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

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R. Eric Petersen
Analyst in American National Government
Government and Finance Division

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

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.

In the House, these measures include H.R. 4975, the Lobbying Accountability and Transparency Act of 2006; H.R. 4948, the Ethics Reform Act of 2006; H.R. 4920, the Accountability and Transparency in Ethics Act; H.R. 4799, to establish a legislative branch office of public integrity; H.R. 4787, the Truth-in-Lobbying Disclosure Act; H.R. 4738, the Commission to Strengthen Confidence in Congress Act of 2006; H.R. 4696, the Restoring Trust in Government Act; H.R. 4682, the Honest Leadership and Open Government Act of 2006; H.R. 4671 the Keep Lobbying Clean Act; H.R. 4670, the Clarity in Lobbying Act; H.R. 4667, the Lobbying Transparency and Accountability Act of 2006; H.R. 4658, to prohibit former Members of Congress from engaging in certain lobbying activities; H.R. 4575, the Lobbying Transparency and Accountability Act of 2005; H.R. 3623, to increase to five years the period during which former Members of Congress may not engage in certain lobbying activities; the Lobby Gift Ban Act of 2005; H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act of 2005, introduced by Representative Martin Meehan; H.R. 1302 and H.R. 1304, both entitled the Stealth Lobbyist Disclosure Act of 2005; and H.Res. 81, directing the Clerk of the House to post on the Internet all lobbying registrations and reports filed with the Clerk under Lobbying and Disclosure Act. On February 1, 2006, the House adopted H.Res. 648 amending House Rules to deny admittance to the House floor and certain House facilities to former Members who lobby.

Measures related to lobbying issues introduced in the Senate include S. 2349, the Legislative Transparency and Accountability Act of 2006; S. 2265, the Pork Barrel Reduction Act; S. 2261, the Transparency and Integrity in Earmarks Act of 2006; S. 2259, the Congressional Ethics Enforcement Commission Act of 2006; S. 2233, the Lobbyist Reform Act of 2006; S. 2186, the Commission to Strengthen Confidence in Congress Act of 2006; S. 2180, the Honest Leadership and Open Government Act of 2006; S. 2128, the Lobbying Transparency and Accountability Act of 2005; S. 1972, the Terrorist Lobby Disclosure Act of 2005; and S. 1398, the Lobbying and Ethics Reform Act of 2005.

This report, which will be updated as events warrant, provides context, comparison, discussion, and analysis of the issues addressed in the legislative proposals that have been introduced in the 109th Congress to address lobbying disclosure and related laws and congressional rules. For further information, see the CRS Current Legislative Issues page on Lobbying, Ethics and Related Procedural Reform at [http://beta.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=2405].

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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.
- House Rule IV, The Hall of the House. Sections of the rule govern who may have access to the floor of the House.
- Senate Rule XXXV, Gifts. The rule governs acceptance of gifts by Senators, their staffs and Senate employees.
- Senate Rule XXIII, Privileges of the Floor. Sections of the rule govern who may have access to the floor of the Senate.
- 18 U.S.C. 207, which specifies limitations on lobbying activities by former executive branch officials, Members of Congress, and congressional staff.

Concerns related to the efficacy of current lobbying disclosure practices have also been linked to other activities carried out by lobbyists. These include campaign

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).

finance practices governed by the Federal Election Campaign Act of 1971 (FECA),³ as amended,⁴ and the inclusion of earmarks advocated by lobbyists in legislation.⁵

This report provides context, comparison, and discussion of the proposals contained in the various legislative proposals, *as introduced* in the 109th Congress. Committee and floor consideration of three measures, H.Res. 648, S. 2349, and S. 2128 is discussed in CRS Report RL33293, *Lobbying and Related Reform Proposals: Consideration of Selected Measures, 109th Congress*, by R. Eric Petersen. For further background and analysis of the current proposals, please consult CRS Report RL33065, *Lobbying Disclosure Reform: Background and Legislative Proposals, 109th Congress*, by R. Eric Petersen; CRS Report RL33237, *Congressional Gifts and Travel, Legislative Proposals for the 109th Congress*, by Mildred Amer; CRS Report RL33295, *Comparison of Selected Senate Earmark Reform Proposals*, by Sandy Streeter; and CRS Report RL32954, *527 Political Organizations: Legislation in the 109th Congress*, by Joseph E. Cantor and Erika Lunder.

House Proposals

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. In the House, these measures include the following:

- H.R. 4975 the Lobbying Accountability and Transparency Act of 2006, introduced by Representative David Dreier;⁶
- H.R. 4948, the Ethics Reform Act of 2006, introduced by Representative Earl Blumenauer;
- H.R. 4920, the Accountability and Transparency in Ethics Act, introduced by Representative Michael Castle;

³ 2 U.S.C. 431.

⁴ See CRS Report RL32954, *527 Political Organizations: Legislation in the 109th Congress*, by Joseph E. Cantor and Erika Lunder; and CRS Issue Brief IB87020, *Campaign Finance*, by Joseph E. Cantor.

⁵ See CRS Report RL33295, *Comparison of Selected Senate Earmark Reform Proposals*, by Sandy Streeter; and CRS Report 98-518, *Earmarks and Limitations in Appropriations Bills*, by Sandy Streeter.

⁶ Representative Dreier, who is chairman of the Committee on Rules, was designated by the Speaker to develop legislation related to lobbying and ethics provisions on behalf of the House majority. “House Speaker Hastert and Rep. Dreier Hold News Conference on Lobbying Reform,” transcript, CQ.com, Jan. 17, 2006, at [<http://www.cq.com/display.do?dockey=/cqonline/prod/data/docs/html/transcripts/newsmaker/109/newsmakertranscripts109-000002036139.html@committees&metapub=CQ-TRANSCRIPTS&searchIndex=1&seqNum=15>], 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.

- H.R. 4799, to establish a legislative branch office of public integrity, introduced by Representative Christopher Shays;
- H.R. 4787, the Truth-in-Lobbying Disclosure Act, introduced by Representative John Doolittle;
- H.R. 4738, the Commission to Strengthen Confidence in Congress Act of 2006, introduced by Representative Mark Udall;
- H.R. 4696, the Restoring Trust in Government Act, introduced by Representative Mike Rogers of Michigan;
- H.R. 4682, the Honest Leadership and Open Government Act of 2006, introduced by Representative Nancy Pelosi;
- H.R. 4671, the Keep Lobbying Clean Act, introduced by Representative Scott Garrett;
- H.R. 4670, the Clarity in Lobbying Act, introduced by Representative Scott Garrett;
- H.R. 4667, the Lobbying Transparency and Accountability Act of 2006, introduced by Representative Michael Fitzpatrick;
- H.R. 4658, to prohibit former Members of Congress from engaging in certain lobbying activities, introduced by Representative Mark Kennedy;
- H.R. 4575, the Lobbying Transparency and Accountability Act of 2005, introduced by Representative Christopher Shays;
- H.R. 3623, to increase to five years the period during which former Members of Congress may not engage in certain lobbying activities, introduced by Representative Robert Andrews;
- H.R. 3177, the Lobby Gift Ban Act of 2005, introduced by Representative George Miller;
- H.R. 2412, the Special Interest Lobbying and Ethics Accountability Act of 2005, introduced by Representative Martin Meehan;
- H.R. 1302 and H.R. 1304, both entitled the Stealth Lobbyist Disclosure Act of 2005, introduced by Representative Lloyd Doggett; and
- H.Res. 81, directing the Clerk of the House to post on the Internet all lobbying registrations and reports filed with the Clerk under LDA, introduced by Representative Mark Green.

Proposals adopted by the House. On February 1, 2006, the House adopted H.Res. 648. The measure amended House Rules to deny admittance to the House floor and certain House facilities to former Members who lobby.⁷

Senate Proposals

Measures related to lobbying issues introduced in the Senate include

- S. 2349, the Legislative Transparency and Accountability Act of 2006, introduced by Senator Trent Lott;
- S. 2265, the Pork Barrel Reduction Act, introduced by Senator John McCain;
- S. 2261, the Transparency and Integrity in Earmarks Act of 2006, introduced by Senator Barack Obama;
- S. 2259, the Congressional Ethics Enforcement Commission Act of 2006, introduced by Senator Barack Obama;
- S. 2233, the Lobbyist Reform Act of 2006, introduced by Senator Dianne Feinstein;

⁷ In addition to H.Res. 648, five other measures with provisions regarding access to House facilities by former Representatives or other former officials who have floor privileges who become lobbyists have been introduced in the 109th Congress. H.Res. 646, introduced on Jan. 31, 2005, by Representative Walter B. Jones, would deny admission to the Hall of the House to former Members who are lobbyists. H.Res. 663, introduced on Jan. 31, 2005, by Representative Vic Snyder, would also deny floor privileges to former Representatives who lobby. Additionally, the measure would deny former Members who are registered lobbyists services or facilities provided in House office buildings which are operated for the exclusive use of Members and former Members. H.Res. 659, introduced by Representative David Obey on Jan. 31, 2006, would require former officials with floor privileges to sign a statement that they have no direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; that they are not employed as a lobbyist or represent any party or organization for the purpose of influencing legislation in the House; and that they will not lobby for the passage, amendment, or defeat of any legislative measure pending before the House, reported by a committee, or under consideration in any of its committees or subcommittees. H.R. 4682, the Honest Leadership and Open Government Act of 2006, introduced Feb. 1, 2006, by Representative Nancy Pelosi, and described in greater detail below, would amend House Rule IV to deny floor privileges to former Representatives, House officers, parliamentarians, or former minority employees nominated as an elected officer of the House if they: are a registered lobbyist or agent of a foreign principal; have any direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; or are employed or represent any entity for the purpose of influencing the passage, defeat, or amendment of any legislative proposal. The measure would also amended House Rule IV to deny access to Member exercise facilities to any former Member who is a registered lobbyist. H.R. 4696, introduced by Representative Mike Rogers of Michigan on Feb. 1, 2005, and described below, would also suspend floor privileges to former Members who are registered as lobbyists.

- S. 2186, the Commission to Strengthen Confidence in Congress Act of 2006, introduced by Senator Norm Coleman;
- S. 2180, the Honest Leadership and Open Government Act of 2006, introduced by Senator Harry Reid;
- S. 2128, the Lobbying Transparency and Accountability Act of 2005, introduced by Senator John McCain;
- S. 1972, the Terrorist Lobby Disclosure Act of 2005, introduced by Senator Rick Santorum; and
- S. 1398, the Lobbying and Ethics Reform Act of 2005, introduced by Senator Russell Feingold.

Proposals considered in the Senate. Floor consideration of S. 2349 was begun in the Senate by unanimous consent on March 6, 2006. During debate, Senator Trent Lott offered S.Amdt. 2907. The amendment was a substitute for S. 2349 consisting of the text of S. 2349⁸, as reported by the Committee on Rules and Administration, as Title I, and S. 2128, as reported by the committee on Homeland Security and Governmental Affairs, as Title II. S.Amdt. 2907 was adopted by unanimous consent and was considered a part of the original text of the bill for any further amendments. S. 2349, as amended, was subsequently further amended before a cloture motion was presented on March 8 by Senator Bill Frist. Cloture on the bill was not invoked by a vote of 51 - 47 on March 9. Further consideration of S. 2349, as amended, and two amendments that were pending when cloture was voted on, remain pending in the Senate. For detailed discussion and analysis of the consideration of S. 2349, see CRS Report RL33293, *Lobbying and Related Reform Proposals: Consideration of Selected Measures, 109th Congress*, by R. Eric Petersen.

⁸ In addition to the lobbying and ethics provisions, S. 2349, as introduced, would allow any Senator to make a point of order against consideration of a conference report that includes any matter not committed to the conferees by either House. The point of order could be made and voted on separately for each item alleged to be in violation. The point of order could be waived or suspended by an affirmative vote of three fifths of the Members, duly chosen and sworn. The Senate could appeal a ruling of the Chair on a point of order raised under this measure by a three fifths vote.

The measure, as introduced, would also amend Senate rules, creating Rule XLIV regarding earmarks. An earmark would be defined as a provision that specifies the identity of a non-federal entity to receive assistance in the form of budget authority; contract authority; loan authority; and other expenditures; or other revenue items, and the amount of the assistance. Before consideration of any bill, amendment or conference report could be in order, a list identifying all earmarks in the measure, along with identification of the Senator(s) who proposed them, and an explanation of the essential governmental purpose for the earmark must be made available, along with any joint statement of managers associated with the measure, to all Senators and made available on the Internet to the general public for at least 24 hours before its consideration. Similarly, S. 2349 as introduced would amend Senate rules to require that conference reports be available on the Internet 24 hours before consideration.

It has been reported that the Senate could take up consideration of S. 2349, as amended, during the week of March 27.⁹

Issues Background

In the decade since enactment of LDA, concerns have been raised about the capacity of Congress to oversee the activities of professional lobbyists through existing institutional arrangements. The oversight of lobbying, and the transparency intended by congressional rules, LDA, and other related laws may be impaired by the actions of lobbyists and others who seek to participate in public policy activities through the formation of coalitions and associations whose members may not be identifiable, or the use of grassroots campaigns that attempt to mobilize citizens to advance the message of a lobbyist's client. Some lobbying activities have also been linked to campaign finance practices, congressional procedures regarding the acceptance of gifts from lobbyists, and the inclusion of earmarks advocated by lobbyists in appropriations legislation.

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, entities that provide services, such as mass mailing or phone banks, and affiliated 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, and in some cases campaign finance 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;

⁹ Kenneth P. Doyle, "As House Bill Introduced, Frist Says Senate Will Return to Reform Debate," *BNA Money and Politics Report*, Mar. 20, 2006, at [<http://pubs.bna.com/ip/bna/mpr.nsf/eh/A0B2N2F8Z2>]; and Tory Newmyer, "Ethics Bill Set for Brief Return Next Monday," *Roll Call*, Mar. 20, 2006, at [http://www.rollcall.com/issues/51_99/news/12614-1.html].

- increased disclosure requirements for lobbyists, Members of Congress, and congressional staff, requiring more frequent reports and more detailed information; and
- increased oversight of activities carried out by lobbyists.

Issues Addressed Under Current Proposals

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

Definition of Client and Specification of Client Activities

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. 4682 and 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. Both measures 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 \$500 per any quarterly period under H.R. 4682, or \$1,000 per any semiannual period under H.R. 1302, to the lobbying activities of the coalition.

H.R. 4667, 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, as introduced, 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.

S. 2180 would require the disclosure of any entity, other than the client who participates in the planning, supervision, or control of lobbying activities. The measure would not require disclosure if an entity's affiliation with the client is publicly available knowledge, or if any funding for the client is publicly disclosed by the entity. The measure would not require the disclosure of any information about individuals who are members of, or donors to, an entity treated as a client by LDA.

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.¹⁰ 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.¹¹

Broader and More Frequent Disclosure

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,¹² and to make

¹⁰ 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.

¹¹ 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.

¹² 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
(continued...)

semiannual reports of their activities until that registration is terminated. H.R. 4575, S. 2180 and S. 2128, as introduced, 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. 4975, H.R. 4948, H.R. 4920, H.R. 4682, H.R. 4667, H.R. 2412, H.R. 4575, S. 2180, S. 2128, as introduced, and S. 1398 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 activities by an organization whose employees engage in lobbying activities on its own behalf exceeds \$20,000, then LDA registration and disclosure are required.

H.R. 4975, H.R. 4667, H.R. 4575, and S. 2128, as introduced, 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 rounded to the nearest \$20,000.

H.R. 4975, H.R. 4667, H.R. 4575, H.R. 2412, S. 2128, as introduced, and S. 1398 would amend LDA to reduce estimated expense increments to less than \$5,000 and \$10,000, respectively. H.R. 4682 and S. 2180 would require estimated expenditures rounded to the nearest \$1,000.

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

Under H.R. 4682, H.R. 4667, H.R. 4575, and S. 2128, as introduced, 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 measures 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;

¹² (...continued)

competitive service under 5 U.S.C. 7511(b)(2)(b).

- 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. 2180 would require the disclosure of lobbying activities to stimulate grassroots lobbying, and defines “grassroots lobbying” as “the voluntary efforts of members of the general public to communicate their own views on an issue to federal officials or to encourage other members of the general public to do the same.”

The measure also proposes

- disclosure of paid efforts to stimulate grassroots lobbying; and
- identification of a “grassroots lobbying firm” as an entity that is retained by a client in paid efforts to stimulate grassroots lobbying, and is paid or spends \$50,000 or more in grassroots lobbying activities in any quarterly period.

H.R. 4682, H.R. 4575, S. 2128, as introduced, and S. 2180 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, H.R. 4682, H.R. 4575, and S. 2128, as introduced, 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.

Disclosure by Recipients of Federal Funds. Recipients of federal funds are not required to make any disclosure related to efforts to acquire those funds under LDA.

S. 2265 and S. 2261 would amend LDA to require recipients of federal funds to file a report identifying the name and amount paid to any lobbyist registered under LDA whom the recipient retained to lobby on behalf of the recipient to receive the federal funding.¹³

Contact with a Covered Official. LDA requires a statement of the houses of Congress and the federal agencies contacted by the lobbyist on behalf of a client.

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, 2006.¹⁴ 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.¹⁵

¹³ S. 2261 would also make to Senate procedures regarding the inclusion and consideration of appropriations earmarks. S. 2265 would also make changes to Senate procedures for considering appropriations legislation, and conference reports. Additionally the measure would prohibit the obligation of funds for appropriations earmarks that are included only in congressional reports, and would require the disclosure by Senators of any proposed earmarks or unauthorized appropriations. See CRS Report RL33295, *Comparison of Selected Senate Earmark Reform Proposals*, by Sandy Streeter.

¹⁴ 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>].

¹⁵ Senate Office of Public Records, “Frequently Asked Questions,” at [<https://opr.senate.gov/faq.html>].

H.R. 4975, H.R. 4948, H.R. 4682, H.R. 4799, H.R. 4667, H.R. 4575, H.R. 2412, S. 2180, S. 2128, as introduced, and S. 1398 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.R. 4975 would require the Clerk and the Secretary to create and maintain a searchable, sortable, and downloadable database containing LDA registration and disclosure information, and make it available through the Internet. H.R. 4920, would require the creation of such a database by the House committee on Standards of Official Conduct. H.R. 4948 and H.R. 4799 would require newly established offices charged with LDA administration to make LDA registrations and disclosure reports available 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. S. 2180 would also require the Secretary and the Clerk to provide public access to disclosure reports through the Internet, and to make those reports publicly available within 48 hours of filing. Currently, the Senate makes LDA 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.¹⁶ 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.¹⁷ 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.¹⁸

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

¹⁶ 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.

¹⁷ West and Loomis, *The Sound of Money*, pp. 45-64.

¹⁸ Nicholas Confessore, “Meet the Press,” *Washington Monthly*, Dec. 2003, available at [<http://www.washingtonmonthly.com/features/2003/0312.confessore.html>].

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 1971¹⁹ (FECA) require the linking of information collected under either law.

H.R. 4682, H.R. 4667, H.R. 4575, H.R. 2412, S. 2128, as introduced, and S. 1398 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.

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 each coalition member is expected to contribute to influencing legislation. H.R. 1304

¹⁹ 2 U.S.C. 431.

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.

Revolving Door Provisions

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 branch²⁰ 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 congressional employment. Similar prohibitions apply to officials and senior level employees of the executive branch.²¹

House Rule IV and Senate Rule XXIII provide floor privileges to former Members of the respective chambers.

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

Past Executive or Legislative Branch Employment, Current Employment Negotiations. H.R. 4975 would require registered lobbyists to disclose all of their past executive branch and congressional employment for the seven years preceding registration. A Member of the House who is negotiating for prospective employment in which he or she has a conflict of interest, or for which

²⁰ “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 \$165,200. The 2006 post-employment threshold for employees who leave their congressional jobs is \$123,900. See Joel Hefley, Chairman, and Alan B. Mollohan, Ranking Minority Member, “The 2006 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 2006,” memorandum issued by the House Committee on Standards of Official Conduct, Feb. 8, 2006, available at [http://www.house.gov/ethics/m_salary06.htm].

²¹ 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.

there is the appearance of a conflict of interest, would be required to make a statement within five days after commencing such negotiations to the Committee on Standards of Official Conduct.

H.R. 4682, H.R. 4667, H.R. 4575, H.R. 2412, S. 2180, S. 2128, as introduced, and S. 1398 would require registered lobbyists to disclose all of their past executive branch and congressional employment.

H.R. 4682, H.R. 4667, H.R. 4575, H.R. 2412, S. 2349, as introduced, S. 2180, S. 2128, as introduced, and S. 1398 would 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.²² The disclosure would be required to file a disclosure within three days of commencing such negotiation or arrangement.

Spouse and Other Family Members of Senators. S. 2349, as introduced, would require a Senator whose spouse or immediate family member²³ is a registered lobbyist or employee of a registrant under LDA for the purpose of influencing legislation to prohibit all staff employed by the Senator, including staff in personal, committee, and leadership offices, from having any official contact with the family member.

Post Employment Restrictions. H.R. 4975 would require notification by the House to former Members, officers, and senior staff of the beginning and ending date of post employment restrictions mandated under 18 U.S.C. 207.

H.R. 4682, H.R. 4667, H.R. 4575, H.R. 2412, S. 2180, S. 2233, S. 2128, as introduced, and S. 1398 would increase to two years the cooling off period during which former senior executive personnel, former Members of Congress, and certain legislative branch personnel, would be prevented from lobbying the entity in which they previously served. H.R. 4920 would prohibit all former Members, officers, and employees of Congress from lobbying any current Member, officer, or employee for a period of one year after they leave office or terminate employment. H.R. 4696 and S. 2233 and would extend current statutory provisions that prevent Members of Congress from lobbying any Member or committee for one year to all senior legislative branch staff. H.R. 4696 would also establish a four-year ban on former federal employees lobbying Congress on behalf of foreign governments after they terminate their government employment. H.R. 3623 would prohibit Members of

²² The provisions of S. 2180 regarding the disclosure of employment negotiations would also apply to Senate staff who earn more than 75% of the salary paid to Senators. The basic rate of pay for Members is \$165, 200. S. 2180 also provides for the review of employment negotiations by members of the executive branch by the Office of Government Ethics.

²³ Under the measure, immediate family member would mean the son, daughter, stepson, stepdaughter, son-in-law, daughter-in-law, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, or stepsister of the Senator.

Congress and chamber officers²⁴ from engaging in currently proscribed lobbying activities for a period five years after they leave office.

S. 2349, as introduced, would amend Senate rules to prohibit for one year any former Senate senior-level employee²⁵ who served on the staff of a Senator or of a Senate committee, and who subsequently becomes a registered lobbyist or lobbyist employee for the purpose of influencing legislation, from lobbying any Senator, officer, or employee of the Senate.

Floor Privileges for Former Members Who Lobby. S. 2349, as introduced, would amend Senate rules to revoke floor privileges from any former Senator, Senator-elect, Secretary of the Senate, Sergeant at Arms of the Senate, or Speaker of the House who is a registered lobbyist or agent of a foreign principal, or is an employee or representative of any party or organization for the purpose of influencing the passage, defeat, or amendment of any legislative proposal.

S. 1398 would eliminate floor privileges in both chambers for former Members who become lobbyists. H.R. 4682 and H.R. 4696 would rescind House floor privileges from former Representatives who become lobbyists. S. 2180 would rescind Senate floor privileges from former Senators who become lobbyists.

House Action. On January 31, 2006, Representative David Dreier, chairman of the Committee on Rules, introduced H.Res. 648 to amend House Rule IV to deny floor privileges to former Representatives, House officers, parliamentarians, or former minority employees nominated as an elected officer of the House if they are a registered lobbyist or agent of a foreign principal; have any direct personal or pecuniary interest in any legislative measure pending before the House or reported by a committee; or are employed or represent any entity for the purpose of influencing, the passage, defeat, or amendment of any legislative proposal. The measure also denies access to Member exercise facilities to any former Member, officers, or their spouses, who is a registered lobbyist. On February 1, 2006, the House adopted the measure under suspension of the rules, by a vote of 379 - 50, 1 present.

Discussion. House and Senate rules, LDA disclosure requirements, and the “cooling off” prohibitions mandated by 18 U.S.C. 207 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 shortly thereafter to the same circles as lobbyists or other representatives seeking favorable action on behalf of private interests.

²⁴ 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. Officers are elected by the respective chamber.

²⁵ The proposal would affect Senate staff who worked for a Senator or Senate committee and whose rate of pay was equal to or greater than 75 percent of the rate of pay of a Senator for more than 60 days in a calendar year. Senators are paid \$165,200. Senate staff who earned more than \$2,382.69 or more per week for more than nine weeks, or \$123,900 per year, would be subject to the post employment restriction proposal.

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.²⁶ 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 as Congress) of access to and the availability of the particular expertise of former legislators and staff.

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. H.R. 4975, H.R. 4682, H.R. 4667, H.R. 4575, S. 2180, and S. 2128, as introduced, would require each LDA registrant, their employees, and any affiliated political committee, as defined in FECA,²⁷ 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.²⁸ H.R. 4975 would suspended privately funded travel and would prohibit registered lobbyists from traveling in corporate aircraft on which a Member of the House travels. The House Committee on Standards of Official Conduct would be required to develop guidelines regarding the use of such travel in the House by December 15, 2006.

S. 2349, as introduced, would

- require a Senator or Senate staff member to obtain written certification before undertaking any travel that the trip was not financed in whole, or in part, by a registered lobbyist or foreign agent, and that the provider did not accept funds from a registered lobbyist or foreign agent specifically earmarked for the purpose of

²⁶ Website of the American League of Lobbyists, “Resources,” at [<http://www.alldc.org/resources.htm>], visited Jan. 13, 2006.

²⁷ 2 U.S.C. 431(4). FECA defines political committee. FECA, LDA, H.R. S. 2128, as introduced, and H.R. 4575 do not specify or define “affiliated.”

²⁸ 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.

financing the travel expenses. A Senator would be required to provide the Select Committee on Ethics a written, detailed itinerary of the trip; and a determination that the trip is primarily educational; consistent with the official duties of the Member, officer, or employee; does not create an appearance of use of public office for private gain; and has a minimal or no recreational component;

- require written approval of privately funded travel from the Select Committee on Ethics. Within 30 days of completing the travel, a Senator, officer, or employee would be required to file with the Select Committee on Ethics and the Secretary of the Senate a description of meetings and events attended during such travel and the names of any registered lobbyist who accompanied them, subject to limited exception on national security grounds. The measure would require that trip information be posted on the Senator's official website not later than 30 days after the completion of the travel; and
- amend Senate rules to require the disclosure of noncommercial air travel taken in connection with the duties of the Member, officer, or employee, and file a report with the Secretary of the Senate, including the date, destination, and owner or lessee of the aircraft, the purpose of the trip, and the persons on the trip, except for any person flying the aircraft.

H.R. 4682, H.R. 4667, H.R. 2412, S. 1398, and S. 2180 would require that congressional travel be certified as not having been planned, organized, arranged, or financed by a registered lobbyist or foreign agent. The measures 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.

H.R. 4575 and S. 2128, as introduced 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;
- 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.

H.R. 4682, H.R. 4667, H.R. 4575, and S. 2128, as introduced, would amend chamber rules in which the measures originated to require Members and congressional staff to disclose private travel, including the date, destination, passenger manifest, and purpose of the trip, and would require reimbursement of the full cost of such air travel. The measures would also require the ethics committees of the respective chambers to establish guidelines regarding reasonable travel expenses.

H.R. 4920 would amend House rules to require advanced authorization by the Standards Committee of any privately funded travel to be undertaken by a Member of the House.

S. 2180 would require Senators and Senate officers and employees to disclose noncommercial air travel taken in connection with their official duties. S.2180 would require Senators and Senate officers and employees to disclose noncommercial air travel taken in connection with their official duties.

S. 2233 would prohibit the acceptance by Senators and Senate staff of privately funded travel by lobbyists or entities that are affiliated with any group that lobbies.

Honors. H.R. 4682, H.R. 4667, H.R. 4575, and S. 2128, as introduced, 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.²⁹ H.R. 4975 would require lobbyists to disclose any gifts that count toward the annual gift limit established by House rules. S. 2349, as introduced, would amend Senate rules to prohibit Senators from accepting gifts from lobbyists. Senators and Senate staff could accept a meal or other food from lobbyists subject to gift rule limits. Any food gift accepted would be subject to public disclosure through the Senator's website.

H.R. 4575 and S. 2128, as introduced, 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,³⁰ 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. H.R. 4975, H.R. 4575, H.R. 4667, and S. 2128, as introduced, 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.

H.R. 4682, H.R. 3177, S. 2180, and S. 1398 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. 2233 would prohibit the acceptance of gifts from lobbyists by Senators and Senate staff. S. 1398 would also impose a civil penalty of up to \$50,000 for noncompliance.

H.R. 4682 and S. 2180 would require LDA registrants to certify that they have not provided a gift, including travel to a Member or employee of Congress in violation of Senate Rule XXXV. H.R. 4920 would establish a civil fine of not more than \$50,000 for any registrant or lobbyist who attempts to offer a gift to a Member of the House in violation of House gift rules. H.R. 4671 would require LDA registrants to disclose any gifts given to a covered legislative branch official.

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

²⁹ See CRS Report RS22231, *The Acceptance of Gifts of Free Meals by Members of Congress*, by Jack Maskell.

³⁰ S. 2128, as introduced, 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.

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 effect 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.

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 \$50,000.³¹

H.R. 4795, H.R. 4682, H.R. 4667, H.R. 4575, H.R. 2412, S. 2180, S. 2128, as introduced, and S. 1398 would increase the maximum penalty to a \$100,000 civil penalty. H.R. 4682, H.R. 4696, and S. 2180 would establish criminal penalties. Under H.R. 4682 and S. 2180, knowing and willful failure to comply with registration requirements would be punishable by fines, a term of imprisonment up to five years, or both. Whoever knowingly willfully, and corruptly fails to comply with LDA disclosure requirements would be subject to fines, a term of imprisonment up to 10 years, or both. H.R. 4696 would amend LDA to impose a prison term of up to one year for failing to comply with disclosure requirements.

H.R. 4670 would prohibit anyone convicted of a felony under federal, state or local law from lobbying. Failure to abide by the prohibition would be subject to imprisonment for up to one year and a civil fine up to \$50,000 or the amount of compensation which the person received or offered for the prohibited conduct, whichever is greater.

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,³² it may not be possible to

³¹ 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.

³² Kenneth P. Doyle, “DOJ Refuses to Disclose Settlements With Those Who Violate (continued...)”

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,³³ as appropriate.

S. 1972 would amend LDA 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 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.

Lobbying and Campaigns

S. 2233 would prohibit registered lobbyists from serving on political committees authorized by FECA.

Other Employment Rights

LDA and chamber rules confer no employment rights.

H.R. 4667, H.R. 4575, and S. 2128, as introduced, would amend the Indian Self-Determination and Education Assistance Act³⁴ 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

³² (...continued)

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.

³³ 22 U.S.C. 611.

³⁴ 25 U.S.C. 450i.

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.

LDA Administration

LDA is administered the House by the Clerk of the House through the Legislative Resources Center, and in the Senate by the Secretary of the Senate, through the Senate Office of Public Records.

H.R. 4948 would create an independent ethics commission within the legislative branch and transfer authority to receive LDA registration and reports to it from the Clerk and the Secretary.

H.R. 4920 would transfer LDA administration in the House to the Committee on Standards of Official Conduct.

H.R. 4682 would establish an Office of Public Integrity within the House Office of Inspector General. The office would receive LDA registrations and disclosure reports, and conduct audits and investigations necessary to ensure compliance with LDA. A director of the office would be appointed by the Inspector general. The office would have the authority to refer violations of LDA to the United State Attorney for the District of Columbia for disciplinary action.

S. 2180 would establish a Senate Office of Public Integrity. The office would receive LDA registrations and disclosure reports, and conduct audits and investigations necessary to ensure compliance with LDA. A director of the office would be appointed by the President pro tempore, based on recommendations of the Senate majority and minority leaders. The office would have the authority to refer violations of LDA to the Senate Select committee on Ethics and the Department of Justice for disciplinary action.

H.R. 4799 would establish an office of public integrity within the legislative branch, overseen by a director appointed jointly by the Speaker and minority leader of the House and the majority and minority leaders of the Senate. The office would receive financial disclosure and other reports filed by Members, congressional officers, and their staff under the Ethics in Government Act of 1978,³⁵ and reports filed by registered lobbyists under LDA. The office would be authorized to investigate any alleged violation, of any rule or other standard of conduct, and present a case of probable ethics violations to the Committee on Standards of Official Conduct of the House of Representatives or the Senate Select Committee on Ethics, as appropriate. H.R. 4799 would authorize the office to provide information and guidance to Members, congressional officers, and their staff regarding any rules and other standards of conduct applicable in their official capacities. The office would also provide informal guidance to lobbying registrants of their responsibilities under LDA, have authority to refer potential violations of LDA to the Department of Justice, and audit LDA registrations and disclosure reports.

³⁵ Ethics in Government Act of 1978, 5 U.S.C. Appendix Sec. 401.

H.R. 4696 would create an independent commission on lobbying in the legislative branch composed of four members, with the Speaker and minority leader of the House, and the majority and minority leaders of the Senate each appointing one for a term of two years. The commission would develop a fee-based funding process under which LDA registrants would be required to pay reasonable fees to cover the estimated costs of operating the commission. Registrant would be required to file with the commission monthly reports in electronic form that cover lobbying activities that relate to Congress.

Oversight of Ethics and Lobbying

There are no explicit oversight requirements in LDA. The Committee on House Administration and the Senate Committee on Rules and Administration have jurisdiction over the Clerk of the House and the Secretary of the Senate, respectively, and may have some oversight authority of LDA provisions the Clerk and the Secretary must implement. Ethics in Congress are overseen by the House Committee on Standards of Official Conduct and the Senate Committee on Ethics.

H.R. 4975 would authorize the Inspector General of the House to audit LDA disclosure information and to refer potential violations of the act to the Department of Justice. The measure provides for ongoing reviews and annual reports by the inspector general on activities carried out by the Clerk of the House under LDA.

S. 2259 would create an independent office of public integrity in the legislative branch overseen by a congressional ethics enforcement commission. The office would investigate lobbying disclosures filed with the Senate and the House, conduct research concerning governmental ethics, and report annually to the Senate Select Committee on Ethics and the House Committee on Standards of Official Conduct on the commission's activities. The commission would conduct investigations of alleged violations of lobbying and chamber rules on the sworn complaint of any U.S. citizen. Investigations by the commission would be in lieu of any preliminary investigation by the ethics committees of either chamber.

H.R. 2412, H.R. 4667, S. 1398, S. 2128, as introduced, 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.

H.R. 4799 and S. 2186 would establish a bipartisan, 10-member commission appointed by the majority and minority leadership of each chamber. The commission would be charged to

- evaluate and report the effectiveness of current congressional ethics requirements, if penalties are enforced and sufficient, and make recommendations for new penalties;
- weigh the need for improved ethical conduct with the need for lawmakers to have access to expertise on public policy issues;
- determine and report minimum standards relating to official travel for Members of Congress and staff;
- evaluate the range of gifts given to Members of Congress and staff, determine and report the effects on public policy, and make recommendations for limits on gifts;
- evaluate and report the effectiveness and transparency of congressional disclosure laws and recommendations for improvements;
- assess and report the effectiveness of the ban on Member of Congress and staff from lobbying their former office for one year and make recommendations for altering the time frame;
- make recommendations to improve the process whereby Members of Congress can earmark priorities in appropriations Acts, while still preserving congressional power of the purse;
- evaluate the use of public and privately funded travel by Members of Congress and staff, violations of Congressional rules governing travel, and make recommendations on limiting travel; and
- investigate and report to Congress on its findings, conclusions, and recommendations for reform.

Further Resources

Lobbying

CRS Current Legislative Issues page on Lobbying, Ethics and Related Procedural Reform, at [http://beta.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=2405].

CRS Report RL33293, *Lobbying and Related Reform Proposals: Consideration of Selected Measures, 109th Congress*, by R. Eric Petersen.

CRS Report RL33234, *Lobbying Disclosure and Ethics Proposals Related to Lobbying Introduced in the 109th Congress: A Comparative Analysis*, by R. Eric Petersen.

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

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.

Congressional Ethics Rules

CRS Report RL33237, *Congressional Gifts and Travel: Proposals in the 109th Congress*, by Mildred Amer.

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

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

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

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

Congressional Procedures

CRS Report RL33295, *Comparison of Selected Senate Earmark Reform Proposals*, by Sandy Streeter.

Campaign Finance

Campaign Finance and Regulation of 527 Organizations, at [http://beta.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=529]

CRS Report RL32954, *527 Political Organizations: Legislation in the 109th Congress*, by Joseph E. Cantor and Erika Lunder.