, the name of the bundler's employer. Contributions by the lobbyist and the lobbyist's spouse are not included; and the amounts are indexed.

The Senate legislative history, expressed in the statement approved by the three principal Senate authors (Senators Feinstein, Lieberman and Reid), sheds light on what it means for the bundler to receive the "credit" that is a condition of the application of the reporting requirement. The credit must be "reflected" in "some form of record, designation or recognition": a designation might be an honorary title, and a recognition would include access to events for fundraisers generating contributions at a certain specified level or "similar benefits provided by the committee as a reward for successful fundraising." *Id.* at S10709.

There principal author's statement also gives examples of what is not included as triggers for reporting under this provision: general solicitations, the mere attendance by a lobbyist at an event, or the holding of an event on the premises of an organization registered as a lobbying entity.

⁴ "Because an era in which soft money is prohibited, the real measure of a lobbyist's influence is not how much money he has contributed, it is how much money he is raising from others." 126 CONG. REC. S10692, daily ed. Aug. 2, 2007 (Statement of Sen. Obama).

The statement further addresses the treatment of events hosted by a lobbyist. The hosting of an event "may trigger" disclosure, provided that it is credited within the terms of the provision. In further discussion on the floor, Senator Feingold, in a colloquy with Senator Obama, took an inclusive view of the coverage of hosted events. Senator Obama expressed in response his view that reporting would be required where "the campaign knows the total amount raised, and knows the lobbyist who hosted the fundraiser is responsible for those contributions." *Id.* at S10699. In this same colloquy, Senator Feingold also took a position on the treatment of jointly sponsored or co-hosted events, where multiple lobbyists may be involved: "in the case of a fundraising event co-hosted by two or more lobbyists...each lobbyist is responsible for and should be treated as providing the total amount raised at the event." *Id.*

The term "raised" is not defined, but the floor debate reflected a view that it is broader than the act of "soliciting." Senator Feingold stated that "even if a lobbyist does not make a solicitation for a contribution,...the lobbyist will still have 'raised' a contribution if the lobbyist facilitated the contribution by hosting or cohosting a fundraising event that brought in the contribution." *Id.*

The FEC is directed to promulgate implementing rules not later than 6 months from the date of enactment.

Effective Date: The new reporting requirements take effect three months after the FEC has promulgated its final rules.

B. Private Aircraft Travel

Candidates, other than House candidates, cannot use private aircraft unless they pay the pro rata share of the charter rate, calculated by dividing the cost by the number of candidates on board. Payment must be made within a "commercially reasonable" time frame. The charter rate used is the one that would be charged for a plane of comparable size and type.

Candidates for the House of Representatives are prohibited from using their campaign funds to travel on any aircraft other than commercial aircraft, charter or public airline. This prohibition is intended to provide parity in the treatment of candidates/challengers and Members who are separately prohibited from using campaign funds for private aircraft travel, by operation of House rules enacted in January.

The Senate's principal authors have indicated that a 60-day transitional period, through the date that implementing rules have been enacted, may be allowed for candidates to develop processes for, or experience with, calculating the relevant

charter rate, allowing them in the meantime and for this two-month period to pay the rates in effect under current (pre-reform) rules.

An exception is provided for aircraft owned by a Member directly, or through a company in which the Member or the Member's family has an interest, provided that in this case, the Member is limited to the use appropriate and proportionate to the ownership interest.

Effective Date: Date of enactment

IV. Enforcement

Ethics in Government Act. The civil penalties are increased (to \$200,000, in action that the Attorney General is authorized under current law to bring) and criminal penalties are provided for Members' and candidates' willful failure to report, or to disclose required information, in personal financial disclosure reports.

Lobbying Disclosure Act:

--The Secretary of the Senate and the Clerk of the House must establish web-accessible availability of the reports filed, including making provision to facilitate searches and sorts, and to establish links to the Federal Election Commission data base.

--The Comptroller General would conduct random audits, beginning with the first quarter of 2008, and its authority includes the right to request materials (other than those protected by the attorney-client privilege) from registrants or individual lobbyists "if the material requested relates to the purposes" of the audit to improve compliance and strengthen enforcement. The Comptroller may notify the Congress in the event of failure of a registrant to provide the requested materials within 45 days of the request.

--Civil penalties are increased for failure to correct identified reporting errors, and criminal penalties, including imprisonment for up to five years, are also provided for.

--The Secretary of the Senate and the Clerk of the House would provide reports on noncompliance, and the Attorney General would also report on enforcement after each semi-annual reporting period.

Effective Date: Takes effect for any violation committed on or after the date of enactment of this Act.

Foreign Agents Registration Act. The new law provides for filing in electronic form, and for public accessibility to the reports over the Internet, with provision of sort and search capabilities.

Effective Date: 90th day after date of enactment.

Senate Rules: "Privately Paid Travel Public Website." Not later than January 1, 2008, the Senate would post information on all authorizations and certifications relating to privately paid travel.

House Public Reporting of Travel-Related Information. The Clerk of the House must post on its public website, searchable, sortable and downloadable (as practical), authorizations, certifications and disclosures relating to privately paid travel.

Effective Date: Not later than August 1, 2008, post all information received by June 1, 2008, and then refresh and supplement this information in each succeeding 45-day period.

Mandatory Ethics Training. The Senate Ethics Committee would provide it within 60 days of a new Member's assumption of office, and for all Members, within 165 days from the date of enactment.

Revolving Door Restrictions. The Clerk of the House and the Secretary of the Senate would notify Members and staff of the "beginning and ending date" of their disqualification periods and would post this information for public use on their websites.

Effective Date: 60th day after the date of enactment, except that the public posting requirement takes effect on January 1, 2008.

APPENDIX

PERKINS COIE LLP

POLITICAL LAW GROUP

TO: Interested Parties

RE: **Congressional Gift Rules**

The new Congress has made significant changes to the rules governing the acceptance of gifts and travel by Members, officers, and employees of the House. What follows is a brief summary of the new gift rules, with notations on how they differ from those of the previous Congress. This memorandum provides a brief overview only.

Gifts

- As did the rules in the previous Congress, the new rules prohibit any Member, officer, or employee from accepting any gift (including a meal, a ticket to a concert or a sporting event, or any other thing of value) that exceeds \$49.99 in value. Total gifts from any one source over the course of the calendar year may not exceed \$99.99 (but no item of less than \$10 in value counts toward the annual limit). The rules contain several exceptions, some of which are discussed below.

New to the 110th Congress: The new rules further restrict gifts given from lobbyists, foreign agents, and entities that employ or retain them. Effective immediately, unless one of the exceptions applies, a Member, officer, or employee may not accept any gift of any value from a federal lobbyist, a registered foreign agent, or from any private entity that retains outside lobbyists or foreign agents, or employs in-house lobbyists or foreign agents.

- More than twenty exceptions remain permitting the acceptance of meals, gifts, and other things of value under certain circumstances notwithstanding the above limits. If an exception applies, the gift may be accepted regardless of whether the donor is a registered lobbyist or foreign agent, or employs or retains lobbyists or foreign agents.

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Among other things, these exceptions permit a Member, officer, or employee to: a) accept campaign contributions permissible under federal campaign finance laws; b) attend and enjoy refreshments served at a reception where no sit-down meal is served; c) accept gifts from family members; d) attend a political fundraiser; and e) enjoy a formal meal at a so-called “widely-attended event” (an event that is open to non-congressional attendees, and at which the individual speaks or participates in a panel or that is otherwise appropriate to his or her official duties). Gifts may also be accepted when they are based on “personal friendship,” a circumstance that the House defines with reference to a number of factors, including the history of reciprocal gift-giving, whether the giver sought a tax deduction or business reimbursement for the gift, and whether similar gifts were given to other Members.

- The new rules also clarify how Members, officers, and employees must value tickets or admittance they are offered to sporting or entertainment events, including those held in skyboxes, for purposes of the gift rules. A ticket with a face value must be valued at that price, as long as it is the same price offered for that ticket to the public. A ticket with no face value must be valued at the highest cost of a ticket with a face value for the event.

Travel

- As they did in the previous Congress, the rules permit a Member, officer, or employee to accept reasonable expenses for transportation, lodging, food, and refreshments necessary for travel to a meeting, speaking engagement, fact-finding trip, or similar event (not substantially recreational in nature) that is in connection with his or her official duties. This provision permits outside organizations (but not lobbyists, foreign agents, or lobbying firms) to pay for Members and staff to attend their out-of-town conferences and site visits, as long as doing so is appropriate to the traveler’s official duties, and the traveler discloses his or her receipt of the expenses.

New to the 110th Congress: In previous years, any outside individual or organization, including a corporation, trade association, or non-profit, could pay for a Member’s travel expenses as long as the payor was not an individual lobbyist or lobbying firm. The new travel rules, which take effect on March 1, retain this ban on payment of expenses by lobbyists and lobbying firms, and extend it to their clients and employers under certain circumstances. The rules also restrict lobbyist involvement in planning and organizing privately-funded travel.

Payment of Travel Expenses and Lobbyist Involvement

Under the new rules, an outside source that retains or employs lobbyists or foreign agents generally may not pay for a Member's or employee's travel expenses to facilitate attendance at an event that lasts more than one day. Nor may travel expenses be accepted for any trip planned, organized, requested, or arranged by a lobbyist or foreign agent.

The rules make an allowance for travel with a single night's stay, permitting an outside source that retains or employs lobbyists or foreign agents to pay for a Member's or employee's travel expenses to participate in a one-day event and stay overnight. However, payment may not be accepted even for such a trip if a registered lobbyist or foreign agent has more than a de minimis role in planning, organizing, requesting, or arranging the trip. Guidance from the Ethics Committee on what constitutes a de minimis role is forthcoming.

The new rules also task the Ethics Committee with developing guidelines for Members, officers, and employees to follow when judging the "reasonableness" of an offered expense. Among other things, these rules will more specifically define the conditions establishing the required connection between a trip and a Member's official duties.

Lobbyist Accompaniment

The new rules prohibit a Member, officer, or employee from accepting travel expenses for any trip of any length during which he or she would be accompanied by a lobbyist or foreign agent. It is not known how broadly this restriction will be applied – that is, whether it would apply only to the travel itself, or to both the travel and the actual event.

Reporting

Members, officers, and employees accepting privately-funded travel expenses face more robust filing requirements than they have in previous years. Before a Member, officer, or employee may accept such travel expenses, he or she must provide advance certification to the House Ethics Committee, signed by the payor, that, *inter alia*: a) the trip will not be financed by a lobbyist or foreign agent, or by any other source that has earmarked funds for the trip; b) a lobbyist will not attend any segment of the trip; and c) acceptance of the expenses otherwise complies with House rules. In addition, the traveler's disclosure of the expenses accepted, required within thirty days of return under the old rule, will now be required within fifteen days.

- The new rules introduce a new prohibition on the use of corporate airplanes for official and campaign travel. Effective immediately, a Member, officer, or

employee on official or campaign travel may fly only on a commercial plane or an airplane licensed by the FAA for charter flight. The campaign or official use of private corporate planes is now prohibited, even if such use would have been reimbursed.

As noted above, the House Ethics Committee will be publishing guidance implementing the new rules in the coming months. We will keep you informed of this new guidance, any additional rules changes, and any other ethics-related developments as they occur.