ACTIVE COMPLIANCE PROGRAMS FOR LOBBYING AND ELECTION LAW

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I. INTRODUCTION

Law enforcement scrutiny of politics and the policy-making process has increased dramatically, heightening the risks for any corporation that lobbies or participates in electoral politics. Firms that host fundraising events, actively publicize their views on policy matters, or operate a PAC, must ensure that their efforts comply with myriad, ever-changing campaign finance regulations. Even for companies that strive to steer clear of any involvement in electoral politics, landmines are everywhere. They too must have a mechanism in place for ensuring that the actions of their employees do not inadvertently embroil the company in matters regulated by the Federal Election Commission.

While the rules in the federal lobbying arena are arguably less complex, firms that employ lobbyists must track information regarding their lobbying expenditures and any disbursements made to honor legislative and executive branch officials. And, they now must require their individual lobbyists to file reports disclosing certain personal expenditures. Even though entities that lobby may avoid the duty to file federal disclosure reports, to do so, they must monitor their activities carefully to ensure that their lobbying of federal officials does not exceed certain thresholds. Thus, even firms that do not strive to be active players in the political arena have compelling reasons to include lobbying and campaign finance compliance as an integral part of their overall compliance initiatives. Moreover, while the complexities of complying with federal laws alone merit an active compliance plan, companies that lobby or participate in electoral politics at the state level have even more reason for concern.

The first step to creating an effective compliance program for lobbying and election law requires understanding the risks the company faces. In what sort of environment do the company's sales people, lobbyists, and managers work? Are they expected to entertain federal, state, or local officials? Are they involved in local politics either personally or professionally? Do they host federal campaign events on the company premises? Do they sponsor informational meetings for members of Congress or executive branch officials? Do they lobby at the federal level? The state level? Is the company a government contractor? And finally, is the company's involvement in shaping policy and politics worth the added risks and costs of compliance? A firm that answers this last question in the negative might adopt very different policies from a firm that answers in the affirmative.

II. ENFORCEMENT AND ITS IMPLICATIONS FOR TARGETED COMPANIES

The easiest way to get the attention of managers responsible for day-to-day compliance is by educating them about the potential real world consequences of non-compliance. In this section we highlight enforcement actions involving some of the more egregious examples of campaign finance and lobbying abuses. These enforcement actions are certainly a cautionary tale for compliance officers. It is arguably more important, however, to understand the magnitude of the dollar and other costs for companies involved even tangentially in investigations.

For companies at the center of a federal investigation, even cooperating with authorities can cost tens of millions of dollars and in some cases upwards of $1 billion. For companies on the periphery of an investigation, their worst fear may not be the immediate dollar cost or the exposure of wrongdoing in the particular matter under investigation, but rather the potential that questions about other unrelated matters might arise as they open their books to government authorities.

A. Lobbying Activity Enforcement

The Office of the Clerk of the House of Representatives must refer cases of suspected lobbying disclosure violations to the United States Attorney's Office for the District of Columbia. The Clerk's office has made 604 referrals since January 2008 for "non-compliant registrants."[1] The Senate has referred over 8,000 cases of potential non-compliance to the U.S. Attorney's Office since 1995.[2] The U.S. Attorney may respond by sending notices of non-compliance and seeking voluntary correction of reporting inadequacies or it may pursue civil or criminal enforcement actions against violators. Abuses in the area of disclosure began receiving serious attention from authorities only following implementation in 2008 of the Honest Leadership and Open Government Act (HLOGA). Although no serious enforcement actions appear to have resulted thus far, it still may be too early to tell whether authorities will demand stiff penalties from intentional violators. Moreover, due to increased attention and easy public access to all corporate federal lobbying reports, companies that may never find themselves in the cross-hairs of a government investigation, nevertheless may suffer due to negative media reports highlighting the inadequacy of their disclosures.

The Public Integrity Section of the Criminal Division of the United States Department of Justice, in conjunction with United States Attorney's Offices, investigates allegations of more serious lobbying-related crimes. Prosecutors in these cases often bring charges involving allegations of illegal gifts, gratuities, bribes, or honest services fraud.[3] Such cases routinely result in multiple charges, including money laundering charges if recipients attempt to hide payments, false statements if those making payments falsify required reports, mail and wire fraud, and obstruction of justice for post-offense cover-ups. Recent examples of violations include:

- ***United States v. Caso*** – Caso, the former Chief of Staff to former-Representative Curt Weldon, pleaded guilty to one count of conspiracy to commit honest services fraud. A consulting firm helping U.S. businesses in Russia sought official action from Caso, Representative Weldon, and others on the Representative's staff, including assistance in obtaining funding for certain projects. The firm paid Caso's wife \$19,000, \$1,500 for editing drafts of the firm's proposals and the remainder for no additional work. Caso intentionally omitted the payments to his wife from his required annual financial disclosure forms.[4]

- ***United States v. Grimes*** – Grimes, a partner in the lobbying firm Grimes & Young, pleaded guilty to destruction of evidence during an investigation of her lobbying contacts. The FBI was investigating whether former-Representative Curt Weldon agreed to support appropriations requests in a *quid pro quo* for the payment of fees to Grime's firm. After receiving two grand jury subpoenas, Grimes discarded relevant documents, and the FBI intercepted her garbage bags containing these items. She separately discarded her Blackberry to prevent the FBI from reading certain e-mails.

In addition to these individual cases, three far-reaching public corruption investigations centered around lobbying activities: investigations related to Jack Abramoff, cases stemming from public corruption in Alaska, and cases relating to public corruption in Puerto Rico.

Abramoff cases – The Abramoff-related cases resulted in dozens of convictions, both in trials and by guilty pleas. Some that involve lobbying activities merit specific discussion:

- ***United States v. Blackann*** and ***United States v. Hirni*** – Hirni (a lobbyist) offered, and Blackann (an aid to Senator Chris Bond) accepted, an all-expense-paid trip to the 2003 World Series, including tickets, accommodations, drinks, and meals. The Senate Committee on the Environment and Public Works, on which Senator Bond served, exercised jurisdiction over the federal highway bill, for which Hirni's client sought an amendment. Blackann pleaded guilty to making false statements on his 2003 federal tax return by failing to report as income the gifts he had received. Hirni pleaded guilty to a conspiracy to commit honest services fraud. Another Congressional staff member was indicted for also accepting a trip to the World Series.[5]

- ***United States v. Boulanger*** – Boulanger, a lobbyist, pleaded guilty to honest services fraud. He admitted involvement in the events detailed above, and also admitted to providing tickets, meals, and drinks to a Senate staffer. That staffer, who also pleaded guilty to an honest services fraud conspiracy, agreed to provide official actions desired by Boulanger. Boulanger also admitted to providing tickets, meals, and drinks to yet a third staffer, the legislative director for a U.S. Senator.[6]

- ***United States v. Ring*** – Ring, a lobbyist, was indicted on charges of conspiracy, payment of an illegal gratuity, and obstruction of justice. He allegedly gave things of value to lawmakers and other government officials in exchange for official action to benefit his clients. Ring's first trial ended in a mistrial. A retrial is scheduled for June 2010.[7]

Alaskan cases – The Public Integrity Section has been involved in a series of high-profile cases that culminated in the trial and (short-lived) conviction of Senator Ted Stevens. After the conviction, the DOJ dismissed Steven's indictment due to prosecutorial misconduct. All told, though, the government obtained convictions of eleven others, including several elected members of the Alaska House of Representatives and several Alaska business professionals. The charges included bribery, extortion, money laundering, honest services fraud, wire fraud, and structuring of transactions to avoid bank reporting requirements.[8]

Puerto Rican cases – The Puerto Rico Governor, his senior aide, and his former campaign director were indicted on charges of honest services fraud and conspiracy to commit money laundering for their part in soliciting and receiving approximately $250,000 in campaign contributions from a local businessperson. The government filed charges against ten other associates for various offenses related to campaign contributions. In addition, a business owner pleaded guilty to conspiracy to knowingly and willfully violate the Federal Election Campaign Act (FECA) for arranging conduit contributions – prohibited contributions falsely made in the name of another person – made by friends, family members, and employees to Puerto Rico's Governor.[9]

While the cases mentioned above involve serious, willful wrongdoing, even "innocent" lapses can have serious legal consequences. And, while most of the enforcement actions described above were against individuals, to the extent that an individual acts on behalf of a corporation, and the corporation enjoys the resulting benefits, liability may be imputed to the company. A company convicted of a felony offense can face hefty fines and other sanctions, such as exclusion from government contracting or participation in other federal programs and loss of state licenses and permits. Enforcement actions that do not result in felony convictions may subject the company to lowered public esteem, declining share prices, congressional scrutiny, and the crippling cost of an investigation.

B. Campaign Finance Enforcement

The Federal Election Commission ("FEC") is responsible for civil enforcement of the Federal Election Campaign Act. The FEC may open enforcement actions based on its review of reports filed by campaign committees, referrals from other government agencies, citizen complaints, and not uncommonly, reports by the media. The FEC maintains an administrative fine program and also enters into alternative dispute resolution with enforcement targets. The FEC also can file federal civil suits. FEC penalties were once mere slaps on the wrist, but not anymore. From 2003 to 2008, the FEC levied more than $18.4 million in fines,[10] including a $3.8 million fine against Freddie Mac for using corporate resources to facilitate 85 fundraising events. Freddie Mac also dedicated corporate staff and resources to solicit and forward contributions from company employees to federal candidates.[11] Other notable matters include:

- ***LifeCare Companies*** – The FEC entered into conciliation agreements in March 2006 with LifeCare Holdings, LifeCare Management Systems, and two former officers of those companies. The President/CEO and the Vice President for Government Affairs made contributions to federal candidates, political party committees, and PACS. The companies reimbursed the individuals through irregular bonuses, unscheduled salary increases, and undocumented expense reimbursements approved by the President/CEO. The President/CEO paid a $100,000 fine, the Vice President paid a $50,000 fine, and the companies paid a $50,000 fine. The FEC purportedly reduced the companies' fine in recognition of their voluntary disclosure of the violations. The individuals also reached criminal plea agreements with the Public Integrity Section.[12]

- ***Highmark, Inc.*** – This Pittsburgh, Pennsylvania insurance company agreed to pay a civil penalty of $54,078 in April 2007. Highmark made a voluntary disclosure that it had violated the FECA by using corporate funds to pay for fundraising events held by Rick Santorum's Senate campaign. The Vice President of Government Affairs used expense reports and check requests to obtain reimbursement for the cost of three fundraiser golf tournaments at a Hershey country club and one fundraiser held at a private home. The payments, which occurred between 1999 and 2003, were discovered during a routine internal audit.[13]

- ***CarePlus Health Plans, Inc. (CPHP) and CAC-Florida Medical Centers, LLC (CPMC)*** – Two corporations and a corporate officer entered into a conciliation agreement with the FEC in September 2008. The Vice President and CEO of CPMC, Herbert Valdes, sent a coercive e-mail to administrators for patient care centers soliciting contributions for Alex Panelas' 2004 Senate campaign. The President and CEO of CPHP, Miguel Fernandez, directed his assistant to plan a fundraiser for the Panelas campaign during working hours and through the use of corporate resources. CPHP and CPMC paid a $128,000 fine in connection with these violations.[14]

More serious campaign finance violations are prosecuted by United States Attorney's Offices and the Public Integrity Section of the Department of Justice. In 2008, the latest year for which information is available, the Public Integrity Section was involved in criminal campaign finance matters in: Arizona, California, the District of Columbia, Florida, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New York, North Carolina, Pennsylvania, Puerto Rico, Texas, and Washington.[15]

Recent examples of criminal enforcement of campaign finance laws include:

- ***United States v. Pierce-Santos*** – Pierce-Santos pleaded guilty to making $17,000 in "conduit contributions" to a candidate for federal office in 2003.[16]

- ***United States v. Belk*** – Belk , a former United States Senate Candidate from South Carolina, pleaded guilty to, among other things, failing to report to the FEC $15,000 in contributions from the Ford Motor Company Civic Action Fund. He also impermissibly used the funds for his own personal expenses.[17]

- ***United States v. Collier and Price*** – Businessmen Collier and Price pleaded guilty to causing others to make false statements to the FEC. In an attempt to procure expanded gambling rights for a South Carolina Indian tribe, they made contributions to key elected officials and candidates for office. Over a four-year period, they hid the source of $66,500 of campaign contributions by recruiting friends, family, and business associates to make contributions that were reimbursed by an Indian tribe.[18]

- ***United States v. Fieger and Johnson*** – Lawyers Geoffrey Feiger and Vernon Johnson were acquitted on charges that they violated the FECA, made false statements, and obstructed justice. The government alleged that they made illegal campaign contributions to John Edwards' 2004 presidential campaign. Feiger also was accused of attempting to shift responsibility to a deceased officer of his law firm, providing misleading information to witnesses, and concealing an incriminating document.[19]

III. KEY COMPLIANCE AREAS FOR CORPORATE COUNSEL

Federal restrictions on gifts to public officials generally place the onus of compliance on the public official receiving the gift rather than on the potential gift-giver. Nevertheless, improper gifts potentially may expose the giver to charges of bribery, illegal gratuities, honest services fraud, and false statements or conspiracy to falsify financial disclosure reports. Many companies may unwittingly violate these rules by, for example, offering meals at events, giving free items to government officials as part of marketing and branding campaigns, or through other seemingly innocuous circumstances. Compliance officers should consider strictly limiting the number of company employees authorized to give gifts and require pre-approval before items of value or preferences are given to public officials.

A. Gifts to Legislative Branch Officials

Gifts to Members of Congress or their staffs from companies with in-house lobbyists are generally prohibited, with limited exceptions. The rules of the House and Senate define "gifts" broadly to include "a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."[20]

Some key exceptions are as follows:

Gifts Based On Personal Friendship ($250) – This exception permits small gifts between *bona fide* friends with a value of up to $250. A gift with a business aspect or purpose is not allowed. Gifts expensed to the company and non-reciprocal gift-giving are good indications that a gift is not based on personal friendship. When offered by a lobbyist, gifts may be subject to greater scrutiny.[21]

Gifts Less Than $10.00 – Gifts of little intrinsic value such as t-shirts, baseball caps, greeting cards, and other items costing less than $10.00 are permitted, even from entities that employ persons who lobby federal officials.[22]

Food of "Nominal" Value – Lobbyists and lobbyist employers may give "food or refreshments of a nominal value" that are *not* offered as part of a meal and are not used to facilitate one-on-one meetings with lobbyists. Hors d'oeuvres, beverages, and pastries generally are permitted. Beware, however, of the seemingly innocuous, inexpensive boxed lunch. Unless it fits within another exception, a ham sandwich, bag of chips, and a can of soda is a prohibited meal when provided by a lobbyist or employer of a lobbyist.[23]

Widely Attended Events (subject to narrow rules) – Congressional members and staffers may attend and accept meals at a widely attended event provided: (1) at least 25 persons from outside Congress are expected to attend; (2) the event is open to members throughout a given industry or profession or to a range of persons interested in an issue; (3) the invitation comes from the sponsor of the event; and (4) the Member or staffer attends as a speaker or panel participant or performs a ceremonial function, or attendance is related to the official duties of the Member or staff person.[24]

Constituent Events – This exception is intended to allow members to attend constituent events that do not meet the size criterion of the widely-attended-events exception. The meeting must be regularly scheduled, related to official duties, and open to members of a constituent organization.[25]

Commemorative Items – Commemorative items typically include trophies, plaques or other similar mementos presented to a Member of Congress or staff person. Items do not become "commemorative" simply because they are presented at an event. This exception carries an expectation that the item has little intrinsic value. Organizations that must file federal lobbying disclosure reports must disclose such items, including the cost of any related event, on their semi-annual contribution reports to the Clerk of the House and Secretary of the Senate.[26]

Informational Materials – This exception allows Members of Congress to accept information helpful in their official duties, so long as the materials are provided by their publisher, author, or producer. Such materials must be delivered to the Member's congressional office, not to the home of a Member or staff person, and a Member may not accept specialized reporting services such as an encyclopedia.[27]

The gift rules also apply to spouses, family members, and potentially others if a gift is given with the knowledge and acquiescence of the Member or staff person and the Member or staff person has "reason to believe the gift was given because of" his or her "official position in the House" or Senate.[28]

Moreover, if a Member receives something at less than market value, such as property, a loan at below market rates, or favorable terms not available to the general public, and such favorable treatment is given because of the person's official position, it likely will be considered a gift.[29]

The House Ethics Manual also provides the following examples:[30]

***Example 1*:**

A lawyer offers tickets to a sporting event to a Member without charge. The Member suggests instead that the lawyer provide the tickets to a friend of the Member. In these circumstances, tickets given to the Member's friend would be deemed a gift to the Member and would be permissible only if the Member could accept the tickets under the gift rules.

***Example 2*:**

A Member has been invited to play golf by an acquaintance who belongs to a country club, and under the rules of the club, guests of club members may play for free. Nevertheless, the Member's use of the course would be deemed a gift from the host. The value of the waived fee is the amount that the country club generally charges for a round of golf.

B. Gifts to Executive Branch Officials

1. Gift Rules Applying to All Executive Branch Officials

Two major types of gifts to executive branch officials are prohibited: (1) gifts given because of the employee's official position; and (2) gifts from prohibited sources.[31] The prohibited sources include the following: (a) persons seeking official action from the agency, persons doing business with the agency, and persons conducting activities regulated by the agency; (b) persons whose interests may be substantially affected by the performance or nonperformance of the duties of the recipient official; and (c) associations or organizations, the majority of whose members are prohibited sources.[32]

The definition of "gift" under the executive branch rules is broad, including "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value" and includes services, gifts of training, transportation, local travel, lodging, and meals.[33]

Exceptions to the prohibition against gifts to executive branch officials include:

- ***De Minimis Gifts*** – This exception includes: (1) modest refreshment not offered as part of a meal (*e.g*., doughnuts, coffee); (2) greeting cards and items of little intrinsic value like plaques and certificates; and (3) non-cash gifts valued at $20 or less.[34]

- ***Gifts Based on Personal Friendship or Family Relationship*** – Gifts motivated by a personal relationship, and not by the employee's official position, are permitted. The history of the relationship and whether the family member or friend personally pays for the gift are relevant in determining whether a gift meets this exception.

- ***Gifts Based on Outside Business Relationship*** – This exception includes, for example, gifts resulting from a spouse's professional activities, where the gift is not offered due to the employee's position and the gift relates to activities outside the government.[35]

- ***Opportunities and Benefits Available to the Public*** – Executive branch employees may accept favorable rates or discounts offered to particular classes of people, and not based upon government employment.[36]

- ***Free Attendance at a Conference or Event*** – Free attendance at a conference or event is permitted where the employee is presenting information on the agency's behalf and attendance is provided by the sponsor of the event. Pre-approval by the employer may be required.[37] See additional specifications at 5 C.F.R.§ 2635 before invoking this exception.

- ***Free Attendance at Event Where the Employee is Teaching or Speaking***.[38]

- ***Free Attendance at Widely Attended Gathering*** – This exception applies when the agency has determined that attendance furthers the agency's operations and either the offer is from the sponsor of the event *or* the offer is from a non-sponsor, but more than 100 people are expected to attend and the value of attendance is $335 or less.[39]

Federal employees may not accept, under any circumstances, gifts in return for the performance of an official act; may not solicit or coerce a gift; and may not accept gifts on such a frequent basis that it raises a question about their propriety.[40]

2. Executive Order 13490

Unlike the congressional gift rules, rules applicable to the executive branch do not distinguish between gifts from organizations that employ in-house lobbyists and those that do not. By executive order, however, President Obama has placed additional restrictions on his political appointees with regard to acceptance of gifts from lobbyists.

Executive Order 13490 generally prohibits political appointees from receiving gifts from lobbyists and registered lobbying organizations.[41] Under this order, the $20 gift exception under the executive branch gift rules and the exception for widely attended gatherings do not apply to gifts from lobbyists to political appointees.[42]

C. Lobbying Registration and Reporting

The federal Lobbying Disclosure Act ("LDA"), 2 U.S.C. §1601 *et seq*., as amended by the Honest Leadership and Open Government Act of 2007, requires entities that meet certain criteria to disclose details concerning their federal lobbying activities, and provides for criminal penalties (up to 5 years imprisonment) and civil penalties (up to $200,000) for noncompliance.[43] There are no regulations to clarify the LDA, and the Act's many ambiguities, for the most part, have not been tested in the courts. The law requires the Clerk of the United States House of Representatives and Secretary of the Senate to publish guidance (the "Clerk's Guidance")[44] concerning registration and reporting requirements. The Clerk's Guidance, while helpful, does not have the force of law.

1. Circumstances Requiring Registration

An organization that lobbies on its own behalf is not required to register under the LDA unless it: (1) employs individuals who meet the legal definition of a lobbyist; and (2) spends more than $11,500 in lobbying expenditures during a quarterly reporting period.[45] For this reason, some organizations that lobby federal officials – and even organizations that engage in significant amounts of lobbying – may never have to disclose their activities.

a. *Definition of a Lobbyist*

An organization is not required to register unless at least one of its employees qualifies as a lobbyist. A person who engages in lobbying activities will not necessarily be considered a lobbyist under the LDA. To qualify as a lobbyist, someone must:

- Be employed for financial compensation;
- Make more than one lobbying contact on behalf of his or her employer; and
- Devote 20 percent or more of his or her time in *any* three-month period to lobbying activities.[46]

Unless an employee satisfies all three of these criteria, the employee is not a lobbyist within the meaning of the LDA. The criteria are further explained below.

(1) Financial Compensation Requirement

Employees who are paid for their work and who engage in lobbying potentially may trigger the LDA's requirements. In contrast, organizations that use only volunteers, who lobby without pay, are exempt from the lobbying disclosure requirements.[47]

When an organization retains an outside lobbyist, the outside lobbyist must register and report his or her activities. Thus, an organization that retains outside lobbyists, but does not lobby on its own behalf, has no federal reporting obligation.[48]

(2) Requirement of Two or More Lobbying Contacts

An employee must make more than one lobbying contact on behalf of an organization in order to be considered a lobbyist. A lobbying contact is an oral or written communication (including e-mail and other informal communications) made to "covered" executive or legislative branch officials "with regard to" one of the follow types of government activity:[49]

- The formulation, modification, or adoption of federal legislation, including legislative proposals;
- The formulation, modification, or adoption of a federal rule, regulation or 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 Senate confirmation.[50]

Although the LDA does not expressly state that the communication must be motivated by a desire to influence the government official, this requirement is implied.

The test takes into account all lobbying contacts, no matter how infrequent. Thus, if an employee made one lobbying contact for the organization in 2009 and will not make another lobbying contact for the organization for several more years, the second prong of the test will be met at the time of the second contact. In addition, contacts made to different officials and contacts made about entirely different issues count toward the two-contact criteria.

The LDA exempts 19 types of communications from the definition of a lobbying contact. Key exceptions include:

Communications to the Public – Communications made in a speech, article, publication, or other material available to the public, or through radio, television, or other medium of mass communication are not considered lobbying contacts, even if the communication reaches covered officials by virtue of their membership in the general public.

Administrative Requests – Most administrative requests are excepted from the definition of lobbying, including communications with covered officials to learn the status of particular legislation, requests for copies of bills, and requests to obtain information concerning the location of a public hearing.

Congressional Testimony – Congressional testimony, whether requested by Congress or sought by the organization, is not considered a lobbying contact. This exemption applies to both oral testimony and written statements merely inserted into the Congressional Record.

Requested Information Provided In Writing – Responding in writing (*e.g.,* letter, memorandum, white paper) to a request from a covered official is not considered a lobbying contact, even if the response involves advocacy. Oral communications are not covered by this exception.

Other Exceptions – Other exempt communications include statements made in connection with civil, criminal, or administrative proceedings; comments provided in public proceedings; and petitions for agency action that are by law a matter of public record. For a complete list of the 19 exempted types of communications, consult 2 U.S.C. § 1602(8)(B).

(3) The 20-Percent Threshold

Even an employee who makes multiple lobbying contacts will not trigger registration requirements unless the employee's lobbying activity in *any* period of three consecutive months constitutes 20 percent or more of his or her time working for the organization.[51] Lobbying contacts and lobbying activities have different definitions. A lobbying contact is an actual communication to a covered official.[52] In contrast, lobbying activities include any efforts in support of lobbying contacts, including preparation and planning activities, such as drafting written materials, participating in internal meetings, researching, and other background work.[53] Work performed by colleagues and subordinates is not taken into account in determining whether an individual meets this 20-percent threshold.[54]

b. *Monetary Threshold For Registration*

An organization that employs at least one lobbyist does not have to register under federal law unless its lobbying expenditures exceed $11,500 (or are expected to exceed $11,500) during a quarterly reporting period.[55] The Clerk's Guidance states that funds used to retain outside lobbyists should be included in calculating an organization's lobbying expenditures.[56] According to the Clerk's Guidance, some portion of a lobbyist employee's compensation must be allocated to the employee's lobbying efforts and included in this calculation.[57] For an employee who spends 10 percent of his or her time on lobbying activities, it would be reasonable to allocate 10 percent of the employee's salary to those activities for reporting purposes. If an employee spends 80 percent or more of his or her time on lobbying activities, for the sake of simplicity, the organization might choose to include the employee's entire salary for reporting purposes. In calculating the amount of expenditures for lobbying activities, the organization should include expenditures and compensation for all employees who engage in lobbying activities, not just employees who satisfy the definition of a lobbyist.[58] The Clerk's Guidance also recommends including some portion of the organization's overhead costs in its calculation of lobbying expenditures.[59] There is no established policy for how to calculate these amounts – reasonableness is only rule of thumb.

2. **Reporting Obligations**

There are three types of filings required under the LDA and HLOGA: the registration statement, called the LD-1; the quarterly report, called the LD-2; and the semi-annual contribution report, called the LD-203.[60] Only the employer files the LD-1 and LD-2 forms. Both the employer and its lobbyist employees file separate LD-203 forms.

a. *Registration and Quarterly Reports (LD-1 and LD-2)*

An organization that employs at least one lobbyist must file a registration statement (the LD-1 form) with the Clerk of the House and Secretary of the Senate. Until the organization terminates its registration, the organization must file quarterly disclosure reports (the LD-2 form) identifying, among other things, the government agencies lobbied, the issues addressed, the aggregate amount of expenditures made in connection with lobbying efforts, and the names of employees who meet the definition of a lobbyist.[61] A registrant must file quarterly reports even for quarters in which no lobbying activity occurred.[62] The identity of the organization's lobbyist employees are reported on these forms, but the individuals themselves are not required to submit LD-1 and LD-2 forms. Some organizations require their government relations employees to submit detailed timesheets identifying their lobbying activities, the federal agency lobbied, and the amount of time spent on those activities. Such timekeeping promotes accuracy and minimizes the need for information-gathering while preparing reports.

b. *Semi-Annual Contribution Reports (LD-203)*

In addition to quarterly reports concerning their lobbying activities, registrants must file semi-annual contribution reports (the LD-203) that disclose their federal campaign contributions and other expenditures made in recognition of covered officials.[63] Any employee who meets the definition of a lobbyist also has a legal obligation to file a personal semi-annual report.[64] Employees who are listed on the organization's quarterly reporting forms as lobbyists will be expected to file an LD-203 report.[65] For this reason, lobbying registrants are taking greater care to disclose on their quarterly lobbying reports only the names of employees who actually satisfy all three prongs of the definition of a lobbyist.

The following information must be disclosed in the contribution reports:[66]

(1) The date, recipient, and amount of funds contributed to any Federal candidate or officeholder, leadership PAC, or political party committee, if the aggregate contributed during the period to that recipient equals or exceeds $200. In addition, if the filer is a member of the governing board of a PAC or otherwise has power to direct the use of PAC contributions, he or she must disclose the name of the PAC;

(2) The date, the names of the honorees, the payees, and the amount of funds paid for an event to honor or recognize a covered legislative branch or executive branch official;

(3) The date, the names of the honorees, the payees, and the amount of funds paid to an entity that is named for a covered legislative branch official, or to an entity or person in recognition of such official;

(4) The date, recipients, the names of the covered officials, the payees, and the amount of funds paid to an entity established, financed, maintained, or controlled by a covered legislative branch or executive branch official or to an entity designated by such official;

(5) The date, the names of the honorees, the payees, and the amount of funds paid for a meeting, retreat, conference, or other similar event held by, or in the name of, one or more covered legislative branch or executive branch officials; and

(6) The date, the name of the honoree, the payees, and the amount of funds equal to or exceeding $200 paid to each Presidential library foundation and each Presidential inaugural committee.

The semi-annual contribution reports also require a certification that the person or organization filing the report has read and is familiar with the gift and travel rules of the Senate and House of Representatives and has not provided, requested, or directed a gift or travel in violation of those rules.[67] Thus, while the onus is on the public official not to accept a gift in violation of congressional gift rules, companies are subject to potential criminal penalties for filing a false certification.

D. Key Election Law Issues

1. Prohibited Campaign Contributions

Corporations are prohibited from making monetary or in-kind contributions to federal candidates or campaign committees.[68] A contribution is "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value."[69] Free use of company facilities is considered an in-kind contribution in most circumstances. For example, permitting use of the corporate premises or providing refreshments for political fundraisers free of charge qualify as in-kind contributions to the candidate's campaign. As a general matter, supplying space and food for fundraising activities is permissible only if the corporation is reimbursed in advance at the market rate.[70] (As discussed in more detail below, fundraising events attended solely by a corporation's "restricted class" are not subject to this restriction.)

Corporations also are prohibited from facilitating the making of contributions. Corporations may not direct employees or others to plan, organize, or carry out fund-raising activities using corporate resources.[71] The FEC's enforcement action against Freddie Mac is a good example. The FEC imposed a $3.8 million fine, discussed above, in connection with Freddie Mac's use of corporate resources to facilitate fundraisers for federal candidates. Freddie Mac paid consulting firms as much as $25,000 in monthly retainers to plan and organize fundraising dinners. It also used corporate staff and resources to solicit and collect contributions from company employees.[72]

In addition, corporations may not use coercion, including threats of job reprisal or professional benefits, to encourage contributions by employees, including members of the restricted class.[73] Corporations also are prohibited from laundering contributions[74] by making contributions in the name of an employee. Therefore, corporations may not reimburse employees for their personal contributions, a.k.a. "conduit contributions."[75] Indirect reimbursements, such as increased bonuses or expense allowances, are prohibited when given with this intent.

2. Permitted Corporate Political Communications

Federal law does not preclude corporate communications concerning political issues if the communication is targeted to the "restricted class,"[76] a term of art meaning a corporation's shareholders and executive or administrative personnel and their families.[77] The corporation expressly may advocate the election or defeat of a federal candidate in communications to the restricted class and may host (and pay for) fundraisers for particular candidates to which only the restricted class is invited.

Aside from communications solely to the restricted class, corporations may allow candidates to address all employees on the corporate premises, provided that all candidates for the same office are given a similar opportunity upon request.[78] Corporations can provide voter guides to their employees, provided that the contents are not coordinated with a candidate's campaign committee.[79]

Finally, in *FEC v. Citizens United*,[80] the Supreme Court recently overruled limits on corporate independent expenditures for political advertisements – *i.e.,* expenditures to advocate for or against the election of a candidate, where the advertisement is not coordinated with a candidate's campaign committee. The FEC currently is considering the impact of the Court's decision on its regulations and plans to provide public guidance soon. Because the law is in a state of flux, companies should proceed with caution in this area.

3. Corporate PACs

Corporate political action committees (PACs), referred to by the FEC as "separately segregated funds," may solicit contributions of up to $5,000[81] from members of the corporation's restricted class and may donate those funds to federal campaigns.[82] Corporate PACs may give contributions of up to $5,000 per election to federal candidates, $15,000 per year to a national party committee, and $5,000 per year to other political action committees.[83] A corporation may use its own treasury funds to pay the administrative expenses of the PAC, including expenses to host fundraisers for federal candidates. Contributions to candidates, however, whether monetary or in-kind contributions, must be made solely from funds contributed to the PAC by members of the restricted class.[84]

PACs may not accept contributions from foreign nationals (*i.e.*, individuals who are not United States citizens and who do not possess a Green Card), from other corporations, or from government contractors.[85]

Corporations also must comply with certain legal restrictions when soliciting contributions from the restricted class. Although the corporation may solicit donations by any method (*e.g.,* e-mail, letter, oral communication), all solicitations must inform potential contributors of the political purpose of the PAC and of their right to refuse to contribute without reprisal.[86] If the corporation suggests a specified contribution amount, the solicitation also must state that this amount is only a suggestion, that more or less than the suggested amount may be given, and that the amount given, or refusal to give, will not benefit or disadvantage the person being solicited.[87] Solicitations also must request the name, address, occupation, and employer of each contributor and inform potential contributors that the PAC is required by law to report this information.[88] Finally, under the Internal Revenue Code, PACs with annual gross receipts of more than $100,000 must include, within any solicitation for a fundraising campaign directed at more than 10 people, a statement that contributions are not deductible as charitable contributions for federal income tax purposes.[89]

4. Other Considerations

A comprehensive treatment of the federal campaign finance laws, much less state campaign finance law, is beyond the scope of this article. There are, of course, numerous other issues with which corporate compliance counsel must grapple. For example, may policy-advocating communications (or, in the wake of *Citizens United,* candidate advocacy) be permitted on the corporate website, and if so, who will police such content and how often will it be monitored for compliance? May the corporation seek to influence the personal political activities of its top officials in ways designed to avoid attribution to the corporation? And, similarly, may the corporation permit personal, volunteer political activity on the corporate premises to the full extent permitted by the law, to some lesser extent, or not at all?

IV. ACTIVE COMPLIANCE PLANS FOR LOBBYING AND ELECTION LAW

The issues highlighted above are only the tip of the iceberg concerning the federal requirements that an active compliance plan must address. Any effective compliance plan also must address state law, where applicable, including state gift restrictions, lobbying disclosure requirements, campaign finance laws, and pay-to-play laws that govern campaign contributions by companies seeking public contracts. The legal requirements in these areas vary among the states and the federal government, raising the question of how to remain up-to-date and compliant with the wide variety of laws that govern interactions with public officials.

Companies that expect to purchase an "off-the-shelf" lobbying law or campaign finance compliance program ignore the complexities of the laws and the reality that company cultures vary markedly. Before adopting a particular compliance program, company counsel must consider the overall approach that best fits the company's culture, abilities, and business needs. The size of an organization and the degree to which it engages in regulated activities will dictate to some degree the necessary formality and scope of any compliance program. Companies that desire simplicity may opt for a "generic" approach to corporate policy by crafting a compliance plan that caters to the most conservative state regimes. Other companies may desire a more tailored approach that requires different codes of conduct for different jurisdictions in which the company does business. If the compliance program is tailored to the strictest regulatory regime, the company may have to forego opportunities in certain jurisdictions where political activity would be both advantageous and permissible. If the company creates individual approaches for each jurisdiction in which it does business, the cost of compliance likely will be greater and employees may have difficulty keeping track of the company's differing policies in each jurisdiction. For this reason, some companies find it necessary to take a hybrid approach. To avoid being hamstrung, while also avoiding additional complications, these companies tailor their policies to permit the full breadth of political activity allowed under the laws of the states where they conduct the most business. They apply more restrictive "generic" policies across states and local jurisdictions where they have less business, and thus, where the cost of tailored compliance outweighs the potential benefits of political activity. Company counsel must grapple with these issues in order to fashion the right model for their organization.

Moreover, an effective compliance program consists of far more than well-written policies. A very sound code of conduct is worthless if it merely collects dust. Compliance managers should not think of their written policies as ends in themselves, but rather as the foundation for a broader approach. The most active of compliance programs include recurring training, audits or monitoring processes intended to ensure compliance, and other measures designed to prevent and detect violations.

A. General Requirements for an Active Compliance Program

The Federal Sentencing Guidelines suggest principles for an effective corporate compliance program. Those principles are intended to guide judges in determining appropriate corporate penalties, the idea being that corporations with more robust compliance plans should receive lesser punishments than other less diligent organizations. The criteria set forth in the

Sentencing Guidelines now have become the yardstick for evaluating compliance plans in other contexts. The criteria suggested are by no means a safe harbor, but they provide a window into the types of measures federal authorities deem to be generally sufficient. The criteria for an effective compliance program, as suggested by the Sentencing Guidelines, are as follows:

(1) The organization must establish standards and procedures to prevent and detect criminal conduct, including monitoring and auditing to detect breaches of policy;

(2) The organization's governing authority must be knowledgeable about the content and operation of the compliance program and must exercise reasonable oversight with respect to the implementation and effectiveness of the program;

(3) The organization should assign overall responsibility for compliance to specific individuals within the company's high-level personnel; specific personnel should have day-to-day operational responsibility for compliance and should report results periodically to higher-level personnel;

(4) The organization should not give substantial authority to individuals who have engaged in illegal activities or other conduct inconsistent with effective compliance;

(5) The organization must make reasonable efforts to educate employees by conducting effective compliance training programs;

(6) The organization should maintain a system, which may allow for anonymity or confidentiality, whereby employees and agents can report or seek guidance regarding potential or actual criminal conduct, without fear of retaliation;

(7) The organization should establish appropriate incentives to promote its compliance program and establish appropriate disciplinary measures for violations;

(8) The organization should evaluate periodically the effectiveness of its compliance program; and

(9) After the organization has discovered a criminal violation, it must take steps to respond appropriately and must modify the compliance program if necessary. [90]

In the event of an enforcement action, the government likely will use these factors to evaluate the robustness of the company's compliance program. Leniency is more likely if the government believes that the violation occurred in spite of the company's best efforts to create and implement an active compliance program.

B. Involvement of Senior Leadership

A key factor in the effectiveness of a compliance program is the integral involvement of high-level personnel with a vested interest in compliance. First, because senior managers are likely to be held responsible for legal or ethical violations committed by their subordinates, these individuals, if properly informed of the potential consequences, have the greatest incentive to monitor and ensure compliance. Second, the involvement of high-level personnel sends a message to all employees that adherence to the program is not optional. Third, the compliance program will be a hollow initiative unless the organization devotes appropriate resources to it. Particularly in this climate of reduced corporate budgets, it is important to place responsibility in the hands of those with the ability to allocate the necessary resources to the program and command the attention of the organization’s highest authority.

C. Training

In addition to a clear and comprehensive policy manual, compliance training is necessary for large organizations. Although it may not be practical in all circumstances, there simply is no substitute for live small-group training sessions. First, in-person training signals to employees the importance of the information imparted. Second, the most effective way for high-level managers to learn about the ethical conundrums facing their employees is to educate them in an interactive setting. The opportunity for interaction and collaboration encourages discussion that likely would not occur in the context of web-based training, for example. A face-to-face training session can reveal concerns and areas of risk about which managers otherwise might not be aware. Outside counsel can be a company’s greatest ally in conducting live training sessions. Employees may speak more frankly with outside counsel than with a supervisor, and the presence of outside counsel helps convey the seriousness of the highlighted subject matter. In situations where in-person training is not practical, web-based training can be an effective tool for reaching remote offices and training employees less likely to encounter compliance risks on a frequent basis. Periodic e-mail reminders may be acceptable in other circumstances.

An employee’s initial education should not be the end of his or her training. Refresher training is a must. Whether refresher courses or “reminders” are conducted face-to-face or through another medium will be dictated by available corporate resources and preference.

Finally, compliance officers should consider creative methods. Some companies e-mail a "Compliance Question of the Week" to relevant employees or provide short quizzes periodically, complete with prizes for departments with the highest level of employee participation. Whatever methods are used, the goal is to encourage employees to think about compliance and to reinforce an appropriate ethical culture.

D. Anonymous Employee Hotlines

One of the most effective ways to prevent and detect criminal activity is to provide a mechanism for employees to seek immediate ethics advice and report potential wrongdoing. For a larger corporation, a hotline is an excellent resource. No requirement exists that callers be permitted to remain anonymous, but anonymity and confidentiality have clear advantages in promoting openness. Here again, outside counsel can be a company's greatest ally. The hotline telephone number for some corporations is a direct line to outside counsel, which helps promote anonymity. Moreover, an outside counsel who specializes in the compliance area at issue should know exactly which questions to ask and how to follow up.

If a hotline is impractical, companies should consider designating a compliance team to field questions and reports of misconduct, and that team should promote an open-door policy. It may prove well worth the cost. Employees who feel they have no other outlet for such information may become whistleblowers or *qui tam* relators, thereby embroiling the company in unnecessary litigation or government investigations. Being the first to receive notice gives the company an opportunity to conduct its own investigation and receive credit for self-disclosure and corrective action, if necessary. The most inconvenient way to learn about a potential compliance problem is from a subpoena, or worse, from a government agent holding a search warrant.

E. Pre-Approval Requirements

Large organizations should consider requiring pre-approval for gifts to government officials, election-related events and expenditures, and lobbying initiatives in unfamiliar jurisdictions. The process should require ample notice so that the approver has time to gather all necessary information, perform any required research, and conduct any necessary training. In addition, formalizing the process to include documentation of the request and decision will enable future auditing of such decisions. Records also create institutional knowledge that can be transferred to successor employees. Finally, documentation of responsible corporate behavior can serve as the first line of defense in the event of a government inquiry.

F. Auditing of Time-Sheets and Expense Reports

Requiring government relations employees to maintain accurate accounts of their time is a very effective tool for promoting accurate lobbying disclosure reports and ensuring that tax-exempt organizations do not conduct more lobbying activity than their status permits. Moreover, requiring detailed and accurate expense reports and other records can help compliance officers detect inappropriate gifts and election-related expenditures. Auditing expense reports and timesheets also places employees on notice that the company pays more than mere lip service to its ethics policies. Many companies already audit expense reports in some way, and doing so in a manner designed to detect unauthorized gift-giving and/or political contributions should require little additional effort.

G. Tying Ethics and Compliance to Compensation and Promotion

Corporate compliance officers also should consider developing appropriate incentives toward compliance. Most employees will understand instinctively that major breaches of corporate policy may result in disciplinary action. Unless instituted in a formal manner, however, employees may not have appropriate incentives for guarding against more minor breaches of policy. This is particularly true where compensation is tied to profits or other results. In addition to gauging an employee's competence and effectiveness in other areas, the company should track an employee's performance in the area of compliance and create tangible incentives where appropriate. Attention to compliance with applicable government ethics policies should be an integral part of the periodic evaluation of all employees who are likely to interact with government officials. Employees who repeatedly violate even less serious policies should feel the effects in their compensation and prospects for promotion. Conversely, employees who are leaders in promoting an ethical culture should be recognized in some tangible way for their efforts.

Tying compensation and promotion to compliance may be controversial in companies that traditionally have judged performance based primarily on the employee's contribution to the bottom line. In the current climate of enforcement, however, internal investigations, criminal or civil fines, shareholder derivative suits, and loss of shareholder's confidence can have a real impact on the company's coffers.

V. CONCLUSION

The days when an organization could hand a written government ethics policy to an employee on the first day of work, and then never mention it again, are coming to an end.

Companies that routinely interact with government officials must be ever vigilant to protect their profits and reputations from the ill-effects of unwanted investigations and unflattering media reports. Though an active compliance program may result in greater costs initially, it can prove a significant cost-saving measure in the long-run.

ENDNOTES

1. Website of the Office of the Clerk, U.S. House of Representatives, available at: http://lobbyingdisclosure.house.gov/ (accessed on Mar. 10, 2010).

2. Website of the Secretary of the Senate, available at: http://www.senate.gov/legislative/Public_Disclosure/cumulative_total.htm (accessed on Mar. 12, 2010). The Secretary of the Senate has not published the number of referrals made following implementation of the Honest Leadership and Open Government Act (HLOGA), but the number is believed to be approximately 2,400.

3. Three cases pending before the Supreme Court potentially may alter the landscape of honest services fraud prosecutions. Oral argument for Weyhruach v. United States, (08-1196) which incidentally stems from the Alaska bribery cases, and United States v. Black, involving an appeal by newspaper mogul Conrad Black, was heard in December 2009. The third case, argued in March 2010, is an appeal by former-Enron CEO Jeff Skilling At oral argument, the justices expressed concern that the current interpretation of the honest services fraud statute (18 U.S.C. § 1346) was too broad and would permit criminalization of almost any bad act. These decisions are likely to cabin future interpretations of the statute.

4. Press Release, US DOJ, "Former Congressional Chief of Staff Sentenced for Honest Services Fraud Conspiracy," (July 30, 2009), http://www.justice.gov/opa/pr/2009/July/09-crm-747.html (accessed on Mar. 14, 2010).

5. Report to Congress on the Activities and Operations of the Public Integrity Section, Public Integrity Section Criminal Division United States Department of Justice (2008) at 19, available at http://www.justice.gov/criminal/pin/docs/arpt-2008.pdf (accessed on Mar. 26, 2010).

6. Press Release, US DOJ, "Former Lobbyist Pleads Guilty to Conspiracy to Commit Honest Services Fraud," (Jan. 30,2009), http://www.justice.gov/opa/pr/2009/January/09-crm-078.html (accessed on Mar. 26, 2010).

7. Id. at 20.

8. Id. at 39-41.

9. Id. at 50-52.

10. FEC OGC Enforcement Statistics for Fiscal Years 2003-2008, available at: http://www.fec.gov/em/enfpro/enforcestatsfy03-08.pdf (accessed on Mar. 9, 2010).

11. Press Release, FEC, "Federal Home Loan Mortgage Corporation ("Freddie Mac") Pays Largest Fine in FEC History," (Apr. 18, 2006), http://www.fec.gov/press/press2006/20060418mur.html (accessed on Mar. 9, 2010). Notably the restaurant where the fundraisers were held was also a potential target of the FEC. Eventually, however, the FEC declined to take any enforcement action against it.

12. Press Release, FEC, "Lifecare Companies and Former Employees to Pay $200,000 Penalty For Illegal Contribution Reimbursements,"(Mar. 28,2006), http://www.fec.gov/press/press2006/20060328mur.html (accessed on Mar. 21, 2010).

13. Press Release, FEC, "FEC Collects $81,578 in Civil Penalties for Prohibited Corporate Contributions Made by Highmark Inc.," (Apr. 11, 2007), http://www.fec.gov/press/press2007/20070412MUR5645.shtml (accessed on Mar. 21, 2010).

14. Press Release, FEC, "FEC Reaches Agreement with Healthcare Companies over Misuse of Corporate Funds," (Sept. 11, 2008), http://www.fec.gov/press/press2008/20080911mur.shtml (accessed on Mar. 21, 2010).

15. Report to Congress on the Activities and Operations of the Public Integrity Section, Public Integrity Section Criminal Division United States Department of Justice (2008).

16. Press Release, US DOJ, "Virginia Man Pleads Guilty to Illegal Campaign Fundraising Scheme," (May 27, 2009), http://www.justice.gov/opa/pr/2009/May/09-crm-518.html (accessed on Mar. 14, 2010).

17. Report to Congress on the Activities and Operations of the Public Integrity Section, Public Integrity Section Criminal Division United States Department of Justice (2008) at 48-49.

18. Id. at 49.

19. Id. at 49-50. The law firm of Feiger, Feiger, Kenney, Johnson, and Giroux, P.C. agreed to pay a fine of $131,000 for the making of conduit contributions. Press Release, FEC, "FEC Takes Final Action on Four Cases," (Nov. 19, 2009), http://www.fec.gov/press/press2009/20091119MUR.shtml (accessed on Mar. 22, 2010).

20. House Ethics Manual, Committee on Standards of Official Conduct, 110th Congress, 2nd Session, available at: http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf (accessed on Mar. 10, 2010) at 31 (citing House Rule 25, clause 5(a)(2)(A)); Senate Ethics Manual, Senate Committee on Ethics, 108th Congress, 1st Session, available at: http://ethics.senate.gov/downloads/pdffiles/manual.pdf (accessed on Mar. 22, 2010) at 25 (citing Senate Rule 35).

21. Senate Ethics Manual at 28; House Ethics Manual at 39-41 (2008 Edition).

22. Senate Ethics Manual at 42; House Ethics Manual at 34 (2008 Edition).

23. Senate Ethics Manual at 42; House Ethics Manual at 50 (2008 Edition).

24. Senate Ethics Manual at 38; House Ethics Manual at 45-47 (2008 Edition).

25. Senate Rule XXV . (c)(24), available at: http://rules.senate.gov/public/index.cfm?p=RuleXXXV (accessed Mar. 26, 2010); House Ethics Manual at 49 (2008 Edition).

26. Senate Ethics Manual at 40; House Ethics Manual at 53 (2008 Edition).

27. Senate Ethics Manual at 33; House Ethics Manual at 54-55 (2008 Edition).

28 House Ethics Manual at 33 (2008 Edition); see also Senate Ethics Manual at 25.

29. House Ethics Manual at 32 (2008 Edition)(citing House Rule 25, clause 5(a)(3)(A)).

30. Senate Ethics Manual at 25; House Ethics Manual at 32, 34 (2008 Edition).

31. 5 C.F.R. § 2635.202(a) (2009).

32. 5 C.F.R. § 2635.203(d) (2009).

33. 5 C.F.R. § 2635.203(b) (2009).

34. 5 C.F.R. § 2635.204(a) (2009). The aggregate value of gifts may not exceed $50 per year from a single source. Even if they meet the de minimis exception, recurring gifts are prohibited. “Buy-downs” also are prohibited. In other words, an executive branch employee may not accept a $75 gift by reimbursing the giver for $25 of the gift’s value.

35. 5 C.F.R. § 2635.204(a) (2009). For example, a member of an advisory committee, who by virtue of that position is a special government employee, may maintain a consulting business.

36. 5 C.F.R. § 2635.204(c) (2009).

37. 5 C.F.R. § 2635.204(g) (2009).

38. 5 C.F.R. § 2635.807(a)(2)(iii)(B) (2009).

39. 5 C.F.R. § 2635.204(g)(4) (2009). Non-career employees above level GS-15 are prohibited from accepting travel, lodging, and meals in connection with teaching, speaking, and writing.

40. 5 C.F.R. § 2635.202(c) (2009).

41. Executive Order 13490 (Jan. 21, 2009), available at:

    http://edocket.access.gpo.gov/2009/pdf/E9-1719.pdf (accessed on Mar. 24, 2010).

42. The President also has asked the Director of the Office of Government Ethics (OGE) to expand the ban to all employees, including career civil servants. At the time of publication of this article, the OGE still was studying the possibility.

43. 2 U.S.C. § 1606 (2010).

44. Lobbying Disclosure Act Guidance, (Dec. 23, 2009), http://lobbyingdisclosure.house.gov/ldaguidance.pdf (accessed on Mar. 16, 2010).

45. 2 U.S.C. § 1603(a) (2010).

46. 2 U.S.C. § 1602(10) (2010).

47. Id.

48. Clerk's Guidance § 4.

49. The following are "covered" executive and legislative branch officials for purposes of the Act:

    The President, Vice-President, or officer or employee in the Executive Office of the President;

    Officers or employees at Levels I through V on the Executive Schedule;

Any member of the uniform services whose pay grade is 0-7 or above;

Any officer or employee serving in a position of confidential, policy-determining, policy-making, or policy-advocating character covered by 5 U.S.C. § 7511(b)(2)(B); and

Members of Congress and their staffs and various other legislative employees.

2 U.S.C. § 1602(3) (2010).

50. 2 U.S.C. § 1602(8) (2010).

51. 2 U.S.C. § 1602(10) (2010).

52. 2 U.S.C. § 1602(8) (2010).

53. 2 U.S.C. § 1602(7) (2010).

54. Clerk's Guidance § 4.

55. 2 U.S.C. § 1603(a)(3)(A) (2010). This amount increases every four years with the Consumer Price Index and will increase again in 2013.

56. Clerk's Guidance § 6.

57. Id.

58. Id.

59. Id.

60. Id.

61. 2 U.S.C. § 1604(b) (2010); Clerk's Guidance § 6.

62. Id.

63. 2 U.S.C. § 1604(d) (2010); Clerk's Guidance § 7.

64. Id.

65. Id.

66. The information in this list comes from 2 U.S.C. § 1604(d) (2010) and the Clerk's Guidance § 7.

67. Clerk's Guidance § 7.

68. Unincorporated entities, such as partnerships, are subject to different rules. This prohibition as to corporations still applies, notwithstanding the Supreme Court's recent decision in FEC v. Citizens United, which, as discussed below, overruled limits on corporate expenditures for political advertising. The permissibility of contributions to state and local candidates is governed by state and local law. The laws of many states permit corporations to make direct contributions to state candidates, but some municipalities impose their own restrictions.

69. 2 U.S.C. § 441b (2010).

70. 11 C.F.R. § 114.2(f)(1) (2009).

71. 11 C.F.R. § 114.2(f)(1) (2009).

72. See Freddie Mac Press release, supra note 9.

73. 11 C.F.R. § 114.2(f)(2) (2009).

74. 2 U.S.C. § 441f (2010).

75. A recent federal district court decision, United States v. O'Donnell, calls into question whether individuals may reimburse others for their campaign contributions. The government charged O'Donnell with violating 2 U.S.C. § 441f by soliciting and reimbursing contributions from employees and agents of his law firm. 2:08-cr-00872-SJO (June 8, 2009). The district court held that section 441f does not prohibit soliciting and reimbursing contributions to candidates. The FEC's regulations provide otherwise. The court reasoned, however, that had Congress intended section 441f to apply to "conduit" and "indirect" contributions, it would have stated so explicitly. At the time of drafting, the district court's decision was on appeal to the Ninth Circuit Court of Appeals. The district court's decision is confined to reimbursements by individuals and does not appear to impact corporations.

76. 11 C.F.R. § 114.3(a) (2009).

77. 11 C.F.R. § 114.1(j) (2009).

78. 11 C.F.R. § 114.4(b)(1) (2009).

79. 11 C.F.R. § 114.4(b)(4) (2009).

80. No. 08-205, 558 U.S. ____ (2010).

81. Once a PAC has been registered with the FEC for six months, has received contributions from more than 50 contributors, and has made contributions to at least five federal candidates, it qualifies as a "multi-candidate" PAC and can make contributions of up to $5,000. PACs that have not obtained multi-candidate status are confined to the lesser contribution limits imposed upon individuals. (The contribution amounts permitted by individuals increase for inflation in odd-numbered years.)

82. 11 C.F.R. §§ 114.5(f), (g) (2009).

83. 11 C.F.R. § 114.5(f) (2009).

84. 11 C.F.R. §§ 114.5(b), (g) (2009).

85. 11 C.F.R. § 114.5(j) (2009).

86. 11 C.F.R. §§ 114.5(a)(3) to (5) (2009).

87. 11. C.F.R. § 114.5(a)(5) (2009).

88. 11. C.F.R. § 114.5(e)(3) (2009).

89. 26 I.R.C. § 6113.

90. United States Sentencing Commission, Guidelines Manual, § 8B2.1 (Nov. 2009).