

## MEMORANDUM

TO: Friends / Colleagues

FROM: Mike Wittenwyler / Adam Briggs  
Godfrey & Kahn, S.C.

DATE: September 30, 2007

SUBJECT: Political Law Update: Federal Lobbying and Ethics Reform – The New Law

As we have discussed with many of you during the last two weeks, President Bush signed the “Honest Leadership and Open Government Act” (“HLOGA”) on September 14, 2007. Approved by Congress in early August, HLOGA is the most ambitious federal lobbying reform bill enacted since the Lobbying Disclosure Act (“LDA”) of 1995. While opinions on the new law vary significantly, HLOGA is unquestionably far-reaching, imposing a wide array of new requirements on lobbyists and elected officials alike. To ensure compliance with the comprehensive new law, all federal lobbyists and organizations that employ lobbyists will need to review their current practices immediately and implement strict new internal compliance mechanisms.

Outlined below are the key HLOGA provisions that affect federal lobbyists and the organizations that employ them. While much longer than our typical updates, this memorandum should provide additional guidance in working with the new law. Keep in mind, this information is still intended as a general overview of HLOGA and is not intended to address specific factual situations or individual problems or issues. Instead, you are encouraged to seek professional legal advice before making any decision based on the topics outlined in this memorandum.

### **LDA REPORTING REQUIREMENTS**

**New Reporting Periods and Filing Requirements** – Current LDA reports filed twice a year now must be filed on a quarterly basis. (Section 201) Each quarterly report must be filed with the House and Senate no later than 20 days – down from 45 days under the original LDA – after the end of a calendar quarter. Accordingly, by January 20<sup>th</sup>, April 20<sup>th</sup>, July 20<sup>th</sup>, and October 20<sup>th</sup> of each year, organizations and lobbying firms must report income from or expenses incurred on all lobbying activities during the previous full calendar quarter of the year. (Section 201)

**New Registration Thresholds** – HLOGA reduces the minimum threshold of income or expenses that trigger registration requirements. Under the new law, registration may be required if a contract lobbyist receives more than \$2,500 in income from a client or if an organization incurs more than \$10,000 in expenses related to lobbying activities in a quarterly period. (Section 201) Under the LDA, there are two general categories of lobbyists: in-house and contract. An organization will trigger regulation under the LDA by meeting certain statutory thresholds when either employing an individual as an “in-house” lobbyist or hiring an individual as a “contract”

lobbyist. Individual contract lobbyists are employed by a “lobbying firm” such as a lobbying, public relations or law firm.

Generally, under the LDA as amended by HLOGA, any organization and an individual will need to register within 45 days if during a three-month reporting period:

- an individual makes more than one lobbying contact;
- an individual spends more than 20 percent of his or her time that quarter working for an organization on lobbying activities; and,
- the organization either has expenses of more than \$10,000 on lobbying activities within the quarter or an outside lobbyist or lobbying firm is paid more than \$2,500 for lobbying activities during the quarter.

**“Lookback” Periods** – HLOGA expands from two to twenty years the LDA’s “lookback” disclosure rule requiring a lobbyist to disclose his or her prior federal executive or legislative branch employment. (Section 208)

**Electronic Filing and Internet Searching** – All lobbyist reports now are to be filed electronically in a publicly searchable Internet database. (Sections 205, 209)

**No New Agencies** – The Secretary of the Senate and the Clerk of the House will still be responsible for all filings and disclosure obligations.

**Audits** – An annual LDA compliance audit will be conducted by the Government Accountability Office (“GAO”). This random audit process will extend to all types of lobbying organizations. The new law grants the GAO access to all relevant documents and to lobbyists and employees of lobbying organizations that are subject to an audit. The first audit under this provision will apply to registrations and reports filed for the first quarterly reporting period of 2008. (Section 213)

**Effective Date** – All lobbying registration and reporting requirements are effective January 1, 2008, with the first quarterly report due on April 20. Current reporting schedules and requirements continue until the end of this year. (Section 201)

## **CAMPAIGN FINANCE ACTIVITIES**

**Individual Reports on Lobbyist Involvement in Campaigns** – Under HLOGA, all lobbyists must disclose information about their own campaign activities. Twice per year, lobbyists must disclose:

- all expenditures associated with any events (including retreats or conferences) intended to honor or recognize – or that are named after – a covered legislative or executive branch official;
- all expenditures associated with any entity named for, established, or maintained by such a covered legislative or executive branch official; and,
- the identities of any federal candidate, officeholder, leadership PAC, or political committee that has received \$200 or more in contributions from the lobbyist (or a political committee controlled by a lobbyist), including all dates and amounts.

These reports will be filed with the Secretary of the Senate and the Clerk of the House beginning on July 31, 2008. (Section 203)

**Bundling** - HLOGA requires federal candidates committees, leadership PACs and political party committees to disclose the identity of any lobbyist or political committee controlled by a lobbyist known by the candidate or committee to be a contribution “bundler” who has organized bundled contributions aggregating over \$15,000 during a Federal Election Commission (“FEC”) reporting period. “Bundled” is broadly defined to cover any contributions – physically forwarded or not – in which a lobbyist receives credit for the contribution. The FEC has announced that it will begin rulemaking to implement these new requirements. The new FEC regulations are expected to be issued by early 2008, and these regulations will take effect 90 days after issuance. (Section 204)

### **GIFTS**

Earlier this year, the House of Representatives enacted strict rules prohibiting House members from accepting gifts of any kind from lobbyists. (H.Res. 6, 109<sup>th</sup> Congress (2007)) The Senate is subject to a similar restriction under Senate Rule 35, which was incorporated into HLOGA. (Section 541)

HLOGA’s gift provision expands the existing ban on acceptance of gifts or travel assistance by federal legislators from lobbyists by also prohibiting lobbyists and organizations that employ lobbyists from *providing* any such benefits. (Section 206) These prohibitions are already in effect and place compliance responsibility on individual lobbyists and the organizations that employ them. (Section 211) Individuals who sign and submit lobbying reports will need to certify on the semi-annual report that none of the lobbyists has given a prohibited gift. (Section 203)

In sum, individual lobbyists and the organizations that employ them should not provide a gift of any value to a member of Congress or other covered official unless the gift falls under one of the existing exceptions to the gift rules. That is, the existing exceptions to the gift rules remain unchanged and still apply – even when the gift is provided by a lobbyist.

### **POLITICAL CONVENTIONS**

Under both House and Senate rule changes, members of Congress will be prohibited from attending any event honoring the member held during a national political party convention if the event is directly paid for by a lobbyist or lobbying organization. (Sections 305, 542)

### **COALITION LOBBYING**

Lobbying “coalitions” are also subject to new restrictions under HLOGA. Lobbying organizations must now disclose the identity of any entity that funds more than \$5,000 in a quarter toward the lobbying activities of the registering lobbyist when the entity also “actively participates” in those lobbying activities. The previous version of this disclosure rule had a higher cutoff of \$10,000, and required that the non-client entity “in whole or in part plan, supervise or control” the lobbying activities in question before being subject to reporting. (Section 207)

Congress stated that this new rule is intended to end “a loophole that has allowed so-called ‘stealth coalitions,’ often with innocuous-sounding names, to operate without identifying the interests

engaged in the lobbying activities.” (126 Cong. Rec. S10709) Congress has also stressed that entities that are “mere donors” will *not* be considered “actively participating” under this rule. (126 Cong. Rec. S10709)

## **PENALTIES**

Lobbyists who “knowingly and corruptly” fail to comply with the LDA are now subject to up to five years of imprisonment while civil penalties have been increased to up to \$200,000. (Section 211) HLOGA’s final section enhances penalties for violations of the Ethics in Government Act – including nondisclosure violations – from \$10,000 to \$50,000. (Section 702)

## **REVOLVING DOOR**

- **Senate and Senior Executive Branch Officials** - HLOGA extends the one-year lobbying prohibition previously imposed upon Senators and very senior Executive Branch employees to two years, and also prohibits top Senate staffers and officers from on making lobbying contacts for one year. (Sections 101, 531).
- **House** - The House of Representative retains its existing one-year lobbying ban on members, officers, and staff. (Section 101)
- **Tribes** - A section of the law also includes new rules on current and former government officials representing or working for tribal organizations. Under HLOGA, an officer or employee of the federal government may act as an attorney for, or appear on behalf of, a tribal organization in a proceeding before a federal government body so long as that officer or employee notifies the presiding government body of any personal involvement she had with the matter at issue while working for the federal government. HLOGA also permits a former officer or employee of the federal government carrying out official duties as an employee or official of a tribal organization to do the same, so long as that individual similarly notifies the presiding government body of any past personal involvement in the matter at issue before the government body. (Section 104)

## **“K STREET PROJECT”**

Members of Congress and staff are prohibited from using their office to influence the employment decisions of a private entity. While legislators are still free to act as references and write letters of recommendation, they may not carry out or withhold any official act – or threaten or offer to do so – with the intention of influencing such employment decisions. (Sections 102, 534)

## **TRAVEL RULES**

HLOGA amends the Federal Election Campaign Act so that candidates will no longer be permitted to pay the first-class or coach airfare rate when traveling on a private plane. Instead, HLOGA requires that Senate and Presidential candidates and their committees pay a *pro rata* portion of the expenses associated with privately chartered air travel. (Sections 544, 601) House candidates and their committees are effectively prohibited from flying private planes (unless it is owned or leased by a member or member’s immediate family). These provisions are already in effect.

The House prohibited lobbyist-funded travel for House members earlier this year. The new law and these earlier House rules require pre-approval and detailed disclosure for all trips to ensure that restrictions on lobbyist involvement are enforced. House members and staff may be reimbursed by a private entity other than lobbyists and organizations that retain lobbyists for necessary transportation, lodging, and related expenses if the trip is conducted in connection with the member's official duties. Reimbursements are permitted from colleges or universities and for attendance in a one-day event. (H.Res. 6, 109<sup>th</sup> Congress (2007))

The Senate's restrictions are similar, generally prohibiting lobbyist-funded travel and permitting pre-approval for permitted privately-funded trips in connection with a Senator's official duties. Tax-exempt section 501(c)(3) organizations – even if they lobby – are also exempt from this requirement. (Section 544) These provisions will take effect in 60 days or upon the issuance of new Senate Ethics Committee Guidelines.

## **CONCLUSION**

Like most legislation, HLOGA leaves several blanks that will need to be completed in by the House and Senate through new guidance documents, rules, forms and procedures as well as the eventual advisory opinions and enforcement actions. Moreover, the FEC will initiate a rulemaking on the new campaign finance requirements for committees.

In the interim, all organizations should begin reviewing their internal practices and procedures involving their lobbying activities. In addition to compliance with the new HLOGA provisions, the new law is also an opportunity for a general review of the existing LDA requirements.

This is serious legislation with significantly expanded provisions and penalties. It warrants the prompt attention of anyone in your organization who is involved – in any way – in the federal legislative process.

As always, please let us know if you have further questions or need any additional information.