



Lobbying & Ethics Compliance

Presentation to:

National Association of Business
Political Action Committees

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Topics

- Federal Lobbying Disclosure
- Federal Gift Prohibitions and Exceptions
- “Cooling Off” Periods for Federal Officials and Employees
- The STOCK Act
- Regulation of Political Intelligence

Lobbying Disclosure



Lobbying Disclosure

- Who is a lobbyist?
A compensated individual with
 - Two or more “lobbying contacts”
 - AND
 - Over 20% of time on “lobbying activities”
- *Analysis is performed internally and is slightly different from the information provided on a quarterly basis for reporting purposes*

Lobbying Reporting

- At the end of each calendar quarter
- Information from registered lobbyists and non-lobbyists alike
- For Lobbying Disclosure Act (LDA) and Internal Revenue Services (IRS) purposes

Reportable Lobbying Activities

- Direct Legislative lobbying
- Grassroots lobbying
- Federal Executive branch administrative lobbying
- Also includes political activities

Direct Legislative Lobbying

- International, federal and state
- Any attempt to influence any legislation through communication with any member or employee of legislative body or with any non-legislative government official or employee who may participate in the formulation of legislation
- Includes attempts to influence anyone in the Executive branch with respect to legislation

Grassroots Lobbying

- International, federal, state and local
- Any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums
- Grassroots activities with respect to administrative actions are not covered

Federal Executive Branch Administrative Lobbying

- Federal level only
- Any direct communications with a Covered Executive Branch Official in an attempt to influence the official actions or positions of such official
- Such Covered Officials are very limited

Covered Executive Branch Officials (IRC)

- The President;
- The Vice President;
- Any officer or employee of the White House Office of the Executive Office of the President) (not the other agencies in the Executive Office of the President);
- The two most senior level officers of each of the other agencies in the Executive Office of the President;
- Any individual serving in a position in Level I of the Executive Schedule under section 5312 of title 5, United States Code (Cabinet secretaries), and any immediate deputy of such an individual; and
- Any other individual designated by the President as having Cabinet level status and his or her immediate deputy.

Exempt Communications



- About other subjects
- Formal proceedings such as rulemaking, litigation
- Requests for meetings
- Requests for status of legislation
- Communications about administrative issues with federal employees who are not Covered Executive Branch Officials

“Lobbying Activities”

- Include “lobbying contacts,” and any efforts in support of such contacts including preparation or planning, research and other background work *that is intended, at the time of its preparation*, for use in contacts and coordination with the lobbying activities of others

Lobbying Reports

- Quarterly: By the company on Form LD-2
- Semi-annual: By the company and every registered lobbyist on Form LD-203

Lobbying Reports (cont'd)



- Quarterly Reports (Form LD 2) –

Due April 20, July 20, October 20 and January 20

- Names of lobbyists (and government positions in preceding 20 years for new lobbyists)
- Parts of government lobbied
- Issues/legislation lobbied
- Total amount spent on lobbying
- Other information
- Electronic filing

Lobbying Reports (cont'd)

- Semi-Annual Reports (LD 203)

Due July 30 and January 30

- Name of any Political Action Committee (PAC) controlled by registrant or registered lobbyists
- Campaign contributions of \$200 or more by PAC and registered lobbyists to candidates, leadership PACs, political parties
- Payments to
 - Presidential libraries and inaugurals
 - For events honoring or recognizing officials
 - To entities named for officials
 - For recognition of officials
 - To entities formed or controlled by officials
 - For costs of meetings and retreats held by or in name of officials
- Electronic filing

AND . . .



Certifications (on Semi-Annual Reports)

- No improper gifts to congressmen, senators or staff
- Have read and are familiar with House and Senate gift rules



Gift Prohibitions and Exceptions



What is a Gift?

- *Anything* of value given to a government official including:
 - Goods or services
 - Money
 - Lunches or dinners
 - Loans and credit
 - Tickets
 - Travel

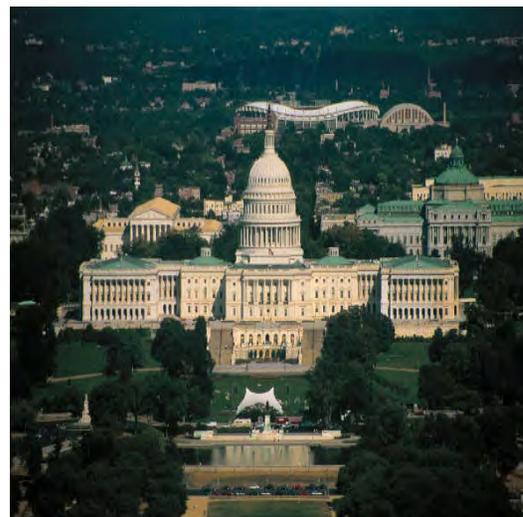
Gift Ban – Congressional

- *No* gifts to members of Congress, senators or staff from:
 1. Entities registered pursuant to the Lobbying Disclosure Act, or
 2. Individuals disclosed as lobbyists

Major Exceptions to Gift Ban – Congressional

(Out of 24 Exceptions)

- Fair market value received
- Political contributions
- Personal friendship
- Personal hospitality
- Widely-attended events
- Receptions
- Charity events
- Constituent events (Senate only)
- Nominal value (less than \$10), baseball caps, t-shirts
- Plaques and commemorative items
- Certain highly regulated travel



Gift Ban – Federal Executive Branch Appointees

- No Executive branch *appointee* may accept gifts from:
 1. Entities registered pursuant to the LDA, or
 2. Individuals disclosed as lobbyists

Major Exceptions to Gift Ban – Federal Executive Branch Appointees

- Anything for which fair market value is paid
- Gifts based on a personal relationship
- Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal
- Greeting cards and items with little intrinsic value intended solely for presentation such as plaques
- Travel related to official's duties accepted and approved by an agency under specific rules

Gift Ban – All Other Federal Executive Branch Employees

- No Executive branch employee may accept gifts from a “prohibited source” who:
 1. Is seeking official action or business with the employee’s agency, or
 2. Is regulated by or has interests that may be affected by the employee’s agency

Major Exceptions to Gift Ban – All Other Federal Executive Branch Employees

- \$20 limit (\$50 per year)
- Widely-attended gatherings
- Social invitations from disinterested sources
- Same exceptions as those for Executive branch appointees

Post-Employment Restrictions and Negotiating for Employment



Post-Employment Restrictions – House and Senate

- House – 18 U.S.C. § 207 (a felony statute)
 - **Members**, for **one year** after leaving office, may not communicate with any member, officer or employee of the House or Senate in connection with any matter on which official action is being sought
 - **Staff** (highly paid) also subject to one-year communications restrictions. Scope of restrictions depends on whether the staffer worked for a personal office, a committee or leadership
- Senate – 18 U.S.C. § 207; Senate Rule 37
 - **Members**, for **two years** after leaving office, may not communicate with any member, officer or employee of the House or Senate in connection with any matter on which official action is being sought
 - **Staff** (highly paid), for one year after leaving employment may not communicate with any member, officer or employee of the Senate in connection with any matter on which official action is being sought; other staff subject to restriction by rule

Post-Employment Restrictions – Executive Branch

- The scope of applicable restrictions – under 18 U.S.C. § 207 depends on the former Executive branch official’s or employee’s government pay grade and on whether he or she was a “political appointee”
- Generally, § 207 places limitations on a former Executive branch official’s ability to make “communications” with or “appearances” before his or her former employing agency, or the U.S. government, for specified periods
 - Appointees may not lobby any covered Executive branch official or non-career senior executive service appointee for the remainder of this Administration

Employment Negotiations by House Members and Staff

- A **member** may not “directly negotiate or have any agreement for future employment or compensation” unless they comply with disclosure and public recusal notification requirements
- “Very senior staff” (defined by salary level) subject to the same requirements, except no public filing of recusal notification

Employment Negotiations by Senate Members and Staff

- **Members**
 - May not engage in any negotiations or arrangements involving lobbying until after successor elected
 - May not engage in negotiations or arrangements for *any* post-Senate employment unless they comply with public disclosure and recusal notification requirements
- **“Senior staff” (defined by salary level)**
 - Must comply with non-public disclosure and recusal requirements

Employment Searches and Negotiations by Executive Branch Officials

- Executive branch officials and employees are prohibited from participating “**personally and substantially**” on a “**particular matter**” if they are “**seeking employment**” with an employer whose financial interests would be directly and predictably affected by that matter
- The STOCK Act requires a public financial disclosure filer to file a signed notification with his or her agency ethics official within three business days after commencing negotiations for, or entering into, an agreement to accept post-government employment

The STOCK Act



The STOCK Act

- The Stop Trading on Congressional Knowledge (STOCK) Act of 2012
 - Applies new duties and requirements – including on permissible uses of governmental information and concerning insider trading prohibitions – on *all three branches* of the federal government
 - Signed into law by President Obama on April 4, 2012

The STOCK Act and Insider Trading

- Affirms that prohibitions on insider trading under the securities laws apply to all officials and personnel of Congress and of the Executive branch
 - Provides that members and staff of Congress owe a duty of trust and confidence to Congress, the U.S. government and the citizens of the United States respecting **material, nonpublic information** gained from the performance of their official duties
 - A similar duty is imposed on executive branch personnel
 - Under the “misappropriation theory” of insider trading, trading on such information - or providing (“tipping”) such information for some “benefit” to others who trade (“tippees”) - is prohibited under the securities laws

The STOCK Act and Insider Trading (cont'd)

- When is congressional, or other governmental, information “material”?
 - Key question: Is there a substantial likelihood that a reasonable investor would consider the information important in making an investment decision?
- When is congressional, or other governmental, information “public”?
 - Key question: Has the information been disclosed in a manner sufficient to ensure its availability to the investing public?

The STOCK Act and Insider Trading (cont'd)

- How does the STOCK Act affect the necessary exchange of information by and with the Congress?
 - Section 10 of the Act states that nothing in the Act shall be construed to “be in derogation of the obligations, duties, and functions of a Member of Congress, [or] an employee of Congress . . . arising from such person’s official position”
 - “The Stock Act is not intended to limit government transparency or hinder dissemination to interested parties regarding Congressional activities and deliberations.” (Sen. Joe Lieberman (ID-CT), in a colloquy with Sen. Harry Reid (D-NV) during debate on final passage of the Act)

Regulation of “Political Intelligence”



Regulation of “Political Intelligence”

- A provision in the STOCK Act creating a registration and disclosure regime for “political intelligence” firms and consultants was removed before final passage
- What is “political intelligence”?
 - Definition in the STOCK Act was very broad and essentially unworkable
- In April 2013, the GAO issued a STOCK Act-mandated report on the potential benefits and costs of “political intelligence” registration and disclosure
 - GAO’s findings were balanced, but inconclusive
- Congressional proponents – Sen. Chuck Grassley (R-IA), Rep. Louise Slaughter (D-NY)– will propose legislation this Congress

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