NEW FEDERAL LEGISLATION MEANS ADDITIONAL OBLIGATIONS ON LOBBYISTS AND COMPANIES THAT LOBBY

Congress has passed, and President Bush has indicated he will soon sign, the "Honest Leadership and Open Government Act of 2007" (the "Act"), legislation that amends the Lobbying Disclosure Act of 1995 (the "LDA") to impose new restrictions and obligations on those who lobby and companies that employ or retain lobbyists. This legislation is in response to the 2005-2006 lobbying scandals involving Jack Abramoff, Members of Congress and their staffs, and Bush Administration officials. The Act will, for the first time, make lobbyists and the companies that hire them responsible for actions that might influence Members of Congress and their staffs to violate ethics rules, and will expand existing civil and criminal enforcement liability for causing such violations. The legislation also creates new reporting obligations under the federal election laws that will identify lobbyists who "bundle" campaign contributions. As a result, businesses and individuals that employ or retain lobbyists need to review and evaluate their conformance to current requirements and take appropriate steps to assure compliance with the new law.

Current Law

Prior to the Act, the regulation of lobbying activities under the LDA has focused, as the title suggests, primarily on disclosure, rather than on restrictions on lobbyists' activities or on enforcement. Under the LDA, companies employing lobbyists are required to register with the House and the Senate if they make more than one lobbying contact and incur $24,500 (indexed for inflation) or more in related expenses within a six-month period. Individuals and firms that engage in lobbying on behalf of clients must register if, on behalf of a client, they make more than one lobbying contact, receive at least $6,000 for lobbying, and spend more than 20 percent of the time allocated to that client on lobbying activities. Once registered, lobbyists have to file semiannual reports that disclose basic information regarding issues on which they lobbied and amounts spent (by companies) or received (by lobbying firms). Recently, the House and the Senate have required filings to be made electronically. Former Members of Congress and senior congressional staff members are prohibited from lobbying their former offices for a one-year "cooling-off period." Although the LDA provides for civil and criminal penalties for violations, the Abramoff scandal revealed that the LDA has had a history of very few enforcement actions—and only for the most egregious abuses.

Amendments to the LDA by the "Honest Leadership and Open Government Act of 2007"

The Act will expand significantly the amount of information that must be disclosed by registrants, and will require affirmation of compliance with certain of the restrictions on lobbyists' conduct. The most significant changes will be:

- for lobbing activities after January 1, 2008, quarterly rather than semiannual reporting. Reports must be filed within 20 days of the end of a calendar quarter. The current semiannual income, expenditure and time triggers for registration will be adjusted to quarterly levels;
- required electronic filing with both the House and the Senate;
- immediate availability of electronic filings via an online database accessible on the Internet;
- semiannual reporting of any political contribution in excess of $200 to a federal candidate, officeholder, leadership, party, or Presidential library or inaugural committee;
- reporting of any privately financed trips that lobbyists arrange for Members of Congress or congressional staff;
- disclosure of "bundled" campaign contributions that a lobbyist collects and forwards on to a covered recipient (i.e., a federal candidate, officeholder, leadership, or party political action committee), or for which a lobbyist is credited by such a recipient. Committees must file disclosure reports with the Federal Election Commission when registered lobbyists bundle $15,000 or more in contributions on a semiannual basis. The Federal Election Commission must make the information readily accessible to the public on the Internet;
- effective on enactment, prohibition on gifts or payment for travel by registered lobbyists to Members of Congress and congressional staff;
- semiannual written affirmation by each registrant that no lobbyist has given a gift or provided travel with the knowledge that the gift may not be accepted under the rules of the House or the Senate;
- prohibiting former senators from lobbying ex-colleagues for two years after they leave office, and former Senate staff members from lobbying the Senate for one year. The current one-year restrictions remain unchanged for former House members and House staff; and
- additional civil (up to $200,000) and criminal (up to five years' imprisonment) penalties, and semiannual disclosure of the number of cases referred to the Justice Department for prosecution.

The Act seeks both to provide greater transparency as to lobbying activities and to restrict the ability of lobbyists to use money to exert undue influence over Members of Congress and staff. The Act will, inevitably, result in heightened public scrutiny of lobbying activities and of enforcement of its new requirements and prohibitions: for the foreseeable future, the risk for the regulated community of penalties for noncompliance or error (as well as of reputational harm) will also be heightened. Because the House and the Senate do not function as administrative agencies, they have historically provided little guidance concerning LDA compliance, and this

lack of clarity is expected to continue. Consequently, businesses that employ lobbyists or lobbying firms should carefully examine the actions of their lobbyists and ensure that adequate compliance policies are in place.

* * * * * * * * * * * * * * *

If you have any questions concerning the foregoing or would like additional information, please contact Russell Smith (202-303-1116, rsmith@willkie.com), Barbara Block (202-303-1178, bblock@willkie.com), or the attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099 and has an office located at 1875 K Street, NW, Washington, D.C. 20006-1238. Our New York telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our Washington, D.C. telephone number is (202) 303-1000 and our facsimile number is (202) 303-2000. Our website is located at www.willkie.com.

August 8, 2007