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Lobbying Disclosure: Themes and Issues, 110th Congress

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Summary

Recent incidents concerning a convicted lobbyist and the provision of privately funded travel, free meals and entertainment by lobbyists to Members of Congress, congressional staff, and some executive branch officials have focused broad public and congressional attention on the interactions between government officials and lobbyists. The First Amendment to the Constitution provides opportunity for interest groups to participate in public policy making by prohibiting laws abridging freedom of speech, while guaranteeing the right of the people to peaceably assemble and to petition the government for a redress of grievances, but lobbying is controversial. Any consideration of current law related to lobbying will likely involve discussing the balance between open, transparent, and accountable governance through thorough public disclosure of activities carried out by lobbyists, and the rights of lobbyists, on their own, or on behalf of a client, to exercise constitutionally guaranteed rights.

The attention of policy makers has in the past focused in two general areas: (1) the efficacy of current lobbying disclosure requirements; and (2) congressional rules governing interactions between lobbyists, Members of Congress, and their staffs, and statutes governing similar relationships between lobbyists and executive branch officials. This report focuses primarily on issues related to lobbying disclosure procedures and their potential amendment.

The regulation of lobbying disclosure is governed by the Lobbying Disclosure Act of 1995 (LDA), as amended. During the early organizational period prior to the 110th Congress, it was reported that leaders of the new incoming majorities in both chambers indicated that lobbying disclosure procedures are likely to be considered as part of a broader package of ethics and procedural initiatives related to lobbying activities. Some of that consideration might include the following issues related to lobbying disclosure: (1) defining clients under LDA to incorporate coalitions and grassroots lobbying; (2) frequency and scope of disclosure; (3) revolving door provisions; (4) lobbyist contributions and payments; (5) linking lobbying disclosure information with Federal Election Commission reports; and (6) LDA enforcement and administration.

This report will be updated as warranted. For further background information and analysis regarding lobbying-related proposals, please consult the CRS Current Legislative Issues page on Lobbying, Ethics and Related Procedural Reform at [http://beta.crs.gov/cli/cli.aspx?PRDS_CLI_ITEM_ID=2405].

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Introduction

Some of the areas widely believed to be influenced by lobbyists include general legislation and administrative rulemaking, the inclusion of earmarks in appropriations legislation that benefit narrow interests,[1] and campaign finance practices.[2] Recent incidents concerning a convicted lobbyist and the provision of privately funded travel, free meals and entertainment[3] by lobbyists to Members of Congress, congressional staff, and some executive branch officials have focused broad public and congressional attention on the interactions between government officials and lobbyists.

The First Amendment to the Constitution provides opportunity for interest groups, which might lobby either in their own behalf, or through paid lobbyists to participate in public policy making by prohibiting laws that unduly abridge freedom of speech, the right of the people to peaceably assemble, and to petition the government for a redress of grievances.[4] Any consideration of current law related to lobbying will likely reconsider the balance between open, transparent, and accountable governance through thorough public disclosure of activities carried out by lobbyists, and the rights of lobbyists, on their own, or on behalf of a client, to exercise constitutionally guaranteed rights. Toward those ends, the attention of policy makers has focused in two general areas: (1) the efficacy of current lobbying disclosure requirements; and (2) congressional rules governing interactions between

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[1] See CRS Report RL33397, *Earmark Reform Proposals: Analysis of Latest Versions of S. 2349 and H.R. 4975*, by Sandy Streeter; CRS Report RL33295 *Comparison of Selected Senate Earmark Reform Proposals*, by Sandy Streeter; and CRS Report 98-518, *Earmarks and Limitations in Appropriations Bills*, by Sandy Streeter.

[2] See CRS Report RL33580, *Campaign Finance: An Overview*, by Joseph E. Cantor; CRS Report RS21716, *Political Organizations Under Section 527 of the Internal Revenue Code*, by Erika Lunder; and CRS Report RL32954, 527 *Political Organizations: Legislation in the 109th Congress*, by Joseph E. Cantor and Erika Lunder.

[3] See CRS Report RL33047, *Restrictions on the Acceptance of "Officially Connected" Travel Expenses From Private Sources Under House and Senate Ethics Rules*, by Jack Maskell; CRS Report RS22231, *The Acceptance of Gifts of Free Meals by Members of Congress*, by Jack Maskell; and CRS Report RL33237, *Congressional Gifts and Travel: Proposals in the 109th Congress*, by Mildred Amer.

[4] For a broad overview of the roles and activities of groups that lobby Congress, see U.S. Senate, Committee on Governmental Affairs, Subcommittee on Intergovernmental Relations, *Congress and Pressure Groups: Lobbying in a Modern Democracy*, 99th Cong., 2nd sess., S. Prt. 99-161 (Washington: GPO, 1986), pp. 1-40.

lobbyists, Members of Congress, and their staffs, and statutes governing similar relationships between lobbyists and executive branch officials. This report focuses primarily on issues related to lobbying disclosure procedures and their potential amendment.

Background

In the American political system, the pursuit of private interests through adoption and amendment of public policy dates from the founding of the republic. Writing in support of the new, as yet unratified Constitution in 1787, James Madison identified interest groups, or factions — groups of citizens united by a common impulse of passion or of interest — as a cornerstone of the American regime, but one that had potentially negative connotations.[5] In 1830, Alexis de Tocqueville observed that "in no country in the world has the principle of association been more successfully applied ... than in America," and that the inclination to association was a positive benefit for American society.[6]

More than two centuries after Madison's writings appeared, the role of interest groups and lobbyists in contemporary policy making is still controversial. In the past 40 years, observers have noted a steady increase in the number of organized interest groups, including associations, public interest groups, and professional organizations. Many of these groups lobby in their own behalf or retain the services of lobbyists. Additionally, these observers note a change in the types of activities lobbyists employ to influence policymaking. Longstanding lobbying techniques of establishing personal ties with Members of Congress, their staffs, and executive branch officials, testifying at congressional and administrative hearings, and supporting public officials in their reelection efforts have been supplemented by marketing techniques. Some of these techniques include direct mail, public relations, newspaper advertisement, and other approaches to generate attention and interest in public policies and programs, in an effort to influence the decisions of policy makers. One consequence of this growth is an increase in the costs of lobbying.

Some observers assert that money plays a critical role in gaining access to policy makers, and thus desired policy outcomes, for those who commit such resources. These observers assert that lobbyists might use money to gain favor and influence with public officials in a number of ways, including (1) making campaign contributions, hosting fund-raising events, or raising and bundling contributions to Members of Congress or their leadership political action committees (PAC); (2) arranging trips for Members or other government officials, paid for by their clients or employers; (3) arranging privately owned aircraft for travel at below market costs; (4) paying for parties or meals and tickets to sporting and entertainment events; making contributions to foundations established or controlled by public officials; and (5) financing retreats and conferences held by Members or other public officials.

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[5] See Federalist Number 10, in *The Federalist* by Alexander Hamilton, James Madison, and John Jay, edited by Benjamin Fletcher Wright (Cambridge, MA: The Belknap Press of Harvard University Press, 1961), pp. 129-136.

[6] Alexis de Tocqueville, *Democracy in America* (New York: Colonial Press, 1989), vol. I, quote, p. 191.

Those observers assert that because such funds are intended to help influence the decisions of Members, they must be subject to appropriate controls to protect the integrity of congressional decisions.[7]

Others counter that the primary activity of lobbying is a communication process regarding issues that may effect firms, organizations and citizens, and that such communications are a legitimate and necessary part of the American political process. Proponents of this view assert that lobbyists representing a broad range of interested parties help Members and their staffs both to sort through the large volume of legislative initiatives that are typically introduced in each Congress and make informed decisions regarding those initiatives. For them, effective lobbying is not about access or money, but organizing and providing information to congressional and executive branch officials regarding the necessity and potential consequences of various legislative or regulatory initiatives from a variety of viewpoints. From their perspective, enforcement of current rules and regulations regarding disclosure and interactions between government officials and lobbyists, such as those cases recently adjudicated,[8] and enhanced education about those rules are preferable to enacting more rigorous disclosure regimes.[9]

Since the interactions between lobbyist and policy makers are protected under the First Amendment, there is likely no way to prohibit those interactions in a manner consonant with the Constitution. Instead, activities of individuals and firms that are compensated as lobbyists are tracked through a system of direct and indirect disclosure of contact and other interactions, but not the content of those interactions. Direct disclosure of lobbying activities is required under the Lobbying and Disclosure Act of 1995 (LDA), as amended, and discussed below. Indirect tracking of the activities of some lobbyists who might also make donations to candidates for federal office might be achieved through disclosures by federal candidates of the sources of their funding required under the Federal Elections and Campaigns Act (FECA),[10] as amended, but the correlation of the activities of lobbyists and any contributions they might make to candidates is not the intended focus of that law. Generally, concern has been expressed that current lobbying disclosure requirements may be inadequate to track all the activities of lobbyists in a manner that assures a level of transparency

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[7] Statements and testimony of Fred Werthheimer, president of Democracy21, before the Senate Committee on Homeland Security and Governmental Affairs, Jan. 25, 2006; Ibid., before the Senate Committee on Rules and Administration, Feb. 8, 2006; and Ibid., before the House Committee on Rules, Mar. 2, 2006. Transcripts retrieved through cq.com. See also, W. Lance Bennett, *The Governing Crisis: Media, Money and Marketing in American Elections*, 2nd edition (New York: St. Martin's Press, 1996).

[8] See *United States v. Abramoff*, No. 06-00001 (D.D.C. filed Jan. 3, 2006); *United States v. Safavian*, No. 05-0370, 2006 U.S. Dist. LEXIS 40474 (D.D.C. June 20, 2006); *United States v. Stillwell*, No. 06-00300 (D.D.C. filed June 27, 2006); and *United States v. Ney*, No. 06-00272 (D.D.C. filed Sept. 15, 2006).

[9] Statements and testimony of Paul Miller, president of the American League of Lobbyists, before the Senate Committee on Homeland Security and Governmental Affairs, Jan. 25, 2006; and Ibid., before the House Committee on Rules, Mar. 2, 2006. Transcripts retrieved through cq.com.

[10] 2 U.S.C. 431.

sufficient to allow a broad understanding of the influences and motivations that animate public policy making. Some observers believe that one solution to this purported problem is to link data collected under lobbying disclosure and campaign finance disclosure laws to achieve a clearer understanding of the roles lobbyists play.

In addition to the constitutional challenges, there are practical limitations to identifying the consequences of lobbying activity. It is unclear, for example, how effective lobbyists are at advancing the interests of their clients in a policy environment characterized by many lobbyists offering many points of view, relatively few policy makers, and the simultaneous demands of constituents vying for consideration. Some argue that "money buys access, and lots of money buys lots of access,"[11] and that preferred policy outcomes could follow.[12] On the other hand, some observers suggest that constituents get the attention of a Member of Congress faster than a lobbyist due to a Members' perception of representational duty and perceived electoral pressures.[13] The difference of interpretation is due in part to the difficulties inherent in efforts to quantify lobbying interactions, or in developing qualitative evaluations that capture lobbying activities.[14] Nevertheless, this paucity of knowledge arguably could be interpreted to suggest that funds-tracking disclosure regimes might be of limited explanatory utility in support of enhanced transparency regarding the effects and outcomes of the activities of lobbyists.

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[11] Jeffrey H. Birnbaum, *The Money Men* (New York: Crown, 2000), p.20.

[12] See Frank R. Baumgartner and Beth L. Leech, "Issue Niches and Policy Bandwagons: Patterns of Interest Group Involvement in National Politics," *Journal of Politics*, vol. 63 (November 2001), pp. 1191-1213; Margaret F Brinig, Randall G Holcombe, and Linda Schwartzstein, "The Regulation of Lobbyists," *Public Choice*, vol. 77 (Oct. 1993), pp. 377-384; John R. Wright, PAC Contributions, Lobbying, and Representation," *Journal of Politics*, vol. 51 (Aug. 1989), pp. 713-730; Laura I. Langbein, "Money and Access: Some Empirical Evidence," *Journal of Politics*, vol. 48 (Nov. 1986), pp. 1052-1163; and Kay L. Schlozman and John T. Tierney, *Organized Interests and American Democracy* (New York: Harper and Row, 1986).

[13] See Michelle L. Chin, "Constituents Versus Fat Cats: Testing Assumptions about Congressional Access Decisions," *American Politics Research*, vol. 33 (Nov. 2005), pp. 751-786; John W. Kingdon, Congressmen's Voting Decisions, 3rd ed. (Ann Arbor, MI: University of Michigan Press, 1989); Morris P. Fiorina, *Congress, Keystone of the Washington Establishment*, 2nd ed. (New Haven, CT: Yale University Press, 1989); Bruce Cain, John Ferejohn, and Morris Fiorina, *The Personal Vote: Constituency Service and Electoral Independence* (Cambridge, MA: The Harvard University Press, 1987); Richard F. Fenno, *Home Style: House Members in Their Districts* (New York: Harper Collins, 1978); and David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974).

[14] Virginia Gray, David Lowery, Matthew Fellowes and Jennifer L. Anderson, "Legislative Agendas and Interest Advocacy: Understanding the Demand Side of Lobbying," *American Politics Research*, vol. 33(May, 2005), pp. 404-434; and Chin, "Constituents Versus Fat Cats...", pp. 751-786

The Lobbying Disclosure Act of 1995

The regulation of lobbying disclosure is governed by the Lobbying Disclosure Act of 1995 (LDA),[15] as amended by the Lobbying Disclosure Technical Amendments Act of 1998.[16] LDA requires any lobbyist who is compensated for his actions, whether an individual or firm, and whose lobbying expenses exceed certain thresholds[17] to register and to file with the Clerk of the House (the Clerk) and the Secretary of the Senate (the Secretary) within 45 days after the lobbyist first makes a lobbying contact with covered officials in the legislative and executive branches of the federal government on behalf of a client.[18] The law requires lobbyists to file with the Clerk and the Secretary semiannual reports of their activities. These reports identify the name of the registrant, lobbyists the registrant employs, client, and the broad issue areas in which lobbying was carried out. In addition, the disclosure must include

- a good faith estimate, by broad category, of the total amount of lobbying-related income from the client, or expenditures by an organization lobbying in its own behalf, during the semiannual period. Expenditures may be estimated at less than $10,000 or in increments of $20,000;

- the specific issues that were the subject of a lobbyist's efforts, including "to the maximum extent practicable" a list of bill numbers;

- a statement of the houses of Congress and the federal agencies contacted by the lobbyist; and

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[15] P.L. 104-65, Lobbying Disclosure Act of 1995 (109 Stat. 691, 2 U.S.C. 1601).

[16] P.L. 105-166, Lobbying Disclosure Technical Amendments Act of 1998 (112 Stat. 38, 2 U.S.C. 1601 note).

[17] If the total income for matters related to lobbying activities on behalf of a client represented by a lobbying firm does not exceed $5,000, or total expenses in connection with the lobbying activities an organization whose employees engage in lobbying activities on its own behalf do not exceed $20,000, then no registration and disclosure is required.

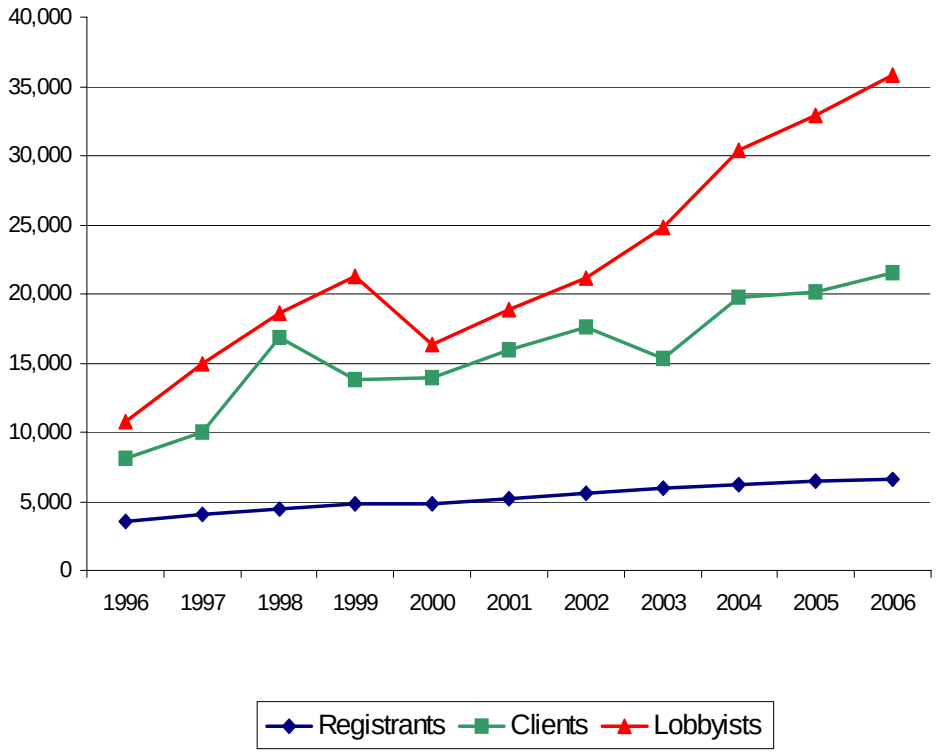
[18] Legislative branch officials covered under LDA include Members of Congress; elected officers of either chamber; any employee of a Member, committee, leader or working group organized to provide assistance to Members; and any other legislative branch employee serving in a position that is compensated at a rate of 120% of the basic pay for GS 15 of the General Schedule.

Executive branch covered officials include the President; the Vice President; any officer or employee in the Executive Office of the President; any officer or employee serving in a position compensated through the Executive Schedule; any member of the uniformed military services whose pay grade is at or above O-7 under 37 U.S.C. 201 (In the United States Army, Air Force, and Marine Corps, this is a brigadier general. In the United States Navy and Coast Guard the equivalent rank is rear admiral.); and any officer or employee serving in a position of a confidential, policy-determining, policy-making, or policy-advocating character that the Office of Personnel Management has excepted from the competitive service under 5 U.S.C. 7511(b)(2)(b).

- a list of the employees of the registrant who acted as lobbyists on behalf of the client, and a declaration of any previous employment as a covered executive branch or legislative branch official in the two years prior to registration.

LDA defines a lobbyist as any individual compensated by a client for services that include more than one direct lobbying contact, within certain limits.[19] A "client" is defined as any person or entity that employs and compensates another person to conduct lobbying activities on their behalf.[20] **Table 1** summarizes the number of registrants, clients, and lobbyists registered with the Secretary of the Senate since LDA took effect. **Figure 1** displays the same data graphically.

Figure 1. LDA Registrants, Clients, and Lobbyists, 1996-2006



[19] An individual whose lobbying activities constitute less than 20% of the time engaged in the services provided to a client over a six month period is exempt from LDA disclosure requirements.

[20] Under LDA, groups that carry out lobbying activities on their own behalf must also register with the Clerk and the Secretary.

Table 1. Registrants, Clients and Lobbyists Registered Under the Lobbying Disclosure Act of 1995, 1996-2006

Year[a]	Registrants		Clients		Lobbyists	
	Total	Annual Change	Total	Annual Change	Total	Annual Change
1996	3,557	—	8,118	—	10,798	—
1997	4,051	13.89%	10,013	23.34%	14,946	38.41%
1998	4,422	9.16%	16,873	68.51%	18,589	24.37%
1999	4,813	8.84%	13,793	-18.25%	21,279	14.47%
2000	4,774	-0.81%	13,865	0.52%	16,342	-23.20%
2001	5,160	8.09%	15,941	14.97%	18,854	15.37%
2002	5,536	7.29%	17,575	10.25%	21,089	11.85%
2003	6,005	8.47%	15,317[b]	-12.85%	24,872	17.94%
2004	6,231	3.76%	19,758	28.99%	30,402	22.23%
2005	6,485	4.08%	20,099	1.73%	32,890	8.18%
2006	6,554	1.06%	21,468	6.81%	35,844	8.98%
Change, 1996-2006		84.26%		164.45%		231.95%

Source: Data from the Secretary of the Senate, Office of Public Records and CRS calculations.

Notes: Except for 2000, data reflect all records available on September 30. Data for 2000 reflect only active registrations, clients, and lobbyists.

a. As of Sept. 30 for each year. LDA became effective Jan. 1, 1996, and data for that year cover nine months.
b. Total reflects Senate Office of Public Records efforts to regularize differences in various client names.

Lobbying Disclosure Issues in the 110th Congress

During the early organizational period prior to the 110th Congress, it was reported that leaders of the new incoming majority in both chambers indicated that lobbying disclosure procedures are likely to be considered as part of a broader package of ethics and procedural initiatives related to lobbying activities.[21]

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[21] Rep. Nancy Pelosi, "Pelosi Announces Opening Session of 110th Congress," Nov 21, 2006; Ibid., "Pelosi: Democrats' First Order of Business in the New Congress Will Be Ethics Reform," press release, Nov. 27, 2006; Reps. Nancy Pelosi, Steny Hoyer, James Clyburn, Rahm Emanuel, John Larson, Rosa DeLauro, and George Miller, "Materials for (continued...)

Some of that consideration might include the following issues related to lobbying disclosure:

- defining clients under LDA to incorporate coalitions and grassroots lobbying;
- frequency and scope of disclosure;
- revolving door provisions;
- lobbyist contributions and payments;
- linking lobbying disclosure information with FEC reports;
- LDA enforcement; and
- LDA administration.

Definition of Client and Specification of Client Activities

Lobbying disclosure proposals in the 110th Congress could address issues related to the lobbying activities of coalitions and grass roots entities. Any such consideration would likely entail reconsideration of the LDA definition of a "client." Under LDA, a client is defined as any person or entity that employs and compensates another person to conduct lobbying activities on their behalf. The law also requires groups that carry out lobbying activities on their own behalf to register with the Clerk and the Secretary. LDA requires the disclosure of any person or entity that contributes more than $10,000 toward the lobbying activities of a registrant, plans, supervises, or controls those lobbying activities. Under non-binding guidance issued by the Clerk of the House and Secretary of the Senate, members of informal coalitions who each pay at least $5,000 in lobbying or membership fees to be a part of a coalition or association may be viewed as separate clients for LDA disclosure purposes.[22] Grassroots lobbying, lobbyists, firms, or activities are not specified or considered in LDA.

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[21] (...continued)
Today's Members' Conference Call on Democratic Rules Package," dear colleague letter to Democratic Caucus, Dec. 14, 2006; Sens. John McCain, Susan Collins, Russell Feingold, and Joseph Lieberman, and Reps. Christopher Shays and Martin Meehan, "Sens. McCain, Feingold, Collins, Lieberman, Reps. Shays and Meehan Hold News Conference on Lobbying Reform," transcript, Dec. 5, 2006; David Nather, "Democrats' First 100 Hours: New Rules Will Test Promise to Run 'Most Ethical Congress in History,'" *CQ Weekly*, Nov. 20, 2006; Senator Harry Reid, "Senate Minority Leader Reid Delivers Democratic Response to President Bush's Weekly Radio Address," transcript, Nov. 18, 2006, article and transcripts retrieved from cq.com.

[22] Office of the Clerk of the House of Representatives and Office of the Secretary of the Senate, *Lobbying Disclosure Act Guidance and Instructions*, undated, p.11.

Concern has been expressed that entities that use anonymous lobbying activities and public relations campaigns might circumvent the process of public consideration of lawmaking and regulatory activities. Observers suggest that the current LDA definition of a client might allow interested entities to shield their lobbying activities through the use of ostensibly separate, independent coalitions and associations.[23] Some of these coalitions and associations, sometimes referred to as "stealth" groups, form alliances with other groups, or serve as groups that exist solely to advance a campaign for or against a specific policy action.[24] Political scientists Darrell West and Burdett Loomis assert that anonymous campaigns are carried out in voter education efforts, and electoral, legislative, and rulemaking settings, and that "the key in each of these efforts is that the actual sponsor is masked by front organizations that make it difficult for the public to see who really is funding the activity. Stealth campaigns are consciously designed to fly under the radar of press and public oversight."[25]

In addition to concerns regarding stealth lobbying, observers have noted a steady increase in the number of interest groups using direct mail, public relations, newspaper advertisement, and other marketing techniques to generate public interest. These activities can include engaging citizens to lobby on their behalf to persuade a government official regarding legislation or executive agency action. Some of these organized efforts, which are not currently subject to disclosure under LDA, are also accompanied by sophisticated media campaigns to advance the causes of a group.[26] Widespread lobbying campaigns may be targeted to citizens, journalists, lawmakers, executive agency personnel, and other groups with interests similar to those of the organization on whose behalf the campaign is mounted.[27] This practice is sometimes referred to as "grassroots" advocacy to identify its appeal to the general public. Some observers, noting the use of marketing techniques and alleging that a bona fide connection to the general public is lacking, sometimes refer to such efforts as "astroturf" lobbying.[28]

Campaigns to sway public opinion and affect public policy, anonymous or otherwise, are not new. Writing a series of articles that became known generally as

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[23] Josephine Hearn, "Dems Want to Change Congressional Rules," *The Hill*, July 14, 2004, p.3; and Alison Mitchell, "Loophole Lets Lobbyists Hide Clients' Identity," *New York Times*, July 4, 2002, p. A1.

[24] For examples of anonymous lobbying, see Jeffrey H. Birnbaum, "Lobbying Under The Cloak Of Invisibility," *Washington Post*, Mar. 7, 2005, p. E1, retrieved through nexis.com.

[25] Darrell M. West and Burdett A. Loomis, *The Sound of Money: How Political Interests Get What They Want* (New York: W. W. Norton and Company, 1998), pp. 69-70.

[26] West and Loomis, *The Sound of Money*, pp. 16-20; and R. Kenneth Godwin, "Money Technology and Political Interests: The Direct Marketing of Politics," in Mark P. Petracca, ed., *The Politics of Interests: Interest Groups Transformed* (Boulder, CO: Westview Press, 1992), pp. 308-325. Also, see H. R. Hood, *Interest Group Politics in America: A New Intensity* (Englewood Cliffs, NJ: Prentice Hall, 1990).

[27] West and Loomis, *The Sound of Money*, pp. 45-64.

[28] Nicholas Confessore, "Meet the Press," *Washington Monthly*, Dec. 2003, available at [http://www.washingtonmonthly.com/features/2003/0312.confessore.html].

the Federalist Papers, Alexander Hamilton, James Madison, and John Jay[29] sought to persuade the general public in the 13 United States, and New York residents in particular, to press their leaders for ratification of the U.S. Constitution. In 1787 and 1788, 85 articles authored by the trio appeared in newspapers throughout the country under the pseudonym "Publius," as part of what has been described as the "most significant public-relations campaign in history."[30] In the articles, the three authors made no mention of their close association with the Constitutional Convention that drafted and approved the document.

Currently, however, concern has been expressed that entities that use anonymous lobbying activities and public relations campaigns to mobilize the public or sway public policy makers might circumvent the process of public consideration of lawmaking and regulatory activities. Those supporting more detailed disclosure through more frequent or detailed disclosure, or the inclusion of grassroots lobbying efforts under LDA, might argue that such efforts could afford greater transparency and a broader understanding of who supports or opposes a particular policy initiative, and why. From their perspective, such an initiative could lead to both a better understanding within Congress, the lobbying communities, and the general public of how lobbying activities affect the public policy making process, and greater understanding and acceptance of the resulting outcomes.

Critics could argue that expanding disclosure of the activities of coalitions and associations might have a potential adverse impact on constitutionally protected rights of assembly, association, and to petition the government, as well as the longstanding tradition of carrying out these activities without the necessity of self-identification. Those critics are likely to argue that such changes could have a chilling effect on expressing those views, or the presentation of critical, but politically sensitive matters to lawmakers. From their perspective, more rigorous disclosure of coalition and association membership could deny policy makers a crucial source of information from parties directly affected by pending legislation or regulatory decisions. Critics of increased disclosure might argue that this could deter Members of Congress and executive branch decision makers from making broadly informed decisions in their deliberations, and could reduce the effectiveness of policy making in general.[31]

Frequency and Scope of Disclosure

Congress might choose to consider changes to current disclosure requirements as described above. Changes could include a shorter period between initial lobbying contact and registration, narrower ranges of estimated expenditures, and more

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[29] Hamilton, Madison and Jay went on to become the first Secretary of the Treasury; a Representative in the First through Fourth Congresses and fourth President; and the first Chief Justice of the United Sates, respectively.

[30] The Federalist Papers website, [http://www.law.ou.edu/hist/federalist/].

[31] See also CRS Report RL33794, *Grassroots Lobbying: Constitutionality of Disclosure Requirements*, by Jack Maskell.

frequent disclosure. In addition, coalitions and grassroots entities might also be required to disclose their activities.

Those supporting changes to disclosure benchmarks might argue that a more detailed disclosure process could afford more openness of government activity and greater accountability on the part of government officials, lobbyists and lobbying clients. Those opposing changes to the current statute might maintain that filing increasingly detailed disclosure reports at more frequent intervals could obligate the registrant to spend increased time and money to comply with the law. This could have the effect of further raising the costs associated with lobbying, and might restrict the lobbying activities of some groups as a consequence.

Revolving Door Provisions

LDA requires registrants to disclose whether they have served as a covered legislative branch or executive branch official in the two years preceding their registration. Relatedly, 18 U.S.C. 207 requires that a Member of Congress may not communicate with or appear before a Member, officer or employee of either chamber, or any legislative branch office, with intent to influence official action on behalf of anyone else for a period of one year after leaving office. Similarly, a "very senior staff member" of the legislative branch[32] may not communicate with or appear before the individual's former employer or office with intent to influence official action on behalf of anyone else for a period of one year after terminating congressional employment. Similar prohibitions apply to officials and senior level employees of the executive branch.[33]

House and Senate rules, LDA disclosure requirements, and the "cooling off" prohibitions mandated by 18 U.S.C. 207 were designed to bring attention to, and reduce the effect of, what some called the "revolving door," through which legislators

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[32] "Very senior staff member," or "highly paid staff" appear to be generic terms that are sometimes used by the House Committee on Standards of Official Conduct to identify individual congressional and legislative branch staff who are subject to outside income limitations, required to file under financial disclosure regulations, or subject to post employment restrictions due to their level of compensation. According to 18 U.S.C. 207 and guidance issued in 2005 by the committee, an employee is subject to post employment restrictions if, for at least 60 days during the one-year period preceding the termination of employment, a staffer was paid at a rate equal to or greater than 75% of the basic rate of pay for Members. The basic rate of pay for Members is $165,200. The 2006 post-employment threshold for employees who leave their congressional jobs is $123,900. See Joel Hefley, Chairman, and Alan B. Mollohan, Ranking Minority Member, "The 2006 Outside Earned Income Limit, and the Salary Levels at which the Outside Earned Income and Employment Limits, the Financial Disclosure Requirement, and the Post-Employment Restrictions Apply in 2006," memorandum issued by the House Committee on Standards of Official Conduct, Feb. 8, 2006, available at [http://www.house.gov/ethics/m_salary06.htm]. Information regarding salary levels and employment limits in the House have not yet been promulgated for 2007.

[33] Similar prohibitions apply to officials and senior level employees of the executive branch. See CRS Report 97-875, *"Revolving Door," Post-Employment Laws for Federal Personnel*, by Jack Maskell.

and public officials could leave positions of authority and influence in government only to return shortly thereafter to the same circles as lobbyists or other representatives seeking favorable action on behalf of private interests.

Efforts to curb the effects of lobbying by former public officials appear to grow out of a widespread belief that lobbying activities advance special interests at the expense of the more general public interest. Lobbying activities carried out by individuals with special access to government decision makers due to previous professional interaction, are sometimes said to exacerbate this perceived problem. Proponents of lobbying activities counter that lobbying is "a legitimate activity protected by the First Amendment to the Constitution," and that all interests are represented.[34] Some maintain that further efforts to extend the duration of the lobbying ban could have the effect of keeping individuals who might wish to pursue lobbying as a career from entering public service, and may deprive the public (as well as Congress) of access to, and the availability of, the particular expertise of former legislators and staff.

Disclosure of Lobbyist Contributions and Payments

The disclosure of campaign contributions is governed by FECA. The acceptance of gifts, travel, or other considerations by Members of Congress are governed by House Rule XXV, Limitations on Outside Earned Income and Acceptance of Gifts, and Senate Rule XXXV, Gifts, as well as criminal laws on bribery and fraud. As part of broader consideration of lobbying related laws and rules, Congress might choose to consider changes to existing policies that clarify current practice or proscribe the acceptance of gifts, meals, or travel from lobbyists. Some of those proposals could amend LDA to require the disclosure of campaign contributions and other payments by lobbyists.

Proposals to link campaign finance and lobbying activities, and to enhance current rules regarding the interactions between Members of Congress and lobbyists, could serve to provide a clearer picture of who participates in public affairs and the scope of the activities that characterize that participation. Proponents of such efforts might argue that such efforts could afford greater transparency and a broader understanding of the effects of private interests in the public policy making process. From their perspective, such a change might also instill greater government accountability, and help to maintain the integrity and legitimacy of the broader political system. Those opposing changes to current lobbying disclosure practices might maintain that expanding lobbying disclosure to include those who make campaign contributions, but who may not have any direct participation in lobbying activities, could have an adverse effect on the accuracy of LDA disclosure data, due to a potential increase in registrants who conduct no lobbying but who must register due to affiliations with entities that retain lobbying services. Additionally, opponents might assert that such a change could increase the administrative burden associated with reporting on their activities under LDA, or curb rights of participation through

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[34] Website of the American League of Lobbyists, "Resources," at [http://www.alldc.org/publicresources/index.cfm].

making campaign donations, or the right of association, due to the increased burden of LDA disclosure.

Electronic Filing of LDA Materials, and FECA Linking

LDA does not require electronic filing of registration and disclosure reports. In the House, the Office of the Clerk, in December 2004, inaugurated a voluntary electronic filing system for those required to file under LDA. Pursuant to a directive issued by Representative Bob Ney, chairman of the Committee on House Administration, the Clerk required all registrants to file LDA materials electronically after January 1, 2006.[35] For some time, the Senate Office of Public Records has maintained a voluntary program of electronic filing "for the purpose of minimizing the burden of filing" LDA materials.[36] It has been reported that that House and Senate officials are working to develop an electronic filing system that can be accepted and used by both the Secretary and the Clerk.[37] No timetable for deployment of such a system has been identified. Neither LDA nor chamber rules require the provision of LDA disclosure information via the Internet. The Senate makes LDA registration and disclosure reports available through the Internet at [http://sopr.senate.gov/].

Neither LDA nor the Federal Election Campaign Act of 1971 (FECA) require the linking of information collected under either law.

Under LDA, registrants must register and files reports with the Secretary and the Clerk, who maintain independent, parallel intake procedures, and separate electronic databases. The linking of information maintained by FEC, and the Clerk and Secretary, could raise data administrative and data management concerns. These concerns might include consideration of the relative costs and benefits of linking parallel databases containing essentially similar information with another database system, or the technical challenges of linking potentially incompatible datasets. Concerns might also arise regarding the merging of data maintained by legislative branch and executive branch entities regarding custody and management of commingled records.

LDA Enforcement

Whoever knowingly fails to rectify an incomplete disclosure report following notification of the error by the Clerk or the Secretary, or who otherwise does not

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[35] Rep. Bob Ney, chairman, Committee on House Administration, "Electronic Filing of Disclosure Reports," dear colleague letter, June 29, 2005, at [http://www.house.gov/cha/dearcolleaguejune29-05.htm]; see also the Clerk's website at [http://clerk.house.gov/pd/index.html].

[36] Senate Office of Public Records, "Frequently Asked Questions," at [https://opr.senate.gov/faq.html].

[37] "Hill Officials to Improve LDA Filing System Ahead of Other Anticipated Changes in Law," *BNA Money & Politics Report*, Dec. 5, 2006, available at [http://pubs.bna.com/ip/bna/mpr.nsf/eh/A0B3U5F3X1].

comply with the requirements of LDA, may be liable for a civil fine of up to $50,000.[38] Congress might consider increased civil penalties or institute criminal penalties for violations of LDA. The Clerk and the Secretary must refer alleged incidents of noncompliance to the United States Attorney for the District of Columbia. The number of such referrals made since LDA became effective on January 1, 1996, is not publicly available. During a 2006 hearing held by the Senate Committee on Rules and Administration to examine procedures to make the legislative process more transparent, however, Senator Christopher Dodd stated that "[s]ince 2003, the [Senate] Office of Public Records has referred over 2,000 cases to the Department of Justice, and nothing's been heard from them again."[39]

The Department of Justice has reportedly claimed that between September 2003 and September 2005, it has received around 200 referrals involving possible LDA violations and has pursued 13 of those cases for further enforcement action. Of that total, media accounts have claimed that seven were still open as of February 2006, three had been closed without further action by the department, and three were settled. No public announcements by the department regarding the settlements have been identified, but it was reported that the three cases were settled for fines totaling $47,000 and other considerations, including periods during which some registrants were prohibited from conducting federal lobbying. It is not known whether these cases comprise the total LDA enforcement effort. Attorneys for the Department of Justice reportedly contend that the details of any settlements of violations under LDA are protected from public disclosure by the Privacy Act.[40]

An increase in potential penalties for noncompliance with LDA arguably could increase the level of compliance, but it may not be possible to assess those potential benefits given the lack of broadly accepted understanding of previous enforcement efforts. Those supporting the approach might argue that a more comprehensive and detailed disclosure process could afford more openness of government activity and greater accountability. Those opposing changes to the current statute might maintain that there could be a negative impact on constitutionally protected rights of assembly, association, and petition of the government. Additionally, opponents might assert that if other changes to LDA relating to clients are enacted, increasing the potential

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[38] For further discussion of LDA and other laws, rules, and regulations affecting those who lobby Congress, see CRS Report RL31126, *Lobbying Congress: An Overview of Legal Provisions and Congressional Ethics Rules*, by Jack Maskell.

[39] Sen. Christopher Dodd, remarks during the Senate Committee on Rules and Administration hearing to examine procedures to make the legislative process more transparent, Feb. 8, 2006, retrieved through cq.com, at [http://cq.com/display.do?dockey=/cqonline/prod/data/docs/html/transcripts/congressional/109/congressionaltranscripts109-000002046780.html@committees&metapub=CQ-CONGTRANSCRIPTS&searchIndex=0&seqNum=1].

[40] Kenneth P. Doyle, "Senate Passed 2,000 Possible LDA Violations To DOJ, Dodd Reports; DOJ Pursued 13 Cases," *BNA Money and Politics Report*, Feb. 14, 2006; Kenneth P. Doyle, "DOJ Refuses to Disclose Settlements With Those Who Violate Lobbying Law," *BNA Daily Report for Executives*, June 20, 2005; and Kenneth P. Doyle, "Justice Department Reveals First Cases Settled Under Lobbying Disclosure Statute,"*BNA Daily Report for Executives*, Aug. 16, 2005, retrieved from the BNA website.

penalties for noncompliance could subject registrants to liability in the event that clients, whether individuals, firms, or coalitions, withhold information.

LDA Administration and Oversight

LDA is administered in the House by the Clerk of the House through the Legislative Resources Center, and in the Senate by the Secretary of the Senate, through the Senate Office of Public Records. There are no explicit oversight requirements in LDA. The Committee on House Administration and the Senate Committee on Rules and Administration have jurisdiction over the Clerk of the House and the Secretary of the Senate, respectively, and may have some oversight authority of LDA provisions the Clerk and the Secretary must implement. Ethics in Congress are overseen by the House Committee on Standards of Official Conduct and the Senate Committee on Ethics.

Congress might choose to consider a range of options regarding the administration and oversight of LDA. These could include creation of an independent ethics commission within the legislative branch with authority to receive LDA registration and reports. LDA administration could be transferred from chamber officers to the ethics committees in each chamber. Another option is the creation of an office of public integrity. This office which could be created in the legislative branch or within each chamber could receive LDA registrations and disclosure reports, and conduct audits and investigations necessary to ensure compliance with LDA. Any entity empowered to administer LDA could also be vested with authority to refer violations of the act to DOJ for further investigation, or prosecution, in the event that criminal penalties are enacted.

The creation of new LDA administration and oversight processes, could require the transfer of previously filed disclosure data to the new entity. In addition, the creation of an office of public integrity, ethics commission, or transfer of LDA responsibility to the chamber ethics committee could necessitate increased staff levels in the legislative branch and concomitant increases in costs to administer those programs. Finally, any reassignment of LDA administration might raise questions regarding the status of staff and offices that are currently responsible for administering LDA.

The potential consequences of reorganizing LDA administration are unclear. For example, it is arguable that vesting administration oversight in the chamber ethics committees might provide the opportunity to monitor the interactions between lobbyists and Members of Congress, because those panels already have jurisdiction over congressional ethics rules, governing Members' interactions with lobbyists. On the other hand, it is not clear how those panels might oversee the disclosure of lobbying interactions with executive branch officials. Similar concerns might affect ethics commissions or public integrity offices based in the legislative branch. In addition to those concerns, creation of integrity offices or commission in the legislative branch might raise constitutional questions regarding the House and

Senate's authority to punish their Members for disorderly behavior,[41] if those offices are vested with authority to investigate Members of Congress regarding potential ethics violations or prescribe discipline in the event that a violation is determined to have occurred.[42]

Consideration of Lobbying Legislation, 109th Congress

In the 109th Congress, numerous legislative proposals related to lobbying disclosure and related ethics rules focused on external and internal participants in the public policy-making process were introduced.[43] External groups include lobbyists, their clients, entities that provide services, such as mass mailing or phone banks, and affiliated political committees that might have a peripheral role in lobbying activities through campaign finance activities. Legislative approaches to address external groups included proposals to amend lobbying disclosure, and in some cases campaign finance laws to require lobbyists to identify themselves, their clients, and activities on behalf of those clients in a more comprehensive manner than currently required by LDA. Internal groups included executive branch officials, Members of Congress, their staffs, and other legislative branch officials who might interact with lobbyists in the course of their official duties. Legislative proposals addressing internal groups include amendment of House and Senate rules regarding interactions with lobbyists by Members and congressional staff, as well as increased waiting periods on certain types of employment these officials may undertake after they leave office or public service.

On February 1, 2006, the House adopted H.Res. 648. The measure amended House Rules to deny admittance to the House floor and certain House facilities to former Members who lobby. On September 14, 2006, the House adopted H.Res. 1000, which provided for increased disclosure of the sponsors of earmarks.

The Senate passed S. 2349, the Legislative Transparency and Accountability Act of 2006, by a vote of 90-8 on March 9, 2006. The House passed H.R. 4975 the Lobbying Accountability and Transparency Act of 2006, on May 3, 2006 by a vote of 217-213. The House passed S. 2349 by unanimous consent on May 23, 2006, with an amendment that substituted the language of H.R. 4975, as passed by the House. On May 23, the Senate disagreed to the House amendments to the measure, requested

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[41] Article I Section 5.

[42] For further analysis of these issues, see CRS Report RL33790, *'Independent' Legislative Commission or Office for Ethics and/or Lobbying*, by Jack Maskell and R. Eric Petersen.

[43] For analysis of lobbying-related measures introduced in the 109th Congress, see CRS Report RL33065, *Lobbying Reform: Background and Legislative Proposals, 109th Congress*, by R. Eric Petersen; and CRS Report RL33234, *Lobbying Disclosure and Ethics Proposals Related to Lobbying Introduced in the 109th Congress: A Comparative Analysis*, by R. Eric Petersen.

a conference, and appointed conferees.[44] The House did not appoint conferees before it adjourned sine die.

Media reports suggest that a Senate majority leadership version of lobbying legislation will be introduced based in part on S. 2349, as passed by the chamber in the 109th Congress. A section by section analysis of the measure is available in CRS Report RL33293, *Lobbying and Related Reform Proposals: Consideration of Selected Measures, 109th Congress*, by R. Eric Petersen. In the House, it has been suggested that any lobbying disclosure legislation will be based in part on H.R. 4682, the Honest Leadership and Open Government Act of 2006.

H.R. 4682, 109th Congress. Representative Nancy Pelosi, who was then House Minority Leader, introduced H.R. 4682 on February 1, 2006. The measure would have amended LDA to require

- quarterly, instead of semiannual, filing of lobbying disclosure reports;
- electronic filing of lobbyist registrations and disclosure reports filed with the Secretary of the Senate or the Clerk of the House of Representatives;
- reduction of the increments in which lobbying expenditures may be estimated in larger increments, from $20,000 to $1,000;
- disclosure by registered lobbyists of all past executive branch and congressional employment;
- establishment and maintenance by the Clerk and Secretary of lobbying disclosure information in an electronic database that directly links lobbying disclosure information to the information disclosed in reports filed with the Federal Election Commission (FEC) under FECA, and made available to the public free of charge through the Internet, and to make those reports available within 48 hours of filing;
- disclosure by registrants, and their employees who work as lobbyists, of any contributions made under FECA; and
- disclosure of grassroots lobbying communications by paid lobbyists and itemized disclosure of expenditures on grassroots lobbying activities. In the event that a grassroots lobbyist receives or spends $250,000 or more for grassroots lobbying activities, an additional report must be made within 20 days.

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[44] For analysis of the provisions of S. 2349, as passed by the Senate, and H.R. 4975, as passed by the House, see CRS Report RL33326, *Lobbying, Ethics, and Related Procedural Reforms: Comparison of Current Provisions of S. 2349 and H.R. 4975*, by Jack Maskell, R. Eric Petersen, and Sandy Streeter.

H.R. 4682 would have required members of coalitions or associations that employ a lobbyist, and not the coalition or association, to be listed as the clients of the registrant lobbyist. H.R. 4682 provided an exception for tax-exempt associations and for some members of a coalition or association if those members expected to contribute less than $500 per any quarterly period to the lobbying activities of the coalition.

The measure would also have required registrants to certify that the registrant and lobbyists they employ had not provided a gift, directly or indirectly, to a Member of the House in violation of House Rule XXV; a contribution to an event to honor a covered legislative branch official or an entity named after or controlled by a covered official in the legislative or executive branches; or to pay the costs of a retreat or other gathering of more than one covered official from the legislative or executive branches.

H.R. 4682 would have established an Office of Public Integrity within the House Office of Inspector General. The office would have received LDA registrations and disclosure reports, and conducted audits and investigations necessary to ensure compliance with LDA. A director of the office would have been appointed by the Inspector General. The office would have been vested with the authority to refer violations of LDA to the United States Attorney for the District of Columbia for disciplinary action.

H.R. 4682 would have eliminated floor privileges and access to Member exercise facilities to former Representatives who become lobbyists. The measure would have increased the civil penalty for failure to comply with lobbying disclosure requirements up to $100,000.[45] In addition, H.R. 4682 would have established criminal penalties for noncompliance with LDA. Knowing and willful failure to comply with registration requirements would have been punishable by fines, a term of imprisonment up to five years, or both. Whoever knowingly willfully, and corruptly failed to comply with LDA disclosure requirements would have been subject to fines, a term of imprisonment up to 10 years, or both. H.R. 4682 would have extended the ban preventing former senior executive personnel, former Members of Congress, and legislative branch personnel from lobbying the entity in which they previously served from one to two years. The measure was referred to the Committee on the Judiciary, and in addition to the Committees on Rules, Government Reform, Standards of Official Conduct, Armed Services, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the

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[45] S. 2180 would have required a number of other changes to laws and rules governing congressional ethics that are not directly related to lobbying disclosure. These included requiring public disclosure by Members of Congress of employment negotiations; the establishment of fines and penalties for Member of Congress who wrongfully influence, on a partisan basis, any entity's employment decisions or practices; amendments to Senate Rules to prohibit favoritism; requiring the Senate Select Committee on Ethics to develop and revise guidelines on reasonable expenditures for official government travel; requiring certification that congressional travel meets certain conditions, and establishing civil fines for false certifications.

committee concerned.[46] No further action was taken in the 109th Congress prior to sine die adjournment.

[46] H.R. 4682 required a number of other changes to laws and rules governing congressional ethics that are not directly related to lobbying disclosure. These include requiring public disclosure by Members of Congress of employment negotiations; the establishment of fines and penalties for Member of Congress or employees of the House who wrongfully influence, on a partisan basis, any entity's employment decisions or practices; amendments to the House Code of Official Conduct to prohibit favoritism; requiring the House Committee on Standards of Official Conduct to develop and revise guidelines on reasonable expenditures for official government travel; requiring certification that congressional travel meets certain conditions, and establishing civil fines for false certifications. Additionally, H.R. 4682 would have required changes in House operations elated to the congressional legislative workweek, time to read measures before they are considered on the floor and procedural changes in conference committees. Finally, H.R. 4682 would have established minimum requirements for executive branch appointees in certain public safety positions, and make changes to public contracting provisions.