

**Campaign Legal Center • Common Cause • Democracy 21
League of Women Voters • Public Citizen • U.S. PIRG**

November 20, 2007

Lorraine C. Miller
Clerk of the House
H-154 – Capitol Building

Nancy Erickson
Secretary of the Senate
S-312 – Capitol Building

Re: Implementation of lobbying disclosure reforms

Dear House Clerk Miller and Senate Secretary Erickson:

Our organizations worked for and strongly support the Honest Leadership and Open Government Act (HLOGA), which adopted important amendments to the Lobbying Disclosure Act (LDA) in order to provide the public with greatly improved disclosure of lobbying activities.

The organizations include the Campaign Legal Center, Common Cause, Democracy 21, the League of Women Voters, Public Citizen and U.S. PIRG.

As your offices are responsible for implementing the disclosure regime required by the LDA, as modified by HLOGA, and for preparing the forms on which the lobbying reports are submitted, we are writing to you to express our views about certain key requirements in the HLOGA.

We strongly urge you to implement these reforms in a manner that is consistent with the language and purpose of the statute, and with the intent of Congress to provide the public with broad disclosure of the money being raised and spent by lobbyists to influence Congress.

Broad disclosure of financial benefits and favors provided by lobbyists

A key reform adopted in HLOGA amends the LDA to require lobbyists to disclose a broad range of financial benefits and favors that they provide to assist members of Congress.

The legislation recognizes that lobbyists influence Members of Congress not only through spending on “lobbying activities,” which is already subject to disclosure, but also by providing financial benefits and favors to assist Members. As a result of the HLOGA, the LDA, for the first time, now requires public disclosure of these other ways in which lobbyists organize and spend money to assist Members.

Representative John Conyers (D-MI), the Chairman of the House Judiciary Committee and the principal House sponsor of the legislation, noted on the House floor that the bill “shines a disinfecting spotlight on lobbying activities by mandating full and enhanced disclosure on these activities.” 153 Cong Rec. H9204 (daily ed. July 31, 2007).

Section 203 of HLOGA amends section 1604 of the LDA to require each registered lobbyist and lobbying organization to file a new semi-annual report that discloses various contributions and disbursements to assist a Member that are made by the registrant or by a political committee established or controlled by the registrant, for the benefit of Members.

New section 1604(d)(1)(E) lists several categories of contributions and disbursements that are now subject to disclosure. Since this language covers both “funds contributed or disbursed” by the lobbyist or lobbying organization for the enumerated purposes, it requires disclosure not only of contributions and disbursements directly made by a registrant to benefit a Member for these purposes, but also of contributions and disbursements indirectly made by a registrant through a third person to benefit a Member for such purposes.

In other words, disclosure is required of both direct and indirect contributions or disbursements by a registrant for any of the purposes enumerated in subsections (i) through (iv) of section 1604(d)(1)(E).

Disclosure of spending for events and entities involving more than one Member.

Subsection (i) of section 1604(d)(1)(E) requires lobbyists to disclose payments they make for “the cost of an event to honor or recognize a covered legislative branch official” or executive branch official.

Subsection (ii) requires disclosure of contributions or disbursements “to an entity that is named for a covered legislative branch official” or executive branch official, “or to a person or entity in recognition of such official.”

Subsection (iii) requires lobbyists to disclose funds contributed or disbursed to “an entity established, financed, maintained or controlled by a covered legislative branch official” or executive branch official, or to “an entity designated by such official.”

In each instance, this disclosure requirement applies with regard to any entity or event involving one Member, or two or more Members, and it is incumbent upon you to make this clear in the rules and forms you issue to ensure proper compliance with the new law.

For example, with regard to subsection (i), which requires disclosure of money spent by a lobbyist for an event held to honor a covered legislative branch official, it is clear that disclosure is required if the event is held to honor two or more Members, or a state delegation of Members or Members who serve on a House Committee, or a group of Members (such as, for example, the “Blue Dogs”). No other interpretation of the statute makes any sense.

A huge loophole and an easy path for circumventing and evading the new disclosure requirement would be created if lobbyists could avoid disclosure of payments made for an event to honor a Member simply by including a second Member in the event. There is no evidence and no reason to believe that Congress wrote this provision in a manner that would license wholesale evasion and circumvention of the new disclosure requirement.

The same holds true in the case of payments made by lobbyists to an entity controlled or established by two or more Members (subsection iii) or for payments made by lobbyists to an entity that is named for two or more Members (subsection ii). Thus, for example, payments made by lobbyists to a foundation that is established, financed, maintained or controlled by two or more Members of a House caucus are required to be disclosed under this provision.

Multiple references in the legislative history of this provision confirm and make clear that it is not restricted to instances involving only a single “covered legislative branch official.”

For instance, in describing this and related disclosure requirements in the new law, Rep. Conyers, the lead House sponsor of the law, said on the floor, “We require lobbyists to disclose to the Secretary of the Senate and the House Clerk their campaign contributions and payments to presidential libraries, inaugural committees or entities controlled by the name for or honoring Members of Congress.” 153 Cong. Rec. H9205 (daily ed. July 31, 2007) (emphasis added). Rep. Chris Van Hollen (D-MD), a key co-sponsor of a portion of the House bill, said in a floor statement that the bill “requires lobbyists to detail their own campaign contributions, and payments to presidential libraries, Inaugural Committees or entities controlled by or named for Members of Congress.” *Id.* at H9209 (emphasis added). Senator Diane Feinstein (D-CA), the lead Senate sponsor of the law, said this provision requires disclosure of payments by lobbyists to “entities controlled by, named, or honoring Members of Congress.” 153 Cong. Rec. S10688 (August 2, 2007) (emphasis added).

Any effort to restrict these disclosure requirements to cases where only one Member is involved would be in direct conflict with the language, meaning and purpose of the statutory provision and with its goal of providing the public with broad disclosure of the financial benefits and favors provided by lobbyists to assist members of Congress. Such a restriction would open a massive loophole in the law and severely limit the scope of the disclosure to the public, thereby frustrating the purpose of Congress in enacting the provision.

We strongly urge you to avoid any such wrongful interpretation of the law, which would dramatically undermine the disclosure provision.

Reporting requirements

The new additional reports to be filed under section 1604(d)(1) are required to be filed on a semi-annual basis. However, under section 203(c) of HLOGA, you are required to submit a report within one year “on the feasibility of requiring the reports...to be made on a quarterly, rather than a semi-annual, basis.” This reflects the “sense of Congress” set forth in section 203(d) that after the first two years of the section 1604(d)(1) semi-annual reports, those reports “should be made on a quarterly basis if it is practicably feasible to do so.”

We strongly urge you to take all steps necessary to implement the goal of Congress and ensure that quarterly reporting can be instituted in the House and Senate after the two-year initial period for semi-annual reporting. The additional disclosures required by section 1604(d)(1)(E) provide important new information to the public about spending by lobbyists to influence Congress. While HLOGA now requires all other lobbying disclosure information to be made public on a quarterly basis, the additional reporting under section 1604(d)(1) will only be available, as an initial matter, on a semi-annual basis. It is vitally important that your offices ensure that it is “practically feasible” to provide this information on a quarterly basis at the earliest opportunity.

Adequate Resources to Implement HLOGA

We also strongly urge you to take the steps necessary to ensure that your offices have adequate resources to fully and effectively implement the additional public disclosure obligations imposed on your offices by the HLOGA. If you do not currently have sufficient resources to carry out your new disclosure obligations under the statute in a timely manner, it is essential that you immediately request that such resources be provided by the House and Senate.

In addition to the new section 1604(d)(1) reporting obligations discussed above, the HLOGA requires you to make substantial amounts of information available to the public on the Internet.

Under section 209(a) of HLOGA, for example, you are required to make all LDA registrations and reports available over the Internet, accessible without a fee, “in a searchable, sortable and downloadable manner, to the extent technologically practicable...” Further, the LDA reports must provide “electronic links or other appropriate mechanisms” to allow users to obtain “relevant information” in campaign finance reports filed in the database of the Federal Election Commission. *Id.*

Under section 304 of HLOGA, relating to the House Clerk, and section 546, relating to the Secretary of the Senate, your offices are also required to post on the Internet the reports and authorizations relating to travel by Members.

A principal goal of HLOGA, furthermore, is to make the information required to be disclosed by lobbyists available to the public on the Internet in an easily accessible and timely manner. The availability of this information to the public on the Internet in a “searchable, sortable and downloadable manner” is a core provision of the new law.

In order to meet these critical new disclosure requirements, as set forth by Congress, it is essential that your offices have adequate resources and funding to carry out your new disclosure responsibilities. If such resources and funding are currently not available to you, we urge you to request that the House and Senate quickly provide them to your offices.

In order to provide assurances to the public that your offices have, or will have, adequate resources and funding to carry out your new responsibilities, we call on you to inform the public about whether you have adequate resources and funding to meet your new disclosure obligations under HLOGA. If you do not, we call on you to inform the public whether you have requested such resources and funding from the House and Senate.

Disclosure Requirements for Stealth Coalitions

Section 207, “Disclosure of Lobbying Activities by Certain Coalitions and Associations,” is a simple and straightforward section to strength the disclosure requirements of the Lobbying Disclosure Act of 1995 (LDA).

Originally, a number of organizations were able to evade the disclosure requirements by establishing a coalition in name only, and then exploiting a provision in the old LDA that required only the coalition – and none of the groups behind the coalition – to register and report its lobbying activities. As a result, the public was aware that a coalition named, for example, the Policy & Taxation Group, was making expenditures to influence legislation without knowing who the key players were in funding and running the coalition.

Several alternatives for closing this loophole in LDA had been offered in both the House and the Senate over the last several years. Each of the proposals sought the common objective of having these lobbying coalitions disclose to Congress and the public, the key groups and sources of funding behind such coalitions, while imposing limited reporting requirements on the coalitions and protecting the associational rights of individuals and organizations.

The legislation that emerged in HLOGA accomplishes these objectives and provides these safeguards. Section 207 does not change the definition of who has to register as a lobbying entity (“client”) with the House Clerk or Senate Secretary. Rather, it simply amends the disclosure requirements for groups that are already registered. So, under the section a coalition or trade association that is already registered must now disclose any organization that both contributes at least \$5,000 toward the coalition or trade association’s lobbying activities and “actively participates in the planning, supervision or control of such lobbying activities.”

The new provision exempts a registered coalition or trade association from reporting any individuals who are members of the coalition or trade association. Furthermore, *organizational* members of a registered coalition or trade association who pay membership dues to support the coalition’s efforts, *but* who do not actively participate in the “planning, supervision or control” of the coalition’s lobbying activities, also are exempt from the disclosure requirement.

In addition, with large trade associations specifically in mind, Section 207 exempts a registered coalition or trade association from disclosing on its LDA reports organizational members whom would otherwise be subject to the disclosure requirement, if the coalition or trade association publishes the names of those organizational members on its Web page.

The coalition or trade association is not required to post the names of all its organizational members on the Web page in order to avail itself of this exception, but only those

members whose identity it would otherwise have to disclose - that is, those organizational members who contribute \$5000 or more and who actively participate in the planning, supervision or control of such lobbying activities.

In these circumstances, only the registered coalition or trade association itself would be disclosed on the lobbying disclosure reports, since its actively participating coalition members would already be known to the public through their disclosure on the coalition or trade association's Web site.

Section 207 of the new lobbying and ethics legislation has been carefully drafted to close a disclosure loophole in LDA involving stealth lobbying coalitions and impose limited new reporting burdens on registered coalitions and trade associations, while at the same time protecting the associational rights of individuals and organizations.

We strongly urge you to interpret and implement the HLOGA to carry out the intent and purpose of Congress to provide the public with timely and easily accessible broad new disclosures about the ways in which lobbyists and lobbying organizations spend money to influence members of Congress.

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