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CRS Report for Congress

Lobbying Law and Ethics Rules Changes in the 110th Congress

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Summary

Significant changes were made by Congress to the current lobbying laws, and to internal House and Senate rules on ethics and procedures, by the passage of S. 1, 110th Congress, and the adoption of H.Res. 6, 110th Congress. In the face of mounting public and congressional concern over allegations and convictions of certain lobbyists and public officials in a burgeoning "lobbying and gift" scandal, and with a recognition of legitimate concerns over undue influence and access of certain special interests to public officials, Congress has adopted stricter rules, regulations, and laws attempting to address these issues.

This report examines the changes made to law and congressional rule in S. 1, 110th Congress, and changes adopted to internal House rules earlier in the Congress in H.Res. 6. The statutory and internal congressional rule changes which have been adopted address five general areas of reform: (1) broader and more detailed disclosures of lobbying activities by paid lobbyists, and more disclosures concerning the intersection of the activities of professional lobbyists with government policy makers; (2) more extensive restrictions on the offering and receipt of gifts and favors for Members of Congress and their staff, including gifts of transportation and travel expenses; (3) new restrictions addressing the so-called "revolving door,"that is, post-government-employment "lobbying" activities by former high-level government officials on behalf of private interests; (4) reform of the government pension provisions with regard to Members of Congress found guilty of abusing the public trust; and (5) greater transparency in the internal legislative process in the House and Senate, including "earmark" disclosures and accountability.

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Congress has adopted several significant changes in the federal law concerning the disclosure of lobbying activities by professional lobbyists, and in internal congressional rules with respect to the acceptance of gifts and travel by Members of Congress and staff from certain outside private interests, such as lobbyists and their clients. Amendments to the Lobbying Disclosure Act of 1995, and to internal House and Senate rules, were made in S. 1, passed by the House on July 31, 2007, and by the Senate on August 2, 2007.[1] Additionally, changes to the internal rules of the House were made previously by H.Res. 6, 110th Congress, adopted by the House on January 4, 2007.[2]

Background

The intent of the statutory amendments and the internal congressional rules changes was to address the concerns over allegations and appearances of improper or undue influence of special private interests, and their hired lobbyists, over high-ranking government officials and decision makers. Over the last few years several instances of individual Members of Congress and of certain high-ranking officials in the President's Administration incurring ethics problems and/or being involved in federal or state corruption investigations and prosecutions have been widely reported in the press and have garnered significant national publicity.[3] The unfolding of an extensive "lobbying and gifts" scandal concerning convicted lobbyists and their provision of privately funded travel, free meals, and entertainment to Members, congressional staff, and certain executive branch officials, has been a continuing major news story focusing public and congressional attention on questions of lobbying reform, gift rules, and transparency in congressional and other governmental

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[1] The House approved the bill at 153 *Congressional Record* H9210 (daily ed. July 31, 2007), the Senate at 153 *Congressional Record* S10723-S10724 (daily ed. August 2, 2007), and the measure was presented to the President on September 4, 2007.

[2] H.Res. 6, 153 *Congressional Record* H19-H38 (daily ed. January 4, 2007). Further amendments and clarifications were adopted in H.Res. 363, 153 *Congressional Record* H4411-H4412 (daily ed. May 2, 2007)[use of private aircraft], and H.Res. 437, Section 4, 153 *Congressional Record* H5746-H5747 (daily ed. May 24, 2007)[attendance at charitable events].

[3] "Abramoff Lobbying Scandal Could Change Washington Rules," Knight Ridder Newspapers, January 10, 2006; "Abramoff Scandal Spurs Lobbying Reform," The Christian Science Monitor, January 9, 2006; "Case Bringing New Scrutiny To a System and a Profession," The Washington Post, January 4, 2006, p. A1; "The Fast Rise and Steep Fall of Jack Abramoff, How a Well-Connected Lobbyist Became the Center of a Far-Reaching Corruption Scandal," The Washington Post, December 29, 2005, p. A1.

operations. The subject of "ethics" and "corruption" in government may arguably have been the single most significant issue for voters in the 2006 congressional elections, with national exit polls showing that the issue of "corruption" was "extremely important" to 42% of the voters, greater even than "terrorism" (40%), the "economy" (39%), or "Iraq" (37%).[4]

The task facing the 110th Congress was to enact legislation to help restore the confidence of the general public in the fairness and equity of the democratic processes in government, and in the integrity of the institution of the Congress and its Members. Any legislative "solutions" needed to take into consideration, however, the constitutional guarantees of freedom of speech, association, and the right to petition the government for all citizens, including those who are or who hire "lobbyists" to represent those interests, as well as the realities of representational self-government to prevent isolating or insulating Members of Congress from interactions with persons, groups, and parties representing varied public and private interests and concerns. Additionally, in the U.S. system of government and elections, campaigns for public office are *privately* financed, and any reforms enacted had to recognize the necessity and reality of having to raise large sums of campaign funds from private citizens by any Member of Congress or other candidate seeking to run a viable campaign for federal office.

The statute and rule changes which have been adopted address five general areas of reform: (1) broader and more detailed disclosures of lobbying activities by paid lobbyists, and more disclosures concerning the intersection of the activities of professional lobbyists and government policy makers; (2) more extensive restrictions on the offering and receipt of gifts for Members of Congress and their staff, including gifts of transportation and travel expenses; (3) new restrictions addressing the so-called "revolving door," that is, post-government-employment "lobbying" activities by former high level government officials on behalf of private interests; (4) reform of the pension provisions with regard to Members of Congress found guilty of abusing the public trust; and (5) greater transparency in the internal legislative process in the House and Senate, including "earmark" disclosures and accountability.

Lobbying Disclosures

The activity of citizens joining together in an effort to influence policy makers and decision makers in the federal government, including hiring persons to represent such interests before the government and the public, involves expression and conduct protected by the First Amendment's guarantees of freedom of speech, association, and petition.[5] Any "regulation" of lobbying activities must therefore not overly or

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[4] CNN.com, "Corruption named as key issue by voters in exit polls," [http://www.cnn.com/2006/POLITICS/11/07/election.exitpolls/index.html].

[5] *United States v. Harriss*, 347 U.S. 612 (1954); *United States v. Rumely*, 345 U.S. 41 (1953); *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-138 (1961); note generally, Eastman, *Lobbying: A Constitutionally Protected Right*, American Enterprise Institute for Public Policy Research (1977), and discussion in Browne, "The Constitutionality of Lobby Reform: Implicating Associational Privacy and the Right

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unduly interfere with such protected advocacy rights and activities. In the area of "lobbying" activities by paid, professional lobbyists, the "regulation" of such activity at the federal level has thus involved merely disclosure, reporting, and publicity, as opposed to prohibitions, limitations, or restrictions on such conduct.[6]

The Lobbying Disclosure Act of 1995 [LDA], which replaced an earlier 1946 law governing lobbying disclosures, is directed at so-called "professional lobbyists," that is, those who are compensated to engage in certain lobbying activities on behalf of a client or an employer.[7] In addition to covering only those who are paid to lobby, the initial "triggering" provisions of the law cover only lobbying activities which may be described as "direct" contacts and communications with covered officials. The law's registration requirements are not separately triggered by "grass roots" lobbying activities. That is, an organization which engages *only* in "grass roots" lobbying, regardless of the extent of "grass roots" lobbying activities, is not required to register its members, officers, or employees who engage in such activities, and does not need to report or disclose its activities or expenses under the LDA.[8]

The provisions of S. 1, 110th Congress, expand the information that must be provided by those who qualify as professional lobbyists under the *existing* provisions of the LDA of 1995 (either as an outside lobbyist who must register and list his/her clients, or as an "in-house" lobbyist who is an employee engaging in a certain amount of lobbying on behalf of his/her employer).[9] S. 1 does not expand or amend the definition of "lobbyist," or require additional persons to register and report as "lobbyists" under the LDA of 1995, as amended.[10]

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[5] (...continued)
to Petition the Government," 4:2 *William & Mary Bill of Rights Journal* 717(1995).

[6] In *United States v. Harriss*, the Supreme Court noted that even if disclosure of lobbying activities and clients could, in some theoretical cases, "chill" First Amendment conduct, any such claims would be looked at on a case-by-case basis, that is, on an "as applied" challenge to the law, as opposed to finding a disclosure provision facially unconstitutional.

[7] *See* H.Rept. 104-339, 104th Cong., 1st Sess., at 2 (1995).

[8] Once an organization has met the threshold requirements for "direct" lobbying and is registered, certain background activities and efforts "in support of" its direct "lobbying contacts," which may include activities which also support other activities or communications which are *not* lobbying contacts, such as grass roots lobbying efforts, may need to be disclosed generally as "lobbying activities." 2 U.S.C. § 1602(7). *Note* H.Rept. 104-339, 104th Cong.,1st Sess., "Lobbying Disclosure Act of 1995," 13-14 (1995). The instructions of the Clerk of the House and Secretary of the Senate also note that "Communications excepted by Section 3(8)(B) [of the LDA of 1995]will constitute 'lobbying activities' if they are in support of other communications which constitute 'lobbying contacts.'"

[9] 2 U.S.C. §§ 1603(a)(1) (outside lobbyists and lobbying firms who must register and list clients), and 1603(a)(2) ("in-house" employee/lobbyists who are listed in registrations as lobbyists by the employing organization or entity).

[10] See current definition of "lobbyist" and "lobbying contact" at 2 U.S.C. § 1602(10) and (8), which were not amended by S. 1. The threshold amounts of time and money spent or received to qualify one as a "lobbyist" are adjusted in S. 1 to conform to the new quarterly
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The provisions of S. 1 regarding disclosures by professional lobbyists are summarized as follows:

- **Quarterly Reports**. Registered lobbyists will now be required to file quarterly, instead of semi-annual, reports 20 days after the quarterly periods beginning on the 1st of January, April, July, and October. (Section 201(a), amending 2 U.S.C. § 1604(a)).

- **Conforming "Threshold" Amounts.** The threshold amounts of time and expenditures (or income received) relevant to "lobbying contacts" and lobbying activities to determine if one qualifies as a "lobbyist" under the LDA are amended (generally halved) to conform to the new quarterly, as opposed to the former semi-annual, reporting periods. (Section 201(b)(5), (6), amending 2 U.S.C. §§ 1603(a)(3)(A)(i) and (ii), 1603(b)(3)(A) and 1603(b)(4), and 2 U.S.C. § 1604(c)(1) and (2)).

- **Identifying State or Local Governmental Clients.** In lobbying reports, lobbyists must now specify if a client is a state or local government, department, agency, district, or other instrumentality. (Section 202, amending 2 U.S.C. § 1604(b)).

- **Semi-Annual Reports of New and Additional Information and Activities.** Requires semi-annual reporting of new and additional information by registrants of

    - *political committees* — the names of all political committees established or controlled by the lobbyist or registered organization

    - *campaign contributions* — the name of each federal candidate or officeholder, leadership PAC, or political party committee to which contributions of more than $200 were made in the semi-annual period, unless the contributions are made to a person required to report the receipt of such funds under the Federal Election Campaign Act (2 U.S.C. § 434)

    - *payments for events or to entities connected with government officials* — the date, recipient, and the amount of funds disbursed (i) to pay the costs of an event to honor or recognize a covered government official; (ii) to an entity that is named for a covered legislative branch official, or to a person or entity "in recognition" of such official; (iii) to an entity established,

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[10] (...continued)
(rather than semi-annual) filing, but the thresholds are not otherwise reduced or lowered to capture more persons as "lobbyists" (assuming *pro rata* expenditure of time and money, but does have the effect of lowering by half the thresholds for minimum or sporadic lobbying efforts).

maintained, or controlled by a covered government official, or an entity designated by such official; (iv) to pay the costs of a meeting, conference, or other similar event held by or in the name of one or more covered government officials

- *payments to presidential libraries or for inaugurations* — the name of each presidential library foundation and each presidential inaugural committee to whom contributions of $200 or more were made in the semi-annual reporting period

- *certifications concerning House and Senate gift rules* — provide a certification that the person or organization filing (i) "has read and is familiar with" the rules of the House and Senate regarding gifts and travel, and (ii) had not provided, requested or directed that a gift or travel be offered to a Member or employee of Congress "with knowledge that the receipt of the gift would violate" the respective House or Senate rule on gifts and travel. (Section 203, amending and adding to 2 U.S.C. § 1604(d))

- **Bundling Disclosure.** Amends the Federal Election Campaign Act to require all reporting campaign committees (and every federal "candidate" is required to have a campaign committee) to list a separate schedule setting forth the name, address, and employer of each person "reasonably known" to the committee to be a registered lobbyist, a registered organization (for whom one or more employees act as a lobbyist), or any employee of such a lobbyist or organization who lobbies, if such person has provided two or more "bundled" campaign contributions aggregating more than $15,000 during any semi-annual reporting period (not counting that individual's or the individual's spouse's contributions). This information will be publicly available on the FEC website, and linked electronically to the lobbying websites maintained by the Clerk of the House and the Secretary of the Senate. "Bundled" campaign contributions are those that are either forwarded by, or credited in some manner to, the registered lobbyist or employee/lobbyist. (Section 204, amending 2 U.S.C. § 434).

- **Electronic Filing.** Requires the reports to be filed by registrants to be filed in electronic form to the Clerk of the House and Secretary of the Senate, and requires those offices to use the same software for receipt and recording of the filings under the LDA. (Section 205, amending 2 U.S.C. § 1604 by adding subparagraph (e)).

- **Offering Gifts or Travel to Members or Employees of Congress.** Places an express prohibition in the federal lobbying law on any registered lobbyist, organization that employs one or more lobbyists and is registered, and any employee required to be listed as a lobbyist by a registrant, from making a gift to a Member or staffer of Congress if the person has knowledge that the gift or travel offered

may not be accepted under the respective, applicable rules of the House or Senate. (Section 206, amending 2 U.S.C. § 1601).

- **Coalition Lobbying Disclosures.** In addition to the disclosure of the client-"coalition" in lobbying registrations, the lobbyist-registrant for a coalition must also identify the name of any organization in the coalition which contributes at least $5,000 in a reporting quarter and actively participates in the planning, supervision, or control of such lobbying activities. If the organization is listed in the coalition's website as a member, then that organization need not also be listed in the lobbying registration (as long as the website is disclosed by the registrant), unless that organization "in whole or in part" plans, supervises, or controls the coalition's lobbying activities, and then such organization must be listed in the registration. (Section 207, amending 2 U.S.C. § 1603(b)(3)).

- **Disclosure of Past Government Employment.** A registrant-lobbyist must disclose if that person served as a covered executive branch or legislative branch official within the past 20 years. (Section 208, amending 2 U.S.C. § 1603(b)(6)).

- **Availability of Lobbying Information.** The Clerk of the House and Secretary of the Senate, to whom lobbying registrations and reports must be filed, are required to make publicly available for free over the Internet in a searchable, sortable, and downloadable manner, the information required in the lobbying registrations and reports; to link this information to Federal Election Commission databases; and to retain all records for six years. (Section 209; amending 2 U.S.C. § 1605).

- **Disclosure of Non-Compliance Actions.** The Clerk of the House and Secretary of the Senate are required to publicly disclose twice a year the aggregate number of referrals made to the U.S. Attorney for the District of Columbia for non-compliance with the provisions of the Lobbying Disclosure Act. The Attorney General is then required to report to the appropriate House and Senate Committees on the aggregate number of enforcement actions taken by the Department of Justice during the semi-annual period, and any sentences imposed, but need not disclose information on the identity of individuals not already a matter of public record. (Section 210; amending 2 U.S.C. § 605).

- **Increased Civil and Criminal Penalties.** The penalty for knowing failure to remedy a defective filing after being notified by the Clerk of the House or Secretary of the Senate, or other knowing failure to comply with a provision of the Lobbying Disclosure Act, has been increased to a civil penalty of up to $200,000. A specific criminal penalty has been added to the LDA for knowing and corrupt failure

to comply with the act of imprisonment of up to five years and a fine in accordance with code. (Section 211, amending 2 U.S.C. § 1606).

- **Electronic Filing and Database for Foreign Agents.** Agents of foreign principals who are required to register and file under the Foreign Agents Registration Act are now required to file in electronic form with the Attorney General, and the Attorney General is required to make publicly available for free over the Internet in a searchable, sortable, and downloadable manner, the information required in the registrations and reports. (Section 212, amending 22 U.S.C. §§ 612, 616).

- **Annual Audit by Comptroller General.** The Comptroller General of the United States is required to audit on an annual basis compliance with the lobbying disclosure laws through random sampling of registrations and reports, and to report to Congress an assessment of compliance and any recommendations for improvement in the disclosure system. (Section 213, adding section 26 to the LDA of 1995).

"Ethics" Rule Changes Concerning Gifts, Travel, and Contacts With Lobbyists

The provisions of S. 1 incorporated changes to the internal rules of both the Senate and the House. These changes were made pursuant to the express rule-making authority of the House and Senate under Article I, Section 5, clause 2, of the Constitution; and thus even though these rule provisions were enacted in a public law, they may be changed or modified by each House separately by way of a simple resolution (without the concurrence of the other body or the signature of the President).

The provisions in S. 1 regarding the Senate rules on gifts are similar in many aspects to the internal changes made to the rules of the House in H.Res. 6, in January of 2007. The new rules of both the House and Senate now work to restrict under-$50 gifts from lobbyists, foreign agents, and their private clients, which had been permitted under the former rules; change the manner in which tickets or passes to "luxury boxes" at sporting and entertainment events are valued for gift purposes; and substantially restrict quasi-official — "officially connected" — travel of Members and staff being paid for, arranged, or participated in by a registered lobbyist, a foreign agent, or their clients, with certain exceptions for educational institutions (House) or other qualifying charitable institutions (Senate), and for certain short-term conferences and events.

Concerning such "officially connected" travel, one significant change which is intended to increase oversight and enforcement of the restrictions in the rules is that Members and staff must now receive *advance* approval from the appropriate ethics committee when such travel is to be paid for by any outside, private source. Prior to the current rules changes, receipt of expenses or payment for such travel from lobbyists, or travel which substantially involved "recreational" activities such as

golfing, or water sports, or tennis, were already prohibited by the express provisions of both House and Senate rules, and legitimate questions of enforcement and oversight of those rules had been raised. Under the new rules, however, before receiving such approval for "officially connected" travel, a Member or staff employee must now certify to the appropriate ethics committee that the trip conforms to the requirements and strictures of the new regulations including the limitation on a lobbyist's involvement and participation in the trip, and assuring that the source of funds does not come from lobbyists, or (except in very limited circumstances) their clients. Additionally, registered lobbyists who must file periodic reports on expenditures under the Lobbying Disclosure Act of 1995, as amended, must now also certify that they have not offered gifts, including travel, to Members of Congress or staff that would violate the provisions of House or Senate rules. Like any certification to an agency or department of the federal government, such statement, if intentionally false or fraudulent, could be subject to the criminal penalties for false statements and fraud, at 18 U.S.C. § 1001.

Changes have also been made in internal congressional rules that require a Senator or Senate staffer to reimburse for the use of a non-commercial aircraft at the higher charter or rental rate (as opposed to a commercial, first class rate), while the House has generally banned its Members and staff from accepting any flights on such private aircraft. Internal congressional rules will also now restrict official staff contact with the spouse of a Member who is a registered lobbyist and, in the Senate, also with the immediate family of their employing Senator.

The internal congressional rule changes made by S. 1 (and the corresponding and similar changes made earlier for the House in H.Res. 6) are as follows:

- **No Under-$50 *De Minimis* Gifts From Lobbyists.** Amends Senate rules to eliminate the exception to the gifts restriction for (and thus prohibits) gifts of under $50 if the gift is from a registered lobbyist, a foreign agent, or a private entity that employs a registered lobbyist or a foreign agent. (S. 1, Section 541, amending Senate Rule XXXV, para. 1(a)(2)). Similar changes to House rules were adopted in H.Res. 6, 110th Congress, so that the under-$50 exception no longer applies to (and thus works to prohibit) even such *de minimis* gifts to House Members and staff from registered lobbyists, foreign agents, or their private clients.

- **National Party Convention Events.** A Member of the Senate or the House may not participate in an event to honor the Member during the course of the national party convention of his or her political party (other than in the capacity of the party's nominee for President or Vice President), if the event is paid for by a registered lobbyist or a private client that retains or employs a registered lobbyist. (S. 1, Section 542, amending Senate Rule XXXV, para. 1(d), and S. 1 Section 305, amending House Rule XXV(8)).

- **Valuation of Tickets to Entertainment or Sporting Events.** When a Senator or a staff employee *is* allowed to accept an under-$50 *de minimis* gift from an outside source, and the gift is in the

form of a ticket or pass to a sporting event or an entertainment venue, then the "value" of the ticket is its face value, or if it has no face value (such as a pass to a luxury box or suite), then the value of the ticket with the highest face value for the event will be used (unless equivalency to another ticket with a face value can be established by the ticket holder). (S. 1, Section 543, amending Senate Rule XXXV, para. 1(c)(1)). Similarly, under the new rules adopted earlier by the House, the "value" of such a ticket or pass will be the actual "face value" printed on the ticket, or when there is no face value on the ticket, then the value of such pass or ticket will be the highest face-value price of a ticket to the same event. (H.Res. 6, amending House Rule XXV, clause 5(a)(1)(B)(ii)).

- **Officially Connected Travel.** One of the ongoing exceptions to the general prohibition in congressional rules on the receipt of gifts from private sources has been the permissibility of accepting from certain outside sources reimbursement or payment of expenses for travel by a Member or staffer when that travel is in connection with one's official duties, when the travel is not for recreational purposes, when the travel is limited in duration, and when the travel is not paid for by a lobbyist. In light of allegations and findings of abuses of this exception for ostensibly officially connected travel, whereby certain Members and staff would allegedly engage in substantially recreational travel with lobbyists, the internal congressional rules in the House and the Senate have been amended and tightened.

  - **Senate:**

    - *(1) Donor of Travel Expenses or Payments*. In addition to prohibiting a registered lobbyist from paying for a Member's or staffer's expenses for "officially connected" travel, the new provisions narrow the permissible acceptance of expenses by prohibiting the receipt of such expenses if provided not only by registered lobbyists or foreign agents, but also by their clients, that is, "a private organization retaining one or more lobbyists or foreign agents," except that a charitable (501(c)(3)) organization may provide such expenses if approved by the Ethics Committee. (S. 1, Section 544, amending Senate Rule XXXV, para. 2(a)(1) and 2(a)(2)(A)(ii)).

    - *(2) Further Restrictions on Lobbyist Participation.* In addition to the restriction on lobbyists paying for such travel, the new provisions bar the receipt of expenses if the trip was "planned, organized, or arranged by or at the request of a lobbyist," or when the lobbyist accompanies the Member on "any segment" of an otherwise permissible one-day event, or if a lobbyist accompanies the Member "at any point" of any other trip. (S. 1, Section 544, new Senate Rule XXXV, paragraph 2(d)).

- *(3) Duration of Travel.* "Officially connected" travel, when permitted, may be for three days for domestic travel and seven days for foreign travel, not counting travel days (newly numbered Rule XXXV, paragraph 2(f)), unless the expenses are provided by a private organization (including a non-approved charitable organization) which retains at least one lobbyist or foreign agent, and then trip may be for a one-day event only (including one overnight). (S. 1, Section 544, adding Rule XXXV, paragraph 2(a)(2)(A)(i)). The Senate Select Committee on Ethics may approve two overnights for extended-distance travel. (S. 1, Section 544, adding to Rule XXXV, paragraph 2(a)(2)(B)).

- *(4) Prior Certification and Approval.* Employees of the Senate have to receive advance approval for officially connected travel from their employing Member and, additionally, all Members and employees must provide a "certification" of conformance of the proposed trip with the restrictions and requirements of Senate rules, and must receive advanced approval from the Senate Ethics Committee. (S. 1, Section 544, amending Rule XXXV, paragraph 2(b) and adding new paragraph 2(e)).

- *(5) Post-Travel Reporting.* Within 30 days after the completion of any officially connected travel, the Member or staff employee must make disclosures of good faith estimates of expenses received, disclose a copy of the certification now required, and must also now include a "description of meetings and events attended." (S. 1, Sec. 544, amending Senate Rule XXXV, paragraph 2(c)).

- *(6) Ethics Committee Guidelines on "Reasonable Expenses."* Under congressional rules when expenses for officially connected travel are allowed to be accepted, such expenses must be "necessary" and "reasonable." There are currently no specific guidelines or valuations for what "reasonable" expenses are in relation to any specific journey. The Ethics Committee is instructed to develop guidelines on the reasonableness of travel expenses.

- **House of Representatives:** The House adopted rules substantially similar to those changes made to the Senate rules by S. 1 for "officially connected" travel, in H.Res. 6, on January 4, 2007. The principal difference is that instead of allowing "officially connected" travel to be compensated by any "charitable organization," even if it employs lobbyists, as in the Senate, the House rules more narrowly allow such travel to be compensated by an "institution of higher education," even if such institution retains or employs lobbyists. The duration of permissible trips in the House is four days for domestic and seven days for foreign travel. Additionally, reporting and disclosures at the conclusion of a trip

must be made by Members and staff in the House 15 days after the completion of the trip, as opposed to 30 days in the Senate.[11]

- **Non-Commercial Air Travel.** Reimbursement by Members of Congress and staffers had to generally be provided for flights on private, non-commercial aircraft (such as "corporate jets") so that such flights would not constitute prohibited "gifts" from private sources, prohibited contributions to an "unofficial office account," or illegal campaign contributions (2 U.S.C. §§ 441a, 441b, 441c)). No specific reimbursement amount had been provided in Senate or House rules, and such flights were generally reimbursed at a 1st class commercial rate. In the Senate, under the new rules, "fair market value" for reimbursement for flights on such private, non-commercial airline flights is to be the pro rata share of the normal *charter fare or rental charge* for similar aircraft, instead of commercial fare. The higher reimbursement provision will not apply to aircraft owned or leased by a Member or the Member's immediate family. (S. 1, Section 544, adding Senate Rule XXXV, paragraph 1(c)(1)(C)(i)-(iii)). The House, however, has substantially banned a Member or employee of the House from taking trips on private, non-commercial aircraft, by prohibiting the reimbursement or payment of such trips with any funds, unless the aircraft is owned or leased by the Member personally, or by a family member. (H.Res. 6, as modified by H.Res. 363, 110th Congress).

- **Constituent Events.** In the Senate, the new Senate rules expressly permit a Member or employee to accept an offer of "free attendance" in the Member's home state at a "constituent event," which is an event sponsored by constituents, or a group mainly of constituents, and attended by at least five of the Member's constituents, when the Member or staffer participates in the event as a speaker or panel participant and when a "lobbyist" will not be in attendance. "Free attendance" may include an "accompanying individual" where appropriate, and includes event fees, *local* transportation only, meals (if under $50), refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. (S. 1, Section 545, adding to Senate Rule XXXV, paragraphs 1(c)(24) and 1(g)).

- **Public Information on Travel and Disclosure.** In the Senate, the Secretary of the Senate is instructed to create a searchable, free website to post the travel information that must be disclosed concerning "officially connected" travel. (S. 1, Section 546). In the House, the Clerk of the House is instructed to establish a free, searchable website that contains the information, certifications, and

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[11] See guidelines, certifications, forms, and instructions for privately funded, "officially connected" travel issued by the House Committee on Standards of Official Conduct, February 20, 2007.

disclosures relating to "officially connected" travel, and the personal financial disclosure reports that are required to be made under the Ethics in Government Act of 1978 by Members. (S. 1, Section 304).

- **Official Contact With Member's Spouse or Family Who Are Lobbyists.** In the Senate, the Senate rules will now require that a Senator prohibit all staff from having any official direct "lobbying contact" with the Member's spouse or Member's immediate family if such spouse or family member is a registered lobbyist, or is employed or retained by a registered lobbyist or an entity retaining lobbyists. (S. 1, Section 552, adding Senate Rule XXXVII, para. 11(a)). All staff employees are further prohibited from having any official "lobbying contact" with a *spouse* of *any* Member of the Senate who is a registered lobbyist, or is employed or retained by a registered lobbyist, unless the spouse was serving as a registered lobbyist at least one year prior to the most recent election of that Member or at least one year prior to his or her marriage to that Member. (S. 1, Section 552, adding Senate Rule XXXVII, paragraphs 11(b) and (c)). In the House, a Member must instruct his or her staff (including personal, committee, or leadership offices) not to have official, direct "lobbying contacts" with that Member's spouse if the spouse is a lobbyist under the LDA of 1995 or is employed or retained by a lobbyist to influence legislation. (S. 1, Section 302, adding Rule XXV, cl. 7).

- **Contractors and Members of their Firms Lobbying the House.** The House rules (Rule XXIII, cl. (18)(b), as re-numbered by H.Res. 6 and S. 1)) provide that contractors to the House are not permitted to lobby the contracting committee or Members or staff of that committee. The changes in S. 1 now provide that members and employees of the firm or business of which the contractor is a member are also prohibited from lobbying the contracting committee or Members or staff of that committee. (S. 1, Section 303, amending House Rule XXIII, cl.18(b)).

- **Ethics Training.** In the Senate, S. 1 requires Senators and staff to complete an ethics training given by the Senate Select Committee on Ethics within 60 days of commencement of service, or if currently serving, within 165 days after the enactment of S. 1. (S. 1, Section 553). In the House, H.Res. 6 has amended the rules of the House to require the House Committee on Standards of Official Conduct to "offer" ethics training on a yearly basis to Members of the House and staff. Only staff employees, however, and not House Members, are required to take such ethics briefings and training. (H.Res. 6, Section 211, adding House Rule XI, cl. 3(a)(6)(A) and (B)).

- **Financial Interests in "Earmarks."** The ethics rules in the Senate and the House have been amended to provide an express standard prohibiting Members of Congress from introducing, and Members and staff from working towards the passage of, an "earmark" in

which they have a particular financial interest. In the Senate, current Senate rules, at Rule XXXVII, para. 4, prohibit a Senator or staffer from using his or her "official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further only his pecuniary interest, only the pecuniary interest of his immediate family, or only the pecuniary interest of a limited class of persons or enterprises, when he, or his immediate family, or enterprises controlled by them, are members of the affected class." S. 1 will now apply this restriction expressly to "earmarks," that is, "congressionally directed spending items, limited tax benefits, or limited tariff benefits." (S. 1, Section 521, adding new Senate Rule XLIV, para. 9). In the House, the Code of Official Conduct within House rules was amended to prohibit certain "logrolling" with respect to "earmarks," that is, to prohibit the conditioning of the inclusion of an earmark "on any vote cast by another Member," (H.Res. 6, Section 404(b), adding new House Rule XXIII, cl.16), and by requiring a certification for any earmark request to the chairman and ranking minority member of the committee of jurisdiction including the name, recipient, and purpose of the earmark, and a statement that the Member "has no financial interest" in the earmark. (H.Res. 6, Section 404(b), adding new House Rule XXIII, cl.17).[12]

Revolving Door, Post-Employment Provisions

Current provisions of federal law, at 18 U.S.C. § 207, restrict certain high-level officers and employees of the federal government from engaging in particular representational activity on behalf of private parties before the government for a period of time after leaving federal service. Known commonly as "revolving door" provisions, these restrictions, in addition to prohibiting all "switching sides" on a narrow range of particular matters involving identified parties, put into place a more general, so-called "cooling off" period for one year, whereby top officials may not "lobby" or make communications with intent to influence someone in their former department or agency. In the case of "very senior" officials, such officials (including the Vice President and cabinet members) had been prohibited for one year from lobbying other high-level officials in the entire branch of government that they left. Members of Congress had been prohibited for one year after leaving service from lobbying anyone in their former House of Congress, and under S. 1 that one-year ban will be extended to two years for Senators, but the restriction will remain the same for House Members and employees. Under the provisions of S. 1, the following changes were made regrading post-employment conflicts of interest:

Cooling Off Periods.

- **Senators and "Very Senior" Executive Officials.** United States Senators and "very senior" officials in the executive branch

[12] See Memorandum from the House Committee on Standards of Official Conduct, "Financial Interests Under the New Earmark Rule," March 27, 2007.

(substantially, the Vice President, cabinet level officials, and certain top white House aides), will have the one-year "cooling off" period extended to two-years. (S. 1, Section 101, amending 18 U.S.C. § 207(d)(1) and 207(e)(1)).

- **"Senior" Senate Staff.** "Senior" Senate employees (those compensated for 60 days at a rate of 75% or more of a Member's salary) will now be prohibited for one year after leaving office from making communications, with intent to influence, to *any* Senator or officer or employee of the Senate (S. 1, Section 101, amending 18 U.S.C. § 207(e)(2)), as opposed to restricting such communications only to their former employing office.

- **"Senior" Senate Staff — Senate Rule.** Senate Rule XXXVII, para. 9, is amended to conform with the statutory restriction to prohibit "senior" Senate staff, for one year after leaving employment, from lobbying *all* Senators and Senate staff, if such former senior employee becomes a registered lobbyist or is employed by registered lobbyists or by organizations retaining registered lobbyists, to influence legislation. (S. 1, Section 531(b)).

- **All Senate Staff — Senate Rule.** Senate Rule XXXVII, para. 9, is amended to prohibit *any* Senate staff employee, for one-year after leaving employment, from lobbying the Member or committee for whom he or she worked, if the employee becomes a registered lobbyist or is employed by registered lobbyists *or organizations retaining registered lobbyists*, to influence legislation. (S. 1, Section 531(b)).

- **Exception for Representing Indian Tribes**. The exception to the post-employment laws for representing Indian Tribes (in the Indian Self-Determination Act) is narrowed to conform more closely to the current law exceptions for representing state and local governments, that is, when carrying out official duties as an employee or an elected or appointed official of the tribal organization, a former officer or employee of the United States may do so without regard to the prohibitions in 18 U.S.C. § 207.

- **Notification.** Members and employees of Congress who leave their offices and positions, and who are covered by the post-employment, "revolving door" law are to be notified of the beginning and ending dates of the prohibitions that apply. (S. 1, Section 103, and for Senate, see also Section 535).

Negotiations For Private Employment.

- **House Members.** Members of the House are prohibited from having negotiations or agreements for future private employment until their successor is elected, unless the Member, within three business days after the commencement of these negotiations or

agreement, files a statement disclosing the names of the entity or entities involved in such negotiations or agreements, and the dates such negotiations commenced. These Members must recuse themselves from any matter in which there is a "conflict of interest or appearance of a conflict for that Member," must notify the Committee on Standards of Official Conduct of the recusal, and then must submit for public disclosure the statement of disclosure of the negotiations or arrangements that had been filed under the requirements of this rule. (S. 1, Section 301, adding new, renumbered House Rule XXVII, cl. 1 and 4).

- **House Employees.** Senior officers or employees of the House (those earning in excess of 75% of a Member's salary) shall notify the Committee on Standards of Official Conduct (within three business days after the commencement of negotiations or agreement) that such employee is negotiating or has any agreement for future employment or compensation. An employee to whom this rule applies must also recuse himself or herself from any matter in which there is a "conflict of interest or appearance of a conflict for that" employee. (S. 1, Section 301, adding new, renumbered House Rule XVII, cl. 2 and 3).

- **Senators.** Senators are prohibited from having negotiations or agreements for future private employment until their successor is elected, unless the Senator, within three business days after the commencement of these negotiations or agreement, files a statement for public disclosure regarding these negotiations and arrangements and including the names of the entity or entities involved in such negotiations or agreements, and the dates such negotiations commenced. Senators may not, however, negotiate or have an arrangement for prospective employment if the job involves "lobbying activities" (as defined by the LDA of 1995) until after his or her successor has been elected. (S. 1, Section 532, adding new, renumbered Senate Rule XXXVII, para. 12(a) and (b)).

- **Senate Employees.** "Senior" Senate staff (compensated at a rate of 75% of a Senator's salary) are required to notify within three business days the Senate Select Committee on Ethics that they are negotiating or have arrangements for private employment, and then must recuse themselves from communicating with that prospective private employer on official matters and from working on legislation where there is a conflict or an appearance of a conflict of interest (and to notify Ethics Committee of any such recusal). (S. 1, Section 532, adding new, renumbered Senate Rule XXXVII, para. 12(c)).

Other

- **Floor Access for Former Members Who are Lobbyists.** The provisions of S. 1 restrict the privileges of former Members to the floor of the Senate, and Senate athletic facilities and member-only

parking, if the former Member is a registered lobbyist or agent of a foreign principal, or is in the employ of or represents any party for the purpose of influencing legislation. (S. 1, Section 533, amending Senate Rule XXIII). The House rules have already restricted the privileges for former Members to the House floor, in House Rule IV, cl. 4, as amended by H.Res. 648 (February 1, 2006). H.Res. 6, Section 511(c) (January 4, 2007) added the restriction to access to the exercise facilities for former Members who are registered lobbyists or foreign agents.

- **Influencing Private Employment Decisions on the Basis of Partisan Affiliation.** Although not specifically directed at post-employment activities of former Members, there had been raised allegations that the hiring of some former Members and staff (as well as others) by lobbying firms was being influenced, or attempted to be influenced, by current Members of Congress on the basis of the partisan political affiliation of the prospective employee or partner. There existed no specific federal provision regarding this particular conduct; but depending on the specific facts and what was promised, threatened, or received in the particular situation, the general statutory laws against bribery (18 U.S.C. § 201(b)), illegal gratuities (18 U.S.C. § 201(b)), and "honest services" fraud (18 U.S.C. §§ 1341, 1343, 1346), do prohibit certain exchanges of official acts/influence for things of value, even things of value that would be directed at third parties (*i.e.*, the prospective employee). The provisions of S. 1 now create a specific federal crime to *expressly* prohibit a Member or employee of Congress from taking or withholding official action, or threatening or offering to take official action, or from influencing or threatening or offering to influence an official act of another, in an attempt to influence, solely on the basis of partisan political affiliation, an employment practice or decision of a private entity. (S. 1, Section 102, adding 18 U.S.C. § 227). In addition to the statute, the House has adopted a rule with similar prohibitions. (H.Res. 6, Section 202, House Rule XXIII(14)), as has the Senate (S. 1, Section 534, amending Senate Rule XLIII, para. 6).

Congressional Pension Reform

Under the so-called "Hiss Act," Members of Congress, in a similar manner as most other officers and employees of the federal government, would forfeit the federal retirement annuities for which they had qualified if convicted of a federal crime which relates to espionage, treason, or other national security offense against the United States.[13] The existing federal law, at 5 U.S.C. § 8312, provides for application of this additional penalty upon conviction for such offenses as, for example, disclosure of classified information, espionage, sabotage, treason, misprision of treason, rebellion or insurrection, seditious conspiracy, harboring or

[13] See now 5 U.S.C. § 8311 *et seq.* See general discussion in CRS Report 96-530, Loss of Federal Pensions for Members of Congress Convicted of Certain Offenses, by Jack Maskell.

concealing persons, gathering or transmitting defense information, and perjury in relation to those and other designated national security offenses.

Under the provisions of S. 1, as passed, the offenses for which Members of Congress may forfeit their pension annuities for congressional service is expanded to cover convictions for a number of other laws that bear upon abuse of the public trust and public corruption in office. Section 401 of S. 1 amends the provisions of the Civil Service Retirement System (CSRS), and the Federal Employee Retirement System (FERS), to provide that a Member of Congress will not receive "creditable service" towards his or her federal pension for *any* time of service as a Member of Congress if convicted for conduct (which occurred while the individual was a Member of Congress) that violated any of the following anti-corruption provisions of federal criminal law:

- bribery and illegal gratuities (18 U.S.C. § 201);
- acting as an agent of a foreign principal (18 U.S.C. § 219);
- wire fraud, including a scheme to defraud the public of the "honest services" of a public official (18 U..C. §§ 1343, 1346);
- bribery of foreign officials (Section 104(a) of the Foreign Corrupt Practices Act);
- depositing proceeds from various criminal activities (18 U.S.C. § 1957);
- obstruction of justice, intimidation or harassment of witnesses, etc., (18 U.S.C. § 1512);
- an offense under "RICO," — racketeer influenced and corrupt organizations — (18 U.S.C. chapter 96);
- conspiracy to commit an offense or to defraud the United States (18 U.S.C. § 371) to the extent that the conspiracy constitutes an act to commit one of the offenses listed above;
- conspiracy (18 U.S.C. § 371) to violate the post-employment, "revolving door" laws (18 U.S.C. § 207);
- perjury (18 U.S.C. § 1621) in relation to the commission of any offense described above; or
- subornation of perjury (18 U.S.C. §1622) in relation to the commission of any offense described above.

In a somewhat similar manner as the current "Hiss Act," a Member of Congress may receive back his or her *own* contribution (lump sum payment) to the retirement system, and to the Member's Thrift Savings Plan (TSP) (S. 1, Section 401(a),

amending 5 U.S.C. § 8332(o)(1), and Section 401(b), amending 5 U.S.C. § 8411(l)(1)).[14] Since the provision increases the penalties attached to the conviction of a crime, however, the law can apply *prospectively* only, and could not work to take away or limit the pensions of those Members of Congress who have already engaged in the conduct covered by this amendment, even if convicted at a later date.[15]

Procedural Rules, Transparency, and Legislative Accountability

Both the House and Senate have adopted internal rule changes that affect internal legislative procedures, and which are intended to provide more transparency and accountability in the legislative process, particularly with regard to "earmarks." This report, intended to focus specifically on lobbying and ethics provisions, will provide only a very brief overview of these procedural and parliamentary changes made in S. 1, and more detailed analysis will be provided in other CRS products.[16]

Under the provisions of S. 1, Section 511(a), if "new material" is added to a conference report, a point of order may be raised by any Senator, and if sustained, those provisions "shall be stricken." A Senator may move to waive any or all points of order by an affirmative vote of 3/5ths of the Members. A report of a conference committee must be available to Members and the public at least 48 hours before a vote on the matter will be in order, unless that requirement is waived by 3/5ths of the Members. (S. 1, Section 511(b)). Section 512 deals with "holds" in the Senate, and is intended to end the practice of anonymous holds by requiring the identification of a Member who places a "hold" on a measure or matter in the Senate. Under Section 513, committees and subcommittees in the Senate are required to make available through the Internet a video or a transcript of any meeting within 21 days of the event, unless the meetings are closed in accordance with Senate rules. Section 514 requires any "amendment and any instruction" accompanying a motion to recommit to be in writing. S. 1 also expresses the sense of the Senate that conference committee meetings should be open to the public, all conferees be given adequate

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[14] It does not appear that the government's portion of a Member's Thrift Savings Plan would be forfeited, as the provisions of S. 1 do not expressly provide for such forfeiture, and the current provisions of retirement law only require such forfeiture when an employee or Member loses his or her pension under the provisions of the so-called "Hiss Act." 5 U.S.C. §8432(g)(5), referring to annuities forfeited under sub-chapter II of chapter 83, the "Hiss Act," which is not directly amended or affected by S. 1.

[15] See express prohibition in the United States Constitution, Article I, Section 9, clause 3, on Congress enacting any "ex post facto" law, and its application to retroactive pension forfeiture, *Hiss v. Hampton,* 338 F. Supp. 1141, 1148-1149 (D.D.C. 1972). An *ex post facto* law "inflicts a *greater punishment*, than the law annexed to the crime, when committed." *Calder v. Bull,* 3 Dall. (3 U.S.) 386, 390 (1798). (Italics in original). Chief Justice Marshall explained simply and clearly that an *ex post facto* law "is one which renders an act punishable in a manner in which it was not punishable when it was committed." *Fletcher v. Peck,* 6 Cranch (10 U.S.) 87, 138 (1810).

[16] For a current analysis and discussion of the Senate procedural changes in S. 1, see sectional analysis of S. 1, at 153 *Congressional Record* S10710-S10712 (daily ed. August 2, 2007), re: Title V, Senate Legislative Transparency and Accountability.

notice of meetings and afforded an opportunity to participate in debate on the matters considered, and that the text of a conference committee report should not be changed after being signed by a majority of the Senate conferees (S. 1, Section 515).

"Earmark" reforms were also enacted in S. 1. An "earmark" is intended to mean a "congressionally directed spending item, limited tax benefit, and limited tariff benefit." (S. 1, Section 521). Senate Rule XLIV is amended to provide that it will not be in order to consider a bill or joint resolution reported by any committee, a bill or joint resolution not reported by a committee, or the adoption of a conference committee report, unless the chairman of the committee of jurisdiction or the Majority Leader, or his or her designee, certifies that any earmark has been identified, including the name of each Senator who submitted a request for each item identified, and that such information is publicly available on a congressional website for at least 48 hours. For any amendment that contains an earmark proposed in floor consideration of a measure, the Senator proposing such amendment must as soon as practicable provide a list of the items and the name of the Senator requesting those items, to be placed in the Congressional Record. All committee reports including earmarks must provide a list or chart of such items identifying the Senator submitting the requests, and must provide such information to the public on the Internet.

Any Senator who requests an earmark is now under an affirmative obligation to submit a written statement to the chairman and ranking member of the committee of jurisdiction naming the Senator, identifying and naming the location of the recipient of the spending or the tax benefit, the purpose of the earmark, and a certification that neither the Senator nor the Senator's immediate family has a pecuniary interest in the item, that is, that the principal purpose of the earmark is not to further only the Member's pecuniary interest, only the pecuniary interest of the member's immediate family, or only the pecuniary interest of a limited class of persons or enterprises when the Member, his or her family, or enterprises controlled by them are members of the affected class. (S. 1, Section 521, amending Senate Rule XLIV, paragraphs 6 and 9).

The House rules on procedure and "earmark" requirements were not amended by S. 1, but were changed for the House on the first day of the 110th Congress, in H.Res. 6, adopted January 4, 2007.