

The logo for Venable LLP, featuring the word "VENABLE" in a large, blue, serif font with a registered trademark symbol, and "LLP" in a smaller, blue, sans-serif font to its right. The background of the slide is a faded image of a city street with a building on the left, a street sign for "ST NW" on a pole, and a traffic light with a red hand symbol.

# The Honest Leadership and Open Government Act: New Lobbying & Ethics Rules

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## **Enhanced Enforcement & Penalties**

- Increased fines and penalties:
  - \$200,000 civil penalties (up from \$50,000)
  - 5 years in prison for knowing and corrupt violations
- Comptroller General random audits of registrants
- Reports of cases referred to U.S. Attorney's office by Clerk and Secretary
- Reports by Department of Justice

## Topics for Today

- **Lobbying Disclosure**
  - What is “lobbying” & who is a “lobbyist”?
  - Quarterly Reports
  - Semiannual Reports
  - Coalition Disclosures
  - Tax Code Definitions
- **Gift & Travel Rules**
  - No Gifts from Lobbyists
  - Exemptions

## What is a Lobbyist?

- **Lobbyist:**
  - More than one lobbying contact***AND***
  - Spends more than 20% of time on lobbying activities

## Lobbying Contact

- Any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—
  - the formulation, modification, or adoption of Federal legislation (including legislative proposals);
  - the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
  - the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license); or
  - the nomination or confirmation of a person for a position subject to confirmation by the Senate.

- **Covered Legislative Branch Officials:**
  - Anyone in Congress – from Members to the receptionist
- **Covered Executive Branch Officials:**
  - President, Vice President, & Executive Office of the President
  - Levels 1 through 4 of the Executive schedule (cabinet & some below)
  - Certain military officers
  - Schedule C political appointments
- **Lobbying Activity:**
  - Contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

- Quarterly Reports
  - Replaces semiannual reports
  - Must be filed within 20 days
    - Previously had 45 days to file
  - Most information is similar to that reported under old system
  - Must be electronically filed
- Due Dates
  - April 21, 2008 (January 1 through March 31)
  - July 21, 2008 (April 1 through June 30)
  - October 20, 2008 (July 1 through September 30)
  - January 20, 2009 (October 1 through December 31)

- Quarterly Reports (continued)
  - Minimum amount to report \$5,000 (instead of \$10,000)
  - Rounded to nearest \$10,000 (instead of \$20,000)
  - Must disclose covered executive or legislative branch officials acting as lobbyist for 20 years after employment
  - Disclose issue areas lobbied
  - Can use tax code definitions for reports



## Coalition Disclosures

### Old Rule:

- Contributes more than \$10,000 in semi-annual period
- “In whole or in major part plans, supervises, or controls such lobbying activities.”
- Defined as 20% control

### New Rule:

- Contributes more than \$5,000 in quarter
- “Actively participates in the planning, supervision, or control of such lobbying activities.”
- Excludes passive role— e.g., mere donors, mere recipients of information and reports, etc.

- **2 New Campaign Finance Disclosures:**
  - Candidates must disclose bundlers who are lobbyists as part of campaign finance reports
    - No reporting obligations on lobbyist
    - Will likely increase disclosure of political activity of lobbyists
  - New semiannual reports for registrants and lobbyists
    - First time individual lobbyists must file reports
    - Must disclose variety of different types of political contributions

- New Semiannual Reporting
  - Must be filed by all registrants
    - Lobbying firms
    - Entities who have in-house lobbyists
  - Must be filed by all lobbyists
  - Due every six months

- Content of New Reports
  - All political committees established or controlled by the person or organization
  - Political Contributions
    - List date, amount, and recipient of contribution
    - List of contributions made by the individual or organization as well as any political committee under the control of the individual or organization made to the following entities:

# Semiannual Reports

- To Federal candidates, leadership PACs, and political parties if the contributions aggregate to \$200 or more during the semiannual period (aggregated across entity or individual and the political committees under the entity or individual's control);
- To each Presidential library foundation if the contributions aggregate to \$200 or more during the semiannual period (aggregated across entity or individual and the political committees under the entity or individual's control);
- To each Presidential inaugural committees if the contributions aggregate to \$200 or more during the semiannual period (aggregated across entity or individual and the political committees under the entity or individual's control);

# Semiannual Reports

- To pay the cost of an event to honor or recognize a covered legislative or executive branch official;
- To an entity that is named for a covered legislative branch official or to a person or entity in recognition of such official;
- To pay the costs of a meeting, retreat, conference, or other similar event held by, or in the name of, one or more covered legislative branch officials or covered executive branch officials; and
- To an entity established, financed, maintained, or controlled by a covered legislative branch official or a covered executive branch official or an entity designated by such official.
  - *Need not be disclosed if disclosed under FECA* ◀

- Must also include certification that lobbyist or registrant:
  - “Has read and is familiar with” the House and Senate Gift Rules
  - “Has not provided, requested, or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress with knowledge that receipt of the gift would violate” the House or Senate Gift Rules

- Must disclose any entity that
  - (1) contributes \$5,000 or more per quarter and
  - (2) “actively participates in the planning, supervision or control” of the group’s lobbying activities
- Exemption from disclosing any entities that are disclosed as members on the association’s or coalition’s web site, as long as the address is included on the registration form.



- Tax code requires association to track lobbying expenses.
- Tax code definitions of lobbying are different from LDA definitions (generally more inclusive)
- LDA allows an association to use the tax code figures for reporting purposes

- Lobbying under the tax code:
  - “influencing legislation”
  - participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office
  - any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums; or
  - any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

- “Influencing legislation” includes activities in support of making a lobbying communication.
- “Influencing legislation” includes state-level lobbying activities.
- Executive branch lobbying definition is two-pronged:
  - Most communications with executive branch officials about *legislation* will be lobbying
  - Very few communications about regulatory actions will be considered lobbying

- House & Senate now prohibit gifts from lobbyists or entities that retain lobbyists
- LDA now prohibits giving gifts “if the person has knowledge that the gift or travel may not be accepted by that covered legislative branch official under the Rules of the House of Representatives or the Rules of the Senate.”
  - Subject to criminal and civil penalties

- **Basic Rule:**
  - No gifts or travel from lobbyists or entities that retain or employ lobbyists
- **Unless:**
  - There is an applicable exemption
- **Cannot expense “gifts”**
  - No reimbursement
  - No deductions
  - May pay using own money if preexisting friendship (discussed below).
- **Does not apply to executive branch gifts**
  - \$20 limit

- Compliance Suggestions
  - Allow meals to be expensed for employees, but not members or staff
  - Include on receipts/reimbursement forms statement:
    - “Reimbursement for employee’s portion of meal only; guest paid for own meal”
  - Review lobbying firm bills for meals
  - Train accounting to prevent reimbursement

- Personal Friendship:
  - Must consider the following factors:
    - History of the relationship
    - Previous exchange of gifts
    - Will it be reimbursed or expensed
    - Similar gifts given to others on Hill
  - If exemption applies, limited to \$250
    - Unless waiver obtained
  - What this allows:
    - Gifts paid for with your own money
    - Dinner, drinks, etc.

- **Widely Attended Events:**
  - Invitation must come from sponsor of event
  - Event must be:
    - Open to individuals from throughout a given industry or profession or
    - those in attendance represent a wide range of persons interested in a given matter
  - Must have 25 people not from Congress invited
  - Member or employee must either:
    - be a speaker at the event or
    - determine that attendance is related to official duties



- **Charity Events:**
  - Invitation must come from sponsor of event
    - Contributors to event may make requests
  - Must be a fundraising event (not merely a congratulatory event)

- **Political Fundraisers:**
  - Invite must come from a political committee
  - Includes local transportation, food, and entertainment
  - Must be a political fundraising event
- **What the exemption is not:**
  - An opportunity to take a member to dinner and give him a campaign contribution
  - Could lead to charges of corporate contributions

- **Site Visits:**
  - Food or refreshments, including a meal, offered by the management of a site being visited
  - Must be:
    - on that business's premises, and
    - in a group setting with employees of the organization

- Training/Educational Events:
  - Academic – not legislative briefings (but those could qualify under other exemptions)

- Receptions
  - food or refreshments of a nominal value offered other than as a part of a meal
  - the kinds of food and refreshments usually offered at receptions—such as hors d’oeuvres, appetizers, and beverages
  - morning meetings—coffee, juice, pasty, or bagels—may be accepted.
  - The exception does not allow Members or staff to accept a “meal,” or “food or refreshments offered as part of a meal,” no matter how nominal the cost

- Home State Items:
  - Donations of products from the district or State that the Member . . . represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any single recipient.
  - Must be able to be given away to visitors or displayed in office
  - Must be of nominal value

- Lobbyists or entities employing or retaining lobbyists may not provide travel
  - Exception for travel of short duration
  - No lobbyist may accompany
  - No lobbyist may plan or arrange trip (*de minimis*)
- Use of private planes
  - Senate: must pay charter rate
  - House: prohibited

- Negotiations
  - Senator:
    - Prohibited from negotiating to be lobbyist before election
    - Must notify Secretary of Senate for other negotiations/publicly disclosed
  - Senate Staff (75% of Senator pay):
    - Must notify Secretary of Senate/not publicly disclosed
    - May negotiate lobbying job
  - House (Member and 75% pay):
    - Must notify House Ethics Committee within 3 days
  - Must recuse for matters involving entity
- Cooling-Off Period
  - 2 years:
    - Very senior executive (executive branch)
    - Senators (Senate)
  - 1 year:
    - House members (entire House)
    - House staff (member or office)
    - Senate staff (entire Senate)



- Family
  - Senate: Members and staff prohibited from having lobbying contact with immediate family of member who is registered lobbyist
  - House: Members and staff prohibited from having lobbying contact with spouse of member who is registered lobbyist



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Questions?