

Lobbying and Ethics Reform

EXECUTIVE SUMMARY

This Government Relations & Public Policy Practice Group alert provides a comparison and analysis of the lobbying and ethics reform initiatives being considered by the U.S. Congress. A table comparing the reform proposals follows the Introduction.

INTRODUCTION

Republican and Democratic Leadership Reform Proposals

Last week, Republican and Democratic leaders in Congress unveiled outlines of competing lobbying and ethics laws reform packages. Speaker Dennis Hastert (R-IL) and House Rules Committee Chairman Rep. David Dreier (R-CA) described a proposal that includes a ban on all privately-funded travel by Members and House staff. The Congressional Democrats' proposal includes a commitment to draft legislation that would "restore accountability and openness in federal contracting by subjecting major contract actions to public disclosure and aggressive competition" and require that all Congressional conference committee meetings be transparent and open to the public.

These very broad proposals, which have not yet been introduced as legislation, join several existing lobbying reform bills already at various stages of the legislative process. Notably among these is Sen. John McCain's (R-AZ) Lobbying Transparency and Accountability Act of 2005, introduced in December, which Sen. Rick Santorum (R-PA) recently

called the "blueprint" for the Senate Republicans' lobbying reform package.

While passage of reform legislation is not assured, support by Republican and Democratic leaders and the continuing corruption investigations make it probable that Congress will pass legislation this year, and possibly within the next few months. Chairman Dreier stated that he intends to introduce a bill February 1 and bring that bill to the House floor in early March.

Provisions Likely to be Included in a Reform Bill

As the chart below demonstrates, the Republican and Democrat reform initiatives vary significantly in scope and degree, most notably with regard to how Congressional travel is paid for and disclosed. That said, there are a number of features common to the reform initiatives that are likely to be included in any reform package. These include:

Expanded Disclosure. Reform legislation will likely require substantially expanded disclosure of lobbying activity, gifts, and campaign fundraising activity

Travel Limits and Prohibitions. At a minimum, it appears that lobbyists will no longer be permitted to arrange or organize Member or staff travel; if the more restrictive proposal is adopted, all privately-funded Congressional travel will be banned

Post-Employment Restrictions. Reform legislation will likely double the post-employment lobbying restriction applicable

to former Members and staff (from one year to two years)

Increased Penalties. Existing penalties for failing to disclose lobbying activity are likely to substantially increase in reform legislation

Gifts. Reform legislation is expected to require either the disclosure of, or a total ban on the receipt of, gifts from lobbyists

Earmarking and Conference Committees. Disclosure of, and/or restrictions related to, earmarking and conference committee activities appears to have support on both sides of the aisle

Earmarking

One subject receiving renewed attention is appropriations earmarks. Earmarks are provisions in a bill that require or permit the obligation or expenditure of appropriated funds for the benefit of an identifiable person, program, project, entity, or jurisdiction. In July 2005, Senator McCain introduced legislation targeted at reducing the number of earmarks members insert into appropriations legislation, and he very recently renewed his call to “fix” the earmarking process. Representative Jeff Flake (R-AZ) also introduced companion legislation in the House, and House Appropriations Chairman Jerry Lewis (R-CA) is putting the finishing touches on a package that will limit House Republicans to as few as three line-item requests per appropriations bill.

On the Democratic side, Sen. Barack Obama (D-IL) introduced legislation last week that would require appropriations bills to list all earmarks, and require that any bills containing earmarks be made available to all Members and the general public by means of the Internet at least 72 hours before consideration.

It does not appear, however, that Congress is

seriously considering eliminating earmarking altogether. The reform proposals offered by the Republican and Democratic leadership do not directly address the issue of earmarks, though the Democratic proposal calls for a more transparent conference committee process.

Inclusion of “527” Political Committee Reform and Other Campaign Finance Restrictions

Also receiving renewed attention in the current debate are “527” political committees and other aspects of campaign finance reform. The House Republican proposal apparently will include provisions aimed at restricting “527” activity, while the Democratic proposal did not address the issue. A number of interest groups have also taken this opportunity to push for a new round of campaign finance restrictions.

Scope, Degree, and Timing of Reform Legislation Uncertain

The scope, degree, and timing of lobbying and ethics reform legislation remains unclear. For instance, the House Republican proposal would ban all privately funded travel, while Sen. McCain’s bill would only require that the sponsor of the trip certify that a lobbyist did not arrange the trip. Also, the Democratic proposal addresses government contracting practices while the Republican proposals do not.

Moreover, it is unclear whether Republicans and Democrats can quickly come to agreement on legislation or whether a drawn-out legislative battle will ensue.

We will be closely tracking these initiatives and will provide follow-up alerts as the legislative process unfolds.

COMPARISON OF REFORM PROPOSALS

Applicable Provisions	Senate Republican Package ¹	House Republican Draft Proposal ²	Democratic (Bicameral) Draft Proposal: “Honest Leadership Act”
“Revolving Door” Post-Employment Restrictions	Increases the “cooling-off” period during which lawmakers and senior Congressional staff and Executive Branch officials are prohibited from lobbying their former colleagues from one year to two years.	Increases the “cooling-off” period during which lawmakers and senior Congressional staff are prohibited from lobbying their former colleagues from one year to two years.	Increases the “cooling-off” period during which lawmakers and senior Congressional staff and Executive Branch officials are prohibited from lobbying their former colleagues from one year to two years.
Travel	New package may ban member travel financed by third parties. As introduced, S. 2128 requires lobbyists to disclose any travel they have directed or arranged for Members and/or staff; Requires disclosure of detailed information regarding charter flights taken by Members and staff and increased disclosure by Members and staff regarding travel paid for by a private source.	Imposes a complete ban on privately funded travel.	Prohibits the receipt of travel from lobbyists.

¹Based on S. 2128, *Lobbying Transparency and Accountability Act of 2005* introduced by Senator John McCain and discussed at a press conference by Senators McCain and Rick Santorum (R-PA) on January 17, 2006. At that press conference, Senator Santorum called S. 2128 the “blue print” for the Senate’s lobbying reform package. The information contained in this table reflects language of S. 2128 as introduced or is derived from press statements made by Senators McCain and Santorum in their press conference announcing this legislation held January 17, 2006.

²To date, no detailed information has been released with respect to the specifics of the House Republican package. The information contained in this table reflects press statements made by Speaker Hastert and Chairman Dreier.

Applicable Provisions	Senate Republican Package ¹	House Republican Draft Proposal ²	Democratic (Bicameral) Draft Proposal: “Honest Leadership Act” ³
Gift Bans	<p>S. 2128 requires lobbyists to disclose any gifts made to government officials in excess of \$20;³ and</p> <p>Sets standards for valuing tickets to sporting events (face value, or, if no face value, the cost of the highest face value ticket at the venue).</p> <p>It is anticipated that the new package will also include stricter gift limits.</p>	<p>Will amend House rules related to gifts. Will likely prohibit the acceptance of meals.</p>	<p>Prohibits the receipt of gifts, including meals and entertainment from lobbyists.</p>
Disclosure	<p>Increases the frequency of lobbyist disclosures from twice yearly to quarterly;</p> <p>Requires lobbyists to disclose on lobbying reports campaign and Leadership PAC contributions as well as any party fundraisers hosted or sponsored;</p> <p>Requires lobbyists to disclose past Executive and Legislative Branch employment;</p> <p style="text-align: right;"><i>(more)</i></p>	<p>Increases the frequency of disclosure filings lobbyists must file from twice yearly to quarterly.</p>	<p>Increases the frequency of disclosure filings by lobbyists; and</p> <p>Requires disclosure of campaign contributions and client fees along with existing LDA disclosure requirements.</p>

³While merely a disclosure provision, the requirement that lobbyists itemize any gift given to a Member of staff in excess of \$20 may, in practical effect, operate as a ban on gifts because lobbyists will not want to be burdened with or embarrassed by such disclosures, and many Members will be unlikely to accept gifts knowing that the lobbyist would be required to disclose the gift.

Applicable Provisions	Senate Republican Package ¹	House Republican Draft Proposal ²	Democratic (Bicameral) Draft Proposal: “Honest Leadership Act” ³
<p>Disclosure <i>(cont.)</i></p>	<p>Requires disclosure of detailed information regarding charter flights taken by Members and staff and increased disclosure by Members and staff regarding travel paid for by a private source;</p> <p>Requires disclosure of a new category of lobbying – “grassroots lobbying” – which is defined as lobbying directed to the general public (as opposed to lobbying directed to covered officials);</p> <p>Lowers the financial thresholds for lobbying registration (from \$5,000 to \$2,500) as adjusted for inflation and reporting of lobbying expenses (from \$20,000 to \$10,000);</p> <p>Requires all lobbying reports to be filed electronically;</p> <p>Requires that improvements be made to the lobbying disclosure database, including cross-referencing capabilities with FEC reports; and</p> <p>Increases the penalties for failure to disclose lobbying activities (from \$50,000 to \$100,000).</p>	<p>Increases the frequency of disclosure filings lobbyists must file from twice yearly to quarterly.</p>	<p>Increases the frequency of disclosure filings by lobbyists; and</p> <p>Requires disclosure of campaign contributions and client fees along with existing LDA disclosure requirements.</p>

Applicable Provisions	Senate Republican Package ¹	House Republican Draft Proposal ²	Democratic (Bicameral) Draft Proposal: “Honest Leadership Act”
Restrictions on Former Members of Congress	Revokes floor privileges to former Members turned-lobbyists.	Revokes access to House gym and House floor by former Members. ⁴	Revokes access to the House and Senate floors by former Members turned-lobbyists.
Government Contract Provisions	N/A	N/A	Requires “major procurement contracts” be made public and subject to competitive bidding;
			Imposes criminal penalties on contractors;
			Imposes stiff criminal penalties for war-time fraud in government contracting;
			Prohibits contractors with conflicts of interest from conducting oversight or writing contract requirements they could bid on;
			Mandates disclosure of contract overcharges;
			Imposes criminal penalties for improper no-bid contracting; and
			Imposes post-employment restrictions on federal contracting officials seeking work with private contractors.

⁴ It is anticipated that this vote will occur separately and apart from the comprehensive lobbying and ethics package. A February 1, 2006 vote is anticipated for this measure.

Applicable Provisions	Senate Republican Package ¹	House Republican Draft Proposal ²	Democratic (Bicameral) Draft Proposal: “Honest Leadership Act”
Congressional Pensions	N/A	Revokes Congressional pensions for any member convicted of a felony related to official duties.	N/A
Private Sector Job Negotiation Disclosure	Requires members of Congress to disclose when they are negotiating private sector jobs.	N/A	Requires members of Congress to disclose when they are negotiating private sector jobs. Requires Executive Branch officials to disclose and receive approval from an independent <i>Office of Government Ethics</i> when negotiating private sector jobs.
Special Interest Provisions / Earmarks	Legislation may contain provisions restricting earmarks.	N/A	Requires conference committee meetings to be open to public; Requires that members of the conference committees have a public opportunity to vote on all amendments; and Conference reports would be required to be made public 24 hours before consideration (could be waived by a supermajority). ⁵

⁵ Democratic Senator Barack Obama (D-IL), the Senate Democrat’s point man on lobbying and ethics law reform, introduced his legislation targeting earmarks S. 2179, the “*Curtailing Lobbyist Effectiveness Through Advance Notification, Updates, and Posting Act* (‘*CLEAN UP Act*’)” on January 18, 2006. Sen. Obama’s bill prohibits the Senate’s consideration of an appropriations bill unless a list of all earmarks in the bill and accompanying reports are available to all Members and the public vis-à-vis the Internet at least 72 hours in advance of consideration. Under the bill’s regime, the publication requirement could only be waived by a 2/3 majority vote in the Senate. Sen. Obama’s bill also requires conference committees to identify and explain each provision added in conference not originally passed by either House and to certify that all committee conferees were afforded an opportunity to vote on the conference provisions.

Applicable Provisions	Senate Republican Package ¹	House Republican Draft Proposal ²	Democratic (Bicameral) Draft Proposal: “Honest Leadership Act”
Appointee / Cronyism Provisions	N/A	N/A	Require individuals appointed to positions involving “public safety” to have experience and training applicable to the position to which they are appointed.
527 Organizations	Legislation will address Section 527 groups. May reflect proposal by Senator McCain (S. 271) requiring these groups to file with the Federal Election Commission as “political committees.” Political committees are prohibited by statute from receiving contributions from corporations, unions, and large contributions from individuals.	Legislation will address Section 527 groups. May reflect proposal by Senator McCain (S. 271) and Representative Chris Shays (H.R. 513) requiring these groups to file with the Federal Election Commission as “political committees.” Political committees are prohibited by statute from receiving contributions from corporations, unions, and large contributions from individuals.	N/A

CONCLUSION

Unanswered Questions

As is often the case with proposals and bills in the early stages of the legislative process, some provisions could benefit from clarification, and, presumably, will be the subject of substantial deliberation. For instance: it is expected that in-house lobbyists will be subject to the same restrictions as their outside-lobbyist counterparts, though it is unclear whether the full implication of this has been thoroughly considered, particularly with regard to proposed travel restrictions. Will a lobbyist gift ban be subject to exceptions? Which ones? What does it mean to “host” or “sponsor” a fundraiser for purposes of disclosure? Does it require more than merely organizing a fundraiser? A number of other questions remain, and we will be carefully reviewing the language of the legislation and the legislative debates for answers to these and other questions.

Other Avenues of Participation

The reform bills do not – and some would say cannot, at least from a Constitutional perspective – infringe upon a lobbyist’s right to participate in the electoral process. That is, the current proposals do not restrict a lobbyist’s right to contribute to Members’ political campaigns or to host, sponsor, and organize fundraisers. To date, Members have not proposed limitations on lobbyists’ ability to engage in otherwise permissible political activities. A number of outside interest groups, however, are proposing that additional campaign finance restrictions be included in this round of reform efforts. It remains to see whether these proposals will have any traction.

KELLEY DRYE COLLIER SHANNON

GOVERNMENT RELATIONS AND PUBLIC POLICY PRACTICE GROUP

The Government Relations and Public Policy Practice Group helps clients interpret and shape governing laws, enabling them to achieve and maintain market leadership. The varied backgrounds of its government relations lawyers and lobbyists enable the team to handle a variety of clients needs, including representation and strategic planning.

FOR MORE INFORMATION

If you have any questions about this alert, or have additional lobbying and ethics questions, please feel free to contact one of our team members at 202-342-8400 or via email:

David E. Frulla
DFrulla@KelleyDrye.com

Corey A. Rubin
CRubin@KelleyDrye.com

Dustin Painter
DPainter@KelleyDrye.com

Dana S. Wood
DWood@kelleydrye.com