

Mrs. FEINSTEIN. I ask unanimous consent to have printed in the **RECORD** a section-by-section analysis of the bill we are about to vote on, including legislative history endorsed by the three principal Senate authors of the legislation: myself, Chairman *Lieberman* and Majority Leader *Reid*.

There being no objection, the material was ordered to be printed in the **RECORD**, as follows:

Honest Leadership and Open Government Act of 2007 Section by Section Analysis and Legislative History

TITLE I CLOSING THE REVOLVING DOOR

Section 101. Amendments to restrictions on former officers, employees and elected officials of the executive and legislative branches

This section prohibits very senior executive personnel from lobbying the department or agency in which they worked for 2 years after they leave their position. It bans Senators from lobbying Congress for 2 years after they leave office and bans senior Senate staff and officers from lobbying the Senate for 1 year after they leave Senate employment. Senior employees of the Senate are those who, for at least 60 days, during the 1-year period before they leave Senate employment, are paid a rate of basic pay equal to or greater than 75 percent of the basic rate of pay payable to a Senator. Section 101 also makes technical and conforming changes to 18 U.S.C. §207(e).

Section 102. Wrongfully influencing a private entity's employment decisions or practices

Section 102 prohibits members from influencing hiring decisions of private organizations on the sole basis of partisan political gain. It subjects those who violate this provision to a fine and imprisonment for up to 15 years. This section is not intended to preclude Senators from providing references or writing letters of recommendation that speak to the credentials of an individual.

Section 103. Notification of post-employment restrictions

This provision directs the Clerk of the House and the Secretary of the Senate to inform Members, officers, and employees of the beginning and end dates of their post-employment lobbying

restrictions under 18 U.S.C. §207. It also requires the Clerk and Secretary to post such notifications on their Internet sites.

Section 104. Exception to restrictions on former officers, employees, and elected officials of the executive and legislative branch

This section removes any confusion as to whether lobbying rules apply to former federal legislative and executive senior staffers who go to work for Indian tribes, tribal organizations and inter-tribal consortia immediately after their federal employment.

The amended tribal provision applies lobbying restrictions to those former federal employees who do not work directly for tribes or the exempted tribal entities or who represent an entity in an unofficial capacity or on non-governmental matters.

Section 104 removes any ambiguity that federal employees who are assigned to Indian tribes, tribal organizations or inter-tribal consortia may represent the Indian entity before a federal agency, department or court without violating lobbying laws. Further, this section removes any ambiguity that only those former federal executive and legislative branch employees who go to work for tribes, tribal organizations and inter-tribal consortia and who perform official governmental duties associated with tribal governmental activities or Indian programs and services are exempt from lobbying laws.

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Under the provision, only ``tribal organizations" (for example, a tribal or village governing body) or ``inter-tribal consortia" (defined as, a coalition of tribes who join to undertake self-governance activities) may employ former officials, who may be exempted. And, only employees of these entities who act on behalf of these entities and who participate in matters related to a tribal governmental activity or federal Indian program or service may be exempted.

Importantly, the amendment preserves federal policy that encourages former federal employees to go to work directly for Indian tribes and tribal organizations that provide governmental services.

Section 105. Effective date

The effective date for section 101 is for individuals that leave federal office or employment on or after the date of adjournment of the first session of the 110th Congress sine die, or December 31, 2007,

whichever is earlier. Section 102 will become effective upon enactment. Section 103 requires the Secretary to begin issuing notifications after 60 days, and all notifications must be published on the Internet as of January 1, 2008. Section 104 goes into effect upon enactment; however the post-employment restrictions go into effect for individuals that leave federal employment on or after 60 days after enactment.

The new "revolving door" restrictions are effective only for officials or employees that terminate office or employment on or after the relevant effective date. A delayed effective date was deemed more reasonable and practical than an immediate effective date.

TITLE II FULL PUBLIC DISCLOSURE OF LOBBYING

Section 201. Quarterly filing of lobbying disclosure reports

Section 201 increases the frequency of lobbying disclosure reports from semiannually to quarterly filings, with required adjustments to dates, thresholds, etc. A number of practical consequences result from the changes in section 201. For instance, exempted from filing are those whose total income from lobbying activities does not exceed \$2,500 or for whom total expenses in connection with lobbying activities do not exceed \$10,000. The changes in the section decrease the threshold amounts that trigger required disclosures of earned income or expenses from clients on lobbyist disclosure reports from \$10,000 to \$5,000, and require registrants to round income and expenses to the nearest \$10,000.

Section 202. Additional disclosure

This provision requires that lobbyists disclose whether their client is a State or local government or a department, agency, or other instrumentality of a state or local government on their reports filed under the Lobbying Disclosure Act.

Section 203. Semiannual reports on certain contributions

This section requires lobbyists to disclose semiannually their name, their employer, the names of all political committees that they established or control, the name of each Federal candidate, officeholder, leadership PAC or political party committee to whom they have contributed more than \$200 in that semiannual period, payments for events honoring or recognizing federal officials, payments to an

entity named in honor of a covered federal official or to a person or entity in recognition of such official, payments made to organizations controlled by such official, or payments made to pay the costs of retreats, conferences or similar events held by or in the name of one or more covered federal officials, and contributions to Presidential library foundations and Presidential inaugural committees in that semiannual period. To avoid duplicative reporting, the bill provides an exception for payments made to committees regulated by the Federal Election Commission with respect to the provisions relating to disclosure of payments made to events honoring or recognizing federal officials, to entities named in honor or recognition of federal officials, to organizations controlled by such officials, and to pay the costs of meetings, etc. held by officials. All of this information would already be reported elsewhere under provisions in this bill or under reporting required by the Federal Election Commission Act.

Section 203 also requires a certification by the lobbyist filing the disclosure report that the person is familiar with House and Senate gift and travel rules, and has not provided, requested, or directed a gift, including a gift of travel, to a Member, officer, or employee of Congress with knowledge that receipt of the gift would violate the relevant rules.

The bill directs the Clerk of the House and the Secretary of the Senate to submit a report to Congress on the feasibility of requiring such reports to be made on a quarterly rather than semiannual basis and expresses the sense of Congress in favor of moving to quarterly reporting in the future if it is practically feasible to do so. After the report is filed by the Clerk and the Secretary, an affirmative vote of Congress will be required to alter the frequency of the filing period.

Section 204. Disclosure of bundled contributions

This section requires certain political committees to disclose to the Federal Election Commission (FEC) the name, address and employer of each current registered lobbyist who has provided the committee with bundled contributions in excess of \$15,000 in each six month period defined in statute. The aggregate amount of contributions is measured on a non-cumulative basis in each six month period.

The definition of "bundled contribution" in this section contains two prongs. Subparagraph 204(a)(8)(A)(i) covers the situation where a lobbyist physically forwards contributions to the campaign. Subparagraph 204(a)(8)(A)(ii) covers the situation where

contributions are sent directly by contributors to the committee, but where the committee or candidate credits a registered lobbyist for generating the contributions and where such credit is reflected in some form of record, designation or recognition. An example of such designations would include honorary titles within the committee; examples of such recognition include access to certain events reserved exclusively for those who generate a certain level of contributions or similar benefits provided by the committee as a reward for successful fundraising.

The disclosure requirement is not triggered by general solicitations of contributions, or where a registered lobbyist attends an event or an event is held on the premises of a registrant. An event hosted by a registered lobbyist may trigger the disclosure requirement if the committee credits the lobbyist with the proceeds of the fundraiser through record, designation or other form of recognition, as described in the preceding paragraph.

This provision covers only contributions credited to registered lobbyists, as defined in subsection 204(a)(7). Contributions credited to others, including others who may share a common employer with, or work for a lobbyist, are not covered by this section so long as any credit is genuinely received by the non-lobbyist and not the lobbyist.

Subparagraph 204(a)(8)(A)(ii) requires that the contribution be credited by the committee or "candidate involved." The candidate "involved" in the case of a principal campaign committee is the candidate for whom the committee is the principal campaign committee; the candidate "involved" in the case of a Leadership PAC is the candidate who directly or indirectly establishes, finances, maintains or controls the Leadership PAC; and the candidate "involved" in the case of a political party committee is the chairman of the committee.

The definition of "Leadership PAC" in 204(a)(8)(B) is intended to recognize the FEC rule on a related topic at 68 Fed. Reg. 67013 (December 1, 2003)--a Leadership PAC associated with a given Member of Congress is not deemed to be "affiliated" with that office holder's principal campaign committee for purpose of contribution or expenditure limits under the Federal Election Campaign Act.

Section 205. Electronic filing of lobbying disclosure reports

Section 205 requires lobbying disclosure reports to be filed in electronic form, and directs the Clerk of the House and Secretary of the Senate to use the same electronic software for receipt and recording of the filings.

Section 206. Prohibition on provision of gifts or travel by lobbyists that are registered or required to register under the LDA, to Members of Congress and to congressional employees

This provision prohibits registrants and lobbyists from providing gifts or travel to covered legislative branch officials with knowledge that the gift or travel is in violation of House or Senate rules.

Section 207. Disclosure of lobbying activities by certain coalitions and associations

This section amends existing rules in section 4(b)(3) of the Lobbying Disclosure Act requiring reporting of "affiliated organizations." The bill closes a loophole that has allowed so-called "stealth coalitions," often with innocuous-sounding names, to operate without identifying the interests engaged in the lobbying activities. Section 207 requires registrants to disclose the identity of any organization, other than the client, that contributes more than \$5,000 toward the registrant's lobbying activities (either directly to the registrant or indirectly through the client) in a quarterly period and actively participates in the planning, supervision, or control of such lobbying activities.

The new provision includes several exceptions to narrow the rule. First, it does not require disclosure of an organization or entity that would otherwise be identified if the client already lists the organization or entity as a member or contributor on its publicly-accessible website. In such cases, the registrant must report the specific web page that includes the relevant information. If the entity would have been disclosed under the existing rule 4(b)(3) language (as adjusted, i.e., the entity contributes \$5,000 per quarter to the lobbying activities and in whole or in major part plans, supervises, or controls the lobbying activities), however, that entity must still be disclosed. Second, the new rule makes clear that it does not require disclosure of individuals that are members of or donors to a client or an entity identified as an affiliated entity.

The provision requires disclosure only of organizations or entities that "actively participate" in the planning, supervision, or control of the lobbying activities described in the report. Entities or organizations

that have only a passive role--e.g., mere donors, mere recipients of information and reports, etc.--would not be considered to be ``actively participating" in the lobbying activities.

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Section 208. Disclosure by registered lobbyists of past executive branch and congressional employment

This provision amends the requirement under the Lobbying Disclosure Act that lobbyists disclose their executive or legislative employment in the preceding two years. Specifically, section 208 extends the disclosure to include executive and legislative branch employment in the preceding 20 years.

Section 209. Public availability of lobbying disclosure information; maintenance of information

Section 209 directs the Secretary of the Senate and the Clerk of the House to maintain and provide online access to an electronic database in a searchable, sortable, and downloadable manner, that includes the information contained in registrations and reports filed under this Act for a period of 6 years after they are filed and provides an electronic link to relevant information in the database of the Federal Election Commission.

Section 210. Disclosure of enforcement for noncompliance

This section requires the Secretary of the Senate and the Clerk of the House to publicly disclose on a semi annual basis the aggregate number of lobbyists and lobbying firms referred to the U.S. Attorney for the District of Columbia for noncompliance with the Lobbying Disclosure Act. It also requires the Attorney General to report semiannually to Congress on the aggregate number of enforcement actions taken by the Department of Justice under the Lobbying Disclosure Act and the amount of fines and prison sentences imposed.

Section 211. Increased civil and criminal penalties for failure to comply with lobbying disclosure requirements

Section 211 increases the civil penalty for violations of the Lobby Disclosure Act from \$50,000 to \$200,000. It imposes a criminal penalty of up to five years for knowing and corrupt failure to comply with the Act.

Section 212. Electronic filing and public database for lobbyists for foreign governments

This provision amends the Foreign Agents Registration Act (FARA) to require that mandatory registration statements or updates be filed electronically, in addition to any other form that may be required by the Attorney General. It requires the Attorney General to maintain a searchable and sortable electronic database, made publicly available on the Internet, that includes the information contained in registration statements and updates filed under FARA.

Section 213. Comptroller general audit and annual report

Under Section 213, the Comptroller General will annually review random samples of publicly-available registrations and reports filed by lobbyists, lobbying firms, and registrants and evaluate compliance by those individuals and entities with the Lobbying Disclosure Act--i.e., it will review the same registrations and reports that are available to the public. The GAO is required to report annually to Congress on its findings. The report will include recommendations to Congress on improving compliance and providing the Department of Justice with the resources and authorities necessary for effective enforcement. Under this provision, it is intended that the GAO audit lobbyist compliance with the Lobbying Disclosure Act; the provision does not give the GAO authority to audit the Secretary of the Senate or the Clerk of the House's activities under the LDA, including receipt, compilation, dissemination and/or review of information filed under the LDA.

Section 213(c) authorizes the Comptroller General to request and receive information from lobbyists, lobbying firms and registrants. This section provides the Comptroller General with the tools necessary to evaluate whether the information included by lobbyists, lobbying firms and registrants in the reports filed under this Act is accurate and complete, and thus whether these individuals and entities are complying with the Act. Nothing in this section provides authority for the GAO to obtain information protected by the attorney-client privilege.

Section 214. Sense of Congress regarding lobbying by immediate family members

Section 214 expresses the Sense of Congress that the use of family relationships by a lobbyist who is an immediate family member of a

Member of Congress to gain special advantage over another lobbyist is inappropriate.

Section 215. Effective date

Sections 201, 202, 205, 207, 208, 209 and 210 apply to information in periods on or after January 1, 2008, and for subsequent registrations and reports. Section 203 goes into effect on the first semi-annual reporting period that begins after enactment. Section 204 goes into effect 90 days after the FEC has promulgated final regulations. Sections 206 and 211 go into effect upon enactment. Section 212 goes into effect 90 days after enactment. Section 213 requires the first audit to be done with respect to filings in the first calendar quarter of 2008 and the report to Congress be completed within 6 months after that quarter, with annual reports thereafter.

TITLE III STANDING RULES OF THE HOUSE

Title III includes changes to the Rules of the House. Information provided with respect to Title III simply summarizes the provisions of the Act and is not meant to be authoritative legislative history with respect to the provisions in that Title.

Section 301. Disclosure by Members and staff of employment negotiations

This provision prohibits House Members from engaging in any agreements or negotiations with regard to future employment or salary until his or her successor has been selected unless he or she, within three business days after the commencement of such negotiations or agreements, files a signed statement disclosing the nature of such negotiations or agreements, the name of the private entity or entities involved, and the date such negotiations commenced with the Committee on Standards of Official Conduct. It requires that Members recuse themselves from any matter in which there is a conflict of interest or an appearance of a conflict, and that Members submit a statement of disclosure to the Clerk for public release in the event that such a recusal is made. It requires senior staff to notify the Committee on Standards of Official Conduct within three days if they engage in negotiations or agreements for future employment or compensation.

Section 302. Prohibition on lobbying contacts with spouse of Member who is a registered lobbyist

Section 302 amends House Rules to require that Members prohibit their staff from having any lobbying contact with the Member's spouse if such individual is a registered lobbyist or is employed or retained by a registered lobbyist to influence legislation.

Section 303. Treatment of firms and other businesses whose members serve as House committee consultants

This section clarifies that when a person is serving as a House committee consultant, other members and employees of that person's employing firm, partnership, or other business organization, shall be subject to the same lobbying restrictions that apply to that individual under the Rules.

Section 304. Posting of travel and financial disclosure reports on public website of Clerk of the House of Representatives

Section 304 directs the Clerk of the House of Representatives to develop a publicly available, searchable, sortable and downloadable website by August 1, 2008 to post Members' travel information that is required to be disclosed under rule XXV of the Rules of the House of Representatives.

It directs the Clerk of the House of Representatives to post on a publicly available website by August 1, 2008 Members' financial disclosure reports required to be filed under section 103(h)(1) of the Ethics in Government Act. Allows Members to omit personally identifiable information from these forms.

Section 305. Participation in lobbyist sponsored events during political conventions

This section prohibits Members from attending parties held in their honor at national party conventions if they have been directly paid for by lobbyists, unless the Member is the party's presidential or vice presidential nominee.

Section 306. Exercise of rulemaking authority

This provision acknowledges that the House adopts the provisions in this title as an exercise of its rule making power with full recognition of the constitutional right of the House to change those rules at any time.

TITLE IV CONGRESSIONAL PENSION ACCOUNTABILITY

Section 401. Loss of pensions accrued during service as a Member of Congress for abusing the public trust

Section 401 prohibits Members from receiving their pension earned while serving in Congress if convicted of bribery, perjury, conspiracy or other related crimes in the course of carrying out their official duties as a Member of Congress.

TITLE V SENATE LEGISLATIVE TRANSPARENCY AND ACCOUNTABILITY

Section 511. Amendments to Rule XXVIII

Section 511 amends certain provisions of Rule XXVIII of the Standing Rules of the Senate, and adds a new provision to the Rule. Rule XXVIII currently provides for a point of order to be made against a conference report if the conferees add ``new matter'' not committed to them by either House." (The current rule also includes language purporting to prevent conferees from ``striking] from the bill matter agreed to by both Houses." The bill authors, in consultation with the Parliamentarian, could not identify a situation in which this language could ever have effect. When there are amendments in disagreement, the conferees have no authority over matter not in disagreement, and thus could not strike such material. When a disagreement to any amendment, including an amendment in the nature of a substitute, has been referred to conferees, nothing has been ``agreed to by both Houses.") As Rule XXVIII notes, conferees may include in their report matter which is a germane modification of subjects in disagreement, and the amendments made in this section do not change that rule.

Section 511 does, however, change the parliamentary consequences if conferees violate the rule by adding new matter. Rule XXVIII currently provides a very blunt instrument--if a point of order is sustained, the conference report is rejected or recommitted to the conference if the House has not already acted. Because many times the House will have already acted, successful invocation of Rule XXVIII would often spell the death knell for legislation. This result has two negative consequences. When successfully invoked, Rule XXVIII may derail legislation

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that otherwise has strong bipartisan support. At the same time, because of the dramatic consequences from making a point of order

under Rule XXVIII, it is rarely invoked. In fact, some Senators believe that the very blunt nature of Rule XXVIII has provided conferees more leeway to add new matter on ``must pass" bills.

Section 511 amends the current Rule XXVIII point of order in two ways. First, it changes Rule XXVIII from a blunt instrument to a ``surgical" one--if new matter is added by conferees, then a point of order may be made and, if successful, the new matter shall be struck, and the Senate will then proceed to consider whether to concur in the bill as so amended by the removal of the material stricken on the point(s) of order, and send it back to the House. Second, Section 511 adds the possibility of 60-vote waivers for points of order under the rule. The language in Section 511 is similar to that used in the so-called ``Byrd" rule and is intended to be interpreted similarly--waivers may be as to one, multiple, or all points of order under the rule; waivers may be made after a point of order has been raised or prospectively. Section 511 also ensures that appeals from rulings of the Chair may be sustained only by an affirmative vote of three-fifths of all Senators (generally, 60 votes).

Separately, Section 511 adds a new paragraph 9 to Rule XXVIII, which requires that all conference reports be posted on a publicly accessible website controlled by Congress 48 hours prior to the vote on adoption of the conference report, as reported to the Presiding Officer by the Secretary of the Senate. This new rule is enforceable via a point of order, which may be waived by an affirmative vote of three-fifths of all Senators. The requirements of the rule may be fulfilled by posting the conference report on any publicly accessible website controlled by a Member of Congress, committee of either the House or Senate, the Library of Congress, another office of the House, the Senate, or Congress, or the Government Printing Office. Section 511 directs the Committee on Rules and Administration, in consultation with the Secretary of the Senate and the Clerk of the House, and the GPO to issue regulations to help harmonize practice among conference committees for the convenience of Senators and the public. Paragraph 9 may be waived by an affirmative vote of three-fifths of all Senators. Waivers may be made after a point of order is made or prospectively.

Under well-established Senate precedent, a new directed spending provision added in conference does not constitute ``new matter" if it relates to the matter in conference. The modifications to rule XXVIII do not change the well-established rule. The new rule XLIV includes a separate provision relating to the addition of ``new directed spending provisions" in conference.

Section 512. Notice of objecting to proceeding

Section 512 relates to the concept of so-called "secret holds." Section 512 provides that the Majority Leader or Minority Leader or their designees shall recognize another Senator's notice of intent to object to proceeding to a measure or matter subsequent to the six-day period described below only if that other Senator complies with the provisions of this section. Under the procedure described in section 512, after an objection has been made to a unanimous consent request to proceeding to or passage of a measure on behalf of a Senator, that Senator must submit the notice of intent to object in writing to his or her respective leader, and within 6 session days after that submit a notice of intent to object, to be published in the Congressional Record and on a special calendar entitled "Notice of Intent to Object to Proceeding." The Senator may specify the reasons for the objection if the Senator wishes.

If the Senator notifies the Majority Leader or Minority Leader (as the case may be) that he or she has withdrawn the notice of intent to object prior to the passage of 6 session days, then no notification need be submitted. A notice once filed may be removed after the objecting Senator submits to the Congressional Record a statement that he or she no longer objects to proceeding.

Section 513. Public availability of Senate committee and subcommittee meetings

Section 513 requires that, 90 days after enactment, Senate committees and subcommittees shall make available through the Internet a video recording, an audio recording or a transcript of all public meetings of the committee not later than 21 business days after the meeting occurs. This requirement may be waived by the Rules Committee upon request should the committee or subcommittee be unable to comply due to technical or logistical issues. To be issued a waiver, a committee will be expected to prove that none of the three means of recording a committee meeting are technically or logistically feasible in the space that the meeting is being held.

Section 514. Amendments and motions to recommit

Section 514 amends Rule XV of the Senate to require that an amendment and any instruction accompanying a motion to recommit be reduced to writing and read, and that identical copies be provided to the desks and the Majority and Minority Leaders before being

debated. Section 514 further amends Rule XV to require motions to be reduced to writing if desired by the Presiding Officer or any Senator, and be read before being debated.

Section 515. Sense of the Senate on conference committee protocols

Section 515 expresses the Sense of the Senate that conference committees should hold regular, formal meetings of all conferees that are open to the public, that conferees should be given adequate notice of the time and place of such meetings, and be allowed to participate in full and complete debate on the matter before the committee, and that the text of the report of a conference committee should not be changed after the signature sheets have been signed by a majority of the Senate conferees.

Section 521. Congressionally directed spending

Section 521 establishes a new Senate Rule XLIV, which provides sweeping reforms to the treatment of so-called "earmarks," limited tax benefits, and limited tariff benefits in legislation before the Senate. With respect to "earmarks," the Rule provides a more accurate term--congressionally directed spending items--because congressional "earmarks" merely reflect the spending priorities of Congress, just as Presidential "earmarks" reflect the spending priorities of the President. The Constitution provides Congress control over the appropriations of the federal government, and congressionally directed spending constitutes a legitimate and important exercise of that authority. Rule XLIV also creates rules for "limited tax benefits" and limited tariff benefits in legislation--essentially, tax provisions and tariff suspensions that assist only a small number of beneficiaries. The provisions of Rule XLIV fall into three main categories--transparency, accountability, and discipline.

Paragraphs 1 and 2 of the new rule require the Chairman of the committee of jurisdiction (or the Majority Leader or his or designee) to certify that all congressionally directed spending items, limited tax benefits, and limited tariff benefits in bills and joint resolutions (and accompanying reports), have been identified through lists charts, or other similar means, including the name of each Senate sponsor, on a publicly accessible congressional website, in a searchable format, at least 48 hours before the vote on the motion to proceed to consider the bill or joint resolution. If a point of order is sustained, then the motion to proceed shall be suspended until the sponsor of the motion (or his or her designee) has requested resumption and compliance

with the requirements of the relevant paragraph has been achieved. In light of the possibility that it may take a day or more for compliance to be achieved and/or for a request for resumption, suspended motions under these paragraphs shall not terminate when Congress adjourns.

Paragraph 3 establishes a similar rule for conference reports the Chairman of the committee of jurisdiction (or the Majority Leader or his or her designee) must certify that all congressionally directed spending items, limited tax benefits, and limited tariff benefits in bills and joint resolutions (and the accompanying joint statement of managers), have been identified through lists, charts, or other similar means, including the name of each Senate sponsor, on a publicly accessible congressional website at least 48 hours before the vote on adoption of the conference report. If a point of order is sustained under paragraph 3, then the conference report shall be set aside.

The bill follows the basic approach taken by the House, which has ensured broad transparency throughout the appropriations process for the FY08 bills. In each case under paragraphs 1, 2, and 3, the point of order lies as to the existence or not of the certification. Especially given that the definition of "congressionally directed spending" requires that the item be included in the bill "primarily at the request of a Senator," the Parliamentarian has no capacity to determine whether a given item is or is not a "congressionally directed spending" item and thus is not in a position to determine the accuracy of the list. Requiring the Parliamentarian to make such a determination independently is not only unworkable in practice (e.g., even if the Parliamentarian could make a determination, it would take a tremendous amount of time and resources to compile the lists that are already compiled by numerous committees, each with their own staff), it is impossible--the Parliamentarian has no choice but to defer to the Committee Chair in determining why a particular item was included in a bill. Similarly, the Parliamentarian is not in a position to know the number of individuals or entities impacted by a tax or tariff provision, and so must defer to the relevant Committee Chair on that information.

The authors fully expect that Committee Chairs (and in the unusual case that the Majority Leader or his or her designee must provide the certification, the Majority Leader or designee) will fully, honestly, and in good faith, comply with the requirements of the new Rule. Given the role of the Ranking Member in compiling the bill and the list of congressionally directed spending items, a Chairman may request that the Ranking Member (and the Chair and Ranking Member of a relevant

subcommittee) join him or her in making the certification. In addition, it is consistent with the spirit of the rule if a Committee Chair chooses to identify Presidential earmark requests.

Rule XLIV provides rules on waivers and appeals from paragraphs 1, 2, and 3. Waivers may be made after a point of order has been raised or prospectively. The rule also places limits on appeals, because a successful appeal would eviscerate the paragraph under

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which the appealed ruling had been made, eliminating the new transparency to which the Senate has committed itself. Rule XLIV places limits on debate for appeals and waivers, so that these are not used as dilatory measures.

Paragraph 4 of new Rule XLIV requires Senators that propose amendments containing congressionally directed spending items, limited tax benefits, or limited tariff benefits to identify each such item, and the Senate sponsor, in the Congressional Record as soon as practicable. Paragraph 4 also directs Committees to make publicly available on the Internet as soon as practicable after reporting a bill or joint resolution, the list of congressionally directed spending items, limited tax benefits, or limited tariff benefits included in the bill, joint resolution or accompanying report. Finally, paragraph 4 states that, to the extent technically feasible, information provided under paragraphs 3 and 4 shall be provided in a searchable format. The electronic version of the Congressional Record constitutes one option for a ``searchable'' publication.

Paragraph 7 provides that, for congressionally directed spending items in classified portions of a report accompanying a bill, joint resolution, or conference report, the committee of jurisdiction shall, to the greatest extent practicable consistent with the need to protect national security, provide a general program description, funding level, and name of Senate sponsor.

In addition to the requirement that Senate sponsors of congressionally directed spending items, limited tax benefits, and limited tariff benefits be identified, Rule XLIV requires accountability through paragraphs 6 and 9. Paragraph 6 requires Senators who request congressionally directed spending items, limited tax benefits, and limited tariff benefits to provide a written statement to the relevant Chairman and Ranking Member that identifies the name and location of the intended recipient or activity, the purpose of the item,

and a certification that neither the Senator nor the Senator's immediate family has a pecuniary interest in the item, consistent with the requirements of paragraph 9. Paragraph 9 makes the requirements of Rule XXXVII(4)--the longstanding Senate Rule against financial interest by Senators and Senate employees relating to any legislative action--specific to actions relating to congressionally directed spending items, limited tax benefits, and limited tariff benefits. It is anticipated that the Select Committee on Ethics will apply the requirements of paragraph 9 (including as incorporated by reference into paragraph 6) identical to the way in which it has applied Rule XXXVII(4).

Finally, Rule XLIV provides an important tool for disciplining the conference process to ensure that new directed spending provisions--i.e., directed spending provisions not included in either the House or the Senate bill committed to conference--are not added in conference. Specifically, paragraph 8 allows any Senator to raise a point of order against one or more new directed spending provisions added in conference. (It is important to note that the term ``new directed spending provision" is defined differently than the term ``congressionally directed spending item.") The term ``measure" as used in paragraph 8 refers only to the bill or amendment committed to the conferees by either House. If the point of order is sustained, then the provision is struck from the bill and the Senate will then proceed to consider whether to concur in the bill as so amended by the removal of the material stricken on the point(s) of order, and send it back to the House. The rule includes the possibility of 60-vote waivers for points of order under the rule. The language is similar to that used in the so-called ``Byrd" rule and is intended to be interpreted similarly--waivers may be as to one, multiple, or all points of order under the rule; waivers may be made after a point of order has been raised or prospectively.

Rule XLIV provides for a number of points of orders, and sets out rules for accompanying waivers and appeals. If Rule XLIV does not expressly provide for a point of order with respect to a provision, then no point of order shall lie under that provision. Rule XLIV also includes in paragraph 11, a waiver of all points of order under the rule with respect to a pending measure. As with other waivers in the rule, it may be made after a point of order has been made or prospectively.

Section 531. Post employment restrictions

Section 531 amends the current ``revolving door" restrictions in Rule XXXVII of the Senate Rules. Specifically, Section 531 amends the

rule to prohibit Senators from lobbying Congress for two years after they leave office and prohibits officers and senior employees from lobbying the Senate for one year after they leave Senate employment. Senior employees of the Senate are those who, for at least 60 days, during the 1-year period before they leave Senate employment are paid a rate of basic pay equal to or greater than 75 percent of the basic rate of pay payable to a Senator.

The new "revolving door" restrictions are effective only for Senate staff that terminate Senate employment on or after the date that the 1st session of the 110th Congress adjourns sine die or December 31, 2007, whichever is earlier. A delayed effective date was deemed more reasonable and practical than an immediate effective date.

Section 532. Disclosure by Members of Congress and staff of employment negotiations

Section 532 amends Senate Rule XXVIII to add new disclosure requirements for employment negotiations. This provision requires Senators to disclose within 3 business days any negotiations they engage in to secure future employment before their successor is elected. The new addition to Rule XXXVII also prohibits Senators from seeking employment at all as a registered lobbyist until his or her successor has been elected. It requires senior staff to notify the Ethics Committee within 3 days of beginning negotiations for future employment, and to recuse themselves from involvement in a matter should employment negotiations create a conflict of interest or the appearance of a conflict.

Section 533. Elimination of floor privileges for former Members, Senate officers, and Speakers of the House who are lobbyists or seek financial gain

This section amends Senate Rule XXIII to revoke floor privileges and the use of the Members' athletic facilities and parking for former Senators, former Secretaries of the Senate, former Sergeants at Arms of the Senate and former Speakers of the House who are registered lobbyists. The Rules Committee will issue guidelines to allow those affected by this provision to participate in ceremonial functions and events on the Senate floor.

Section 534. Influencing hiring decisions

Section 534 amends Senate Rule XLIII to specifically prohibit members from taking official action or threatening to take official action in an effort to influence hiring decisions of private organizations on the sole basis of partisan political affiliation. This section is not intended to preclude Senators from providing references or writing letters of recommendation that speak to the credentials of an individual.

Section 535. Notification of post-employment restrictions

Section 535 requires the Secretary of the Senate to notify Members, officers or employees of the Senate of the beginning and end dates of their post-employment lobbying restrictions under the Senate Rules. It is expected that the Secretary of the Senate will encourage Senators and staff to contact the Ethics Committee for a full explanation of the terms of their post-employment lobbying restrictions. This provision goes into effect 60 days after the date of enactment.

Section 541. Ban on gifts from lobbyists and entities that hire lobbyists

Section 541 amends the gift rules in Rule XXXV of the Standing Rules of the Senate. This provision prohibits Senators and their staff from accepting gifts from registered lobbyists or entities that hire or employ them. The provision does not alter the exceptions under Rule XXXV(1)(c).

Section 542. National party conventions

This provision prohibits Senators from attending parties held in their honor at national party conventions if they have been directly paid for by lobbyists, unless the Senator is the party's presidential or vice presidential nominee.

Section 543. Proper valuation of tickets to entertainment and sporting events

Section 543 specifies that the market value of a ticket to an entertainment or sporting event shall be the face value of the ticket, or in the case of a ticket without a face value, the value of the highest priced ticket to the event. It allows the ticket holder to establish that a ticket without a face value is equivalent to a ticket priced less than the highest priced ticket by providing information related to the primary features of the ticket to the Ethics Committee. In order for a ticket

holder to have the option to establish "equivalency," he or she must provide information to the Ethics Committee prior to attending the event. The Committee may accept information obtained on the Internet from venues and third-party ticket vendors.

Section 544. Restrictions on lobbyist participation in travel and disclosure

Section 544 makes significant changes to the provisions in paragraph 2 of Rule XXXV of the Standing Rules of the Senate relating to reimbursement for travel for Senators and staff from third parties. Section 544 prohibits certain types of travel altogether, restricts other travel, and imposes new requirements applicable to all privately funded travel.

Section 544 generally prohibits privately funded travel paid for by entities that hire lobbyists or foreign agents. It creates two exceptions from this general rule. First, section 544 allows trips paid for by entities that hire lobbyists or foreign agents if they are for one-day's attendance/participation at an appropriate event (exclusive of travel time and an overnight stay). The Select Committee on Ethics is given authority to issue guidelines that would allow a two-night stay when practically required to participate in an event (e.g., an event requiring travel across the country). With respect to these "one day trips," in addition to the other restrictions described below, the new rule prohibits lobbyists from accompanying the Member, officer, or employee on any "segment of the trip" in other than a de minimis way, and requires a trip sponsor to provide a certification to that effect. It is intended that this language be interpreted identically to the interpretation given similar language by the House Committee on Standards of Official Conduct in its memorandum dated March 14, 2007.

Second, section 544 allows trips paid for by 501(c)(3) organizations, regardless of whether

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the organization hires a lobbyist or foreign agent. The Senate made the judgment that 501(c)(3)s, due to their non-profit and often educational or public-interest nature were not likely to be a source of abuse. In this respect, 501(c)(3)s are treated similar to entities that do not hire lobbyists or foreign agents.

Section 544 also establishes new rules across the board for all trips. It requires pre-approval from the Select Committee on Ethics for all trips. The Select Committee on Ethics must issue guidelines on the factors it will use to pre-approve a trip.

Additionally, regardless of trip sponsor, section 544 prohibits Senators, officers, or staff from participating in trips planned, organized, or arranged by or at the request of a lobbyist or foreign agent in other than a de minimis way, and a trip sponsor must provide a certification to that effect. As a general matter, the term "de minimis" means negligible or inconsequential. It would be "negligible or inconsequential" for a lobbyist to respond to a trip sponsor's request that the lobbyist identify Members or staff with a possible interest in a particular issue relevant to a planned trip or to suggest particular aspects of a Member or staffer's interest known to the lobbyist. For instance, if a trip sponsor that was a 501(c)(3) asked a lobbyist which staffers might be most interested in joining a trip to the U.S.-Mexican border and the lobbyist knew that a potential trip participant had a particular interest in the DEA's activities at the border, or in a particular border facility, then the conveyance and receipt of that information (in light of the trip sponsor's request), in and of itself, would not exceed a de minimis level of participation. Additionally, the mere presence of one or more lobbyists on the board of an organization does not exceed a de minimis involvement. If a lobbyist solicits or initiates an exchange of information with a trip sponsor, however, that would go beyond de minimis. Additionally, if the lobbyist has ultimate control over which Members or staff are actually invited on the trip, or determines the trip itinerary, each of these would go beyond de minimis. Certainly, if a lobbyist actually extends or forwards an invitation to a participant, or if an invitation mentions a referral or suggestion of a lobbyist, each of these would go beyond de minimis.

For all trips other than one day trips paid for by entities that hire lobbyists, the new rule prohibits a lobbyist from accompanying the Member, officer, or employee "at any point throughout the trip" in other than a de minimis way. This language should be interpreted in a manner different--and more broadly--than the concept of "any segment of the trip."

Both lobbyist "accompaniment" standards include a de minimis exception. The Act directs the Select Committee on Ethics to issue guidance on what constitutes "de minimis." If the trip includes attendance at an event that meets the definition of a "widely

attended event" under Rule XXXV(1)(c)(18), the trip sponsor is unlikely to know all attendees at the event. Accordingly, a lobbyist's attendance at a ``widely attended event" also attended on the trip would be a type of de minimis ``accompaniment." Similarly, an organization cannot possibly know the other passengers that might be on a common carrier used during a trip if the organization has had no contact or coordination with these other passengers. Accordingly, the new rule does not require a sponsor to certify that it knows for certain that no lobbyist will be on such a common carrier.

Section 544 also improves disclosure of privately funded travel. It requires Members, officers and Senate employees to disclose the expenses reimbursed by a private entity not later than 30 days after the travel is completed and requires disclosure of greater detail on the types of meetings and events attended on the trip.

Section 544 includes a separate provision relating to flights on private jets. This provision requires Senators to pay full market value--defined as charter rates--for flights on private jets, with an exception for jets owned by immediate family members (or non-public corporations in which the Senator or an immediate family member has an ownership interest).

In general, the changes made by section 544 go into effect 60 days after enactment, or the date that the Select Committee on Ethics issues the required guidelines under the rule, whichever is later. Until the new rules take effect, the existing rules for travel will remain in place. In light of the transition to the new rule relating to reimbursement for flights on private jets and the lack of experience in many offices in determining ``charter rates," the Select Committee on Ethics may treat reimbursement at current rates as reimbursement at charter rates for a transition period not to exceed 60 days.

Section 544 includes an important caveat--nothing in section 544 or section 541 is meant to alter law or treatment under Senate rules, of gifts and travel that fall under the Foreign Gifts and Decorations Act or the Mutual Educational and Cultural Exchange Act. Gifts and travel under those provisions are governed by a separate regulatory regime.

Section 544 directs the Legislative Branch Appropriations subcommittee, and the Committee on Rules to examine within 90 days whether congressional travel allowances will need to be adjusted in light of the new restrictions on privately funded travel.

Section 545. Free attendance at a constituent event

Section 545 creates a new, narrow exception, to the gift rule for small constituent events. Specifically, section 545 allows Senators, officers or employees to accept free attendance at a conference, convention, symposium, forum, panel discussion, dinner event, site visit, viewing, reception or similar event in their home state if it is sponsored by constituents or a group of constituents, and attended primarily by at least 5 constituents, provided that there are no registered lobbyists in attendance, and that the cost of any meal served is less than \$50.

Section 546. Senate privately paid travel public website

This provision directs the Secretary of the Senate to develop a publicly available, searchable website by January 1, 2008 to post Senators' travel information that is required to be disclosed under rule XXXV of the Standing Rules of the Senate.

Section 551. Compliance with Lobbying Disclosure

Section 551 makes clear that former members and staff who are registered lobbyists may contact the staff of the Secretary of the Senate regarding compliance with the lobbying disclosure requirements of the Lobbying Disclosure Act of 1995 despite post-employment lobbying restrictions.

Section 552. Prohibit official contact with spouse or immediate family member who is a registered lobbyist

This provision prohibits Senate spouses who are registered lobbyists from engaging in lobbying contacts with any Senate office, but exempts Senate spouses who were serving as registered lobbyists at least one year prior to the most recent election of their spouse to office, or at least one year prior to their marriage to that Member.

The provision also prohibits a Senator's immediate family members (including a spouse) who are registered lobbyists, from engaging in lobbying contacts with the Senator's staff.

Section 553. Mandatory Senate ethics training for Members and staff

This section requires the Ethics Committee to conduct ongoing ethics training and awareness programs for Senators and Senate staff.

Section 554. Annual report by Select Committee on Ethics

Section 554 directs the Ethics Committee to issue an annual report that describes the number of alleged violations of Senate rules received from any source, a list of the number of alleged violations that were dismissed, the number of alleged violations in which the committee conducted a preliminary inquiry, the number of alleged violations that resulted in an adjudicatory review, the number of alleged violations that the committee dismissed, the number of letters of admonition issued and the number of matters resulting in disciplinary sanction. Nothing in this section requires or allows the Ethics Committee to violate the confidential nature of its proceedings.

Section 555. Exercise of rule making power

This section acknowledges that the Senate adopts the provisions in this title as an exercise of its rule making power with full recognition of the constitutional right of the Senate to change those rules at any time.

Section 556. Effective dates and general provisions

All sections in this title go into effect upon enactment except for section 513, which goes into effect 90 days after enactment; section 531: This title shall take effect on the date of enactment unless otherwise noted.

TITLE VI--PROHIBITED USE OF PRIVATE AIRCRAFT

Section 601. Restrictions on Use of Campaign Funds for Flights on Non Commercial Aircraft

Section 601 amends the Federal Election Campaign Act to require that candidates, other than those running for a seat in the House of Representatives, pay the fair market value of airfare when using non-commercial jets to travel. Fair market value is to be determined by dividing the fair market value of the charter fare of the aircraft, by the number of candidates on the flight. This provision exempts aircraft owned or leased by candidates or candidates' immediate family members (or non-public corporations in which the Senator or his or her immediate family member has an ownership interest). The bill prohibits candidates for the House of Representatives from any campaign use of privately-owned, non-chartered jets.

Many candidates are not accustomed to determining charter rates. The FEC may, during a transition period of no more than 60 days, deem reimbursement at current rates to be charter rates while committees determine how to calculate charter rates.

TITLE VII MISCELLANEOUS PROVISIONS

Section 701. Sense of the Congress that any applicable restrictions on Congressional branch employees should apply to the Executive and Judicial branches

This section expresses the Sense of Congress that any applicable restrictions on Congressional branch employees in this title should apply to the executive and judicial branches.

Section 702. Knowing and willful falsification or failure to report

This provision increases from \$10,000 to \$50,000 the penalty for knowingly and willfully falsifying or knowingly and willfully failing to report financial disclosure forms

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required by the Ethics in Government Act. It imposes a criminal penalty of up to one year of imprisonment and/or a fine for knowingly and willfully falsifying such report and imposes a fine for knowingly and willfully failing to file such report.

Section 703. Rule of construction

Section 703 provides that nothing in this Act shall be construed to prohibit any conduct or activities protected by the free speech, free exercise, or free association clauses of the First Amendment.