

## CLIENTTOPICS

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### A Brief Overview of US Lobbying Laws

This *ClientTopics* provides a brief overview of US federal laws that govern lobbying at the federal level in the United States. Most states and municipalities in the states each have varying laws dealing with lobbying in their jurisdiction which are similar to US federal laws.

The US federal laws governing lobbying generally:

1. Require individuals, and entities (including lobbyists and organizations that employ lobbyists) in the United States acting on behalf of local persons or entities to register and file disclosure reports regarding their communications and contacts with US government officials about legislation and executive action;
2. Require the registration and disclosure of individuals, and entities (including lobbyists and organizations that employ lobbyists) who lobby or engage in political activities on behalf of a foreign government or entity;
3. Define the scope within which individuals, and entities (including lobbyists and organizations that employ lobbyists) may fund the campaign of or contribute funds to a candidate running for public office; and
4. Define the scope within and the circumstances under which individuals and entities (including lobbyists and organizations that employ lobbyists) may provide gifts, meals, travel, entertainment, jobs and other benefits to government officials and their family members.

Violators of the relevant laws face potential civil and criminal penalties, including the loss of contracts with the US government and being barred from future contracts with the US government. Recent scandals and violations have prompted more aggressive enforcement of US federal lobbying laws. The relevant laws and regulations of states and municipalities governing lobbying activities may be more stringent than comparable federal laws.

#### **Registration and Disclosure**

Registration of lobbyists and disclosure regarding their activities is mandated and governed by the Lobbying Disclosure Act of 1995 ("LDA") and the Foreign Agents Registration Act of 1938 ("FARA").

LDA requires lobbyists to register and file reports when they engage in oral or written communication or other contacts with executive or legislative branch officials on behalf of their clients regarding legislation or executive action. Failure to comply with the registration and reporting requirements can result in large civil fines. Criminal liability may be imposed for willfully filing false statements. Most lobbying laws of states of the United States require disclosure and reports which are far more detailed than the LDA.

FARA requires individuals and entities that lobby or engage in political activities on behalf of a foreign government, a foreign political party and foreign persons and entities to register with the US Department of Justice. Civil and criminal penalties may be imposed on anyone that willfully violates the registration requirements, willfully makes a false statement of material fact or willfully omits any material fact.

#### **Campaign Finance Regulation**

Campaign finance laws regulate how money is raised, contributed and spent on elections for candidates for public office. Federal election campaigns are regulated by the Federal Election Campaign Act of 1971 ("FECA") and the Bipartisan Campaign Reform Act of 2002 ("BCRA") which amended the FECA. The FECA and BCRA govern how political candidates raise and spend campaign funds, set forth the reporting requirements for monies received, and regulate who can contribute and how much.

## CLIENT TOPICS

### A Brief Overview of US Lobbying Laws – February 2007

FECA requires political candidates to disclose their source of contributions and list expenditures, limits contribution by individuals and organizations, and prohibits campaign funds from foreign nationals, government contractors, corporations, national banks and labor organizations, and contribution in the name of persons other than the identified contributor and contributions in cash over \$100.

BCRA, which amended the FECA, regulates soft money contributions, requires the disclosure of the source of funds for election advertisements in excess of \$10,000, and increases some limits on contributions set by the FECA. The BCRA also increases the civil and criminal penalties for violation of federal election laws.

#### **Gifts and Benefits to Government Officials**

Gifts to public officials are highly regulated, especially gifts by lobbyists and agents of foreign entities. US federal anti-bribery and anti-gratuity laws (e.g., 18 USC section 201 – Bribery of Public Officials and Witnesses) impose criminal liability to anyone who directly or indirectly gives, offers or promise anything of value to a public official with the intent to influence an official act, in return for an official act or with the expectation of favorable acts in the future.

Under the law, gifts “to public officials” is defined in the broadest sense as it also encompasses gifts to their family, gifts to organizations maintained or controlled by the public officials, charities designated by the public officials or gifts to any other individual or entity that inure to the benefit of the public official(s). Gifts include meals, entertainment, food, refreshments, and tickets to games.

Travel and “honorarium” are also highly regulated. A public official may be reimbursed for the cost of actual and necessary travel expenses for travel for an official purpose such as attending a meeting or speaking at a conference. The length of the trip is generally limited.

Public officials are expressly prohibited from receiving an honorarium for appearances speeches, and articles. The sponsor may make a contribution of up to \$2,000 in lieu of the honorarium.

Public officials are also governed by and expected to adhere to ethical rules which mandate how they should treat gifts, travel and other non-campaign directed benefits.

#### **Proposed Law: The Lobbying Transparency and Accountability Act of 2007**

On January 18, 2007 the US Senate passed the Lobbying Transparency and Accountability Act (“LTAA”) of 2007. As the name indicated, LTAA aims to bring more transparency and accountability to the practices of lobbyists and their relationship with public officials. If signed into law as passed by the Senate, the LTAA will, among other things:

- expressly prohibit gifts and travel from lobbyists and organizations that employ lobbyists, subject to certain exceptions;
- ban lobbyists from hosting or sponsoring events that honor Members of Congress at party conventions;
- amend the LDA by requiring quarterly instead of semiannual electronic reporting of lobbying activities;
- provide that FARA reports are to be filed electronically and made available to the public on the Internet;
- increase to \$200,000 the penalty for failure to comply with LDA reporting requirements; and
- penalize lobbyists for violating the gift and travel rules.

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For more information specifically with respect to US lobbying laws, please contact:

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