

The Honest Leadership and Open Government Act

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The Honest Leadership and Open Government Act was signed into law by President George W. Bush in September of 2007. It is the most recent major reform to federal lobbying regulations since the Lobbying Disclosure Act of 1995 and was prompted by the major lobbying scandal involving Jack Abramoff and multiple members of Congress. While the legislation did address several ethics problems within the lobbying industry like gift rules, lobbying disclosures, and the revolving door issue, there is still a significant lack of enforcement that needs to be addressed.

1. Problem

The act of lobbying the federal government is protected by the Bill of Rights, specifically within the First Amendment which states that there is the right “to petition the Government for a redress of grievances.”¹ Despite the right to lobby being enshrined within the Constitution, many within the United States hold a negative view towards lobbyists mainly due to high profile scandals like those involving Jack Abramoff and Representatives Cunningham, Ney, and Jefferson.² For many years, lobbying the federal government was largely unregulated until the Foreign Agents Registration Act was passed in 1938. There are “four major federal lobbying laws- the Foreign Agents Registration Act (FARA) of 1938, the Regulation of Lobbying Act (RLA) of 1946, the Lobbying Disclosure Act (LDA) of 1995, and the Honest Leadership and

¹ Jankowsky, Joel. "Lobbying and Lobby Reform: A Practitioner's Viewpoint." Extensions, Fall 2006, 20-24.

² Thurber, James. "Corruption and Scandal in Washington: Have Lobbying and Ethics Reform Made a Difference?" In Corruptions and American Politics, 177-207. Amherst, NY: Cambria Press, 2010.

Open Government Act (HLOGA) of 2007.”³ FARA was focused on regulating the lobbying activities of foreign agents, while the RLA and LDA focused on regulating all lobbying activities across the board.

While these lobbying reforms made good first steps to regulate the activities of the lobbyists in Washington DC, there was a significant lack of enforcement of LDA regulations which allowed lobbyists like Jack Abramoff to unduly influence members of Congress. Abramoff’s methods included bribery through gifts and donations to campaigns and private foundations controlled by various members of Congress.⁴ The Abramoff scandal prompted lobbying reform in Congress, specifically when it came to the lack of enforcement of the LDA within Washington. Since the LDA was passed in 1995 “there have been no formal enforcement actions filed and only three formal settlements (as of 2011).”⁵

Many influential members of the lobbying industry have also blamed the ethical issues surrounding their industry on the lack of enforcement of current regulations, with one individual stating that this “lack of enforcement is a travesty.”⁶ While the lack of enforcing lobbying rules on registered lobbyists is a travesty, there is also a rampant trend of individuals that fit the definition of lobbyists that do not register under the LDA. In 2002, data showed that although approximately 15,000 lobbyists were registered with the government, the number of individuals that should be registered is closer to 91,000.⁷ This lack of lobbyist accountability and non-

³ Straus, Jacob R. "The Lobbying Disclosure Act at 20: Analysis and Issues for Congress." Congressional Research Service, December 1, 2015. <https://fas.org/sgp/crs/misc/R44292.pdf>.

⁴ Pimpare, Stephen. "Heist: Superlobbyist Jack Abramoff, His Republican Allies, and the Buying of Washington." *New Political Science* 33, no. 2 (June 1, 2011): 259-64. EbscoHost.

⁵ Fried, Charles, Rebecca H. Gordon, Trevor Potter, Joseph E. Sandler, and Ronald M. Levin. "Lobbying Law in the Spotlight: Challenges and Proposed Improvements ." Report of the Task Force on Federal Lobbying Laws Section of Administrative Law and Regulatory Practice, January 3, 2011. American Bar Association

⁶ Gordon, Rebecca. "The Quirky Law of Federal Lobbying." Lecture, Workshop on Ethics & Lobbying, American University, Washington DC, February 10, 2018.

⁷ Thurber, James A. "From Campaigning to Lobbying" In *Shade of Gray*, 151-70. Washington, DC: Brookings Institution Press, 2002.

enforcement of current regulations led to the passage of the Honest Leadership and Open Government Act of 2007 by the 110th Congress.

2. Goals

The overall goals of the Honest Leadership and Open Government Act (HLOGA) were to bring increased openness and accountability to the lobbying industry in Washington. The legislation focused on restricting the revolving door issue of lobbying firms hiring former government officials to take advantage of their relationships within the government and stricter disclosure standards and transparency for registered lobbyists. HLOGA also increased criminal and civil penalties for violating the LDA to \$200,000 and five years in prison for willful and knowing violations of the act.⁸ These legislative goals intended to force increased lobbyist registration and enforcement of current lobbying regulations.

Following the massive publicity surrounding the Jack Abramoff scandal, many in the general public called for comprehensive lobbying regulation reforms. Predominantly Republican politicians were implicated in the Abramoff scandal and when the Democratic Party gained control of both chambers of Congress and many state legislatures and governorships during the 2006 midterm election, many Democratic politicians saw it as a public referendum calling for lobbying reform.⁹ Senate Majority Leader at the time Harry Reid (D-NV) said that “The American people asked us in November to fix the way business gets done in Washington, and Democrats are heeding that call. We are fighting to enact the most sweeping ethics and lobbying reform in history, so we can deliver to the American people a government as good and honest as

⁸ Thurber, James. "Causes, Characteristics, and Consequences of Ethics and Lobbying Reform." Lecture, Workshop on Ethics & Lobbying, American University, Washington DC, February 3, 2018.

⁹ Fogarty, Brian J. "Scandals, News Coverage, and the 2006 Congressional Elections." *Political Communication* 30, no. 3 (July 18, 2013): 419-33. doi:10.1080/10584609.2012.737431.

the people it represents.”¹⁰ Senator Reid’s answer to the wishes of the American people was the HLOGA which was the first legislation introduced during the 110th Congress.

3. Reform

The Honest Leadership and Open Government Act of 2007 was introduced in the Senate as S. 1 on January 4th, 2007. The bill was sponsored by Senator Reid with seventeen additional cosponsors, twelve Democratic Senators, one Independent Senator that caucused with the Democrats and four Republican Senators including then Minority Leader Senator Mitch McConnell (R-KY). A companion bill was also introduced in the House of Representatives as H.R. 2316 introduced by Rep. John Conyers (D-MI-14) on May 15th, 2007. H.R. 2316 was passed by the House in May of 2007, but S. 1 was eventually used as the vehicle for the HLOGA’s passage through Congress.¹¹ S. 1 was ultimately signed into law by President George W. Bush on September 14th, 2007 with strong bipartisan support in the House of Representatives and Senate.¹²

Some of the most meaningful changes that HLOGA made when it comes to lobbying transparency and enforcement include the electronic filing of lobbying disclosures in a publicly available and searchable database, the expanded frequency of lobbying activity filings and the amount of information disclosed, the disclosure of campaign fundraising activities by lobbyists, the restriction of gifts and travel accommodations provided by lobbyists to government officials,

¹⁰ United States Senator for California Dianne Feinstein. "Reid, Feinstein, Lieberman Announce Most Sweeping Ethics, Lobbying Reform in Generations." News release, July 30, 2007. <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=1819927D-E3DA-D2C5-8C9D-02DF1289FEB>.

¹¹ "H.R.2316 - Honest Leadership and Open Government Act of 2007." Congress.gov. <https://www.congress.gov/bill/110th-congress/house-bill/2316>.

¹² "S.1 - Honest Leadership and Open Government Act of 2007." Congress.gov. <https://www.congress.gov/bill/110th-congress/senate-bill/1>.

and making lobbyists liable for ethics violations.¹³ The change that made lobbyists liable for ethics violations was especially significant because it increased the penalties for violating the LDA, increasing the penalties for those convicted from fines to felony convictions.¹⁴ HLOGA also expanded revolving door regulations that were already in place to include high level Congressional and executive branch staffers.¹⁵

The Department of Justice is charged with enforcing these lobbying regulations and investigating violations, while the Government Accountability Office handles audits of the lobbying disclosure forms that are submitted.¹⁶

4. Impact

The Honest Leadership and Open Government Act made significant strides to reform lobbying regulations, but there is still a massive lack of enforcement of these regulations by both the Department of Justice and the Government Accountability Office. This lack of enforcement has contributed to decreases in the number of registered lobbyists and the frequent exploitation of loopholes present within the LDA that were not fixed by HLOGA. Unfortunately, the enforcement of regulations present within the HLOGA are very dependent on the executive branch's willingness to enforce these regulations, which is illustrated by the clear differences in enforcement by President Barack Obama's administration and the current administration of President Donald Trump.

¹³ Holman, Craig. "Perspectives on Ethics and Lobbying Reform in 2018." Lecture, Workshop on Ethics & Lobbying, American University, Washington DC, February 3, 2018.

¹⁴ Brand, Stanley. "Intended and Unintended Consequences of Lobbying and Ethics Reform." Lecture, Workshop on Ethics & Lobbying, American University, Washington DC, February 3, 2018.

¹⁵ Drutman, Lee, and Bruce E. Cain. "Congressional Staff and the Revolving Door: The Impact of Regulatory Change." *Election Law Journal* 13, no. 1 (2015): 27-44. doi:10.2139/ssrn.2313304.

¹⁶ Gordon, Rebecca. "The Quirky Law of Federal Lobbying." Lecture, Workshop on Ethics & Lobbying, American University, Washington DC, February 10, 2018.

President Obama's administration was historic because he is one of the few presidents to not have any major scandals regarding the undue influence of lobbyists on his administration. His administration specifically focused on strengthening revolving door restrictions on executive branch officials beyond those listed within HLOGA and hindering lobbyist's influence on the economic stimulus package that was championed by his administration following the economic recession.¹⁷ Although the Obama administration took a hard line when it came to enforcing revolving door restrictions, he did not adequately work to improve the registration of lobbyists under the LDA and during the first three years of his tenure there was no progress in investigating the over four thousand referrals to the DOJ regarding violations of lobbying regulations.¹⁸

On the other hand, President Trump has also made far reaching promises during his tenure to hinder executive branch lobbying that have not been adequately enforced by his administration. There have been dozens of cases of revolving door issues within his administration that go against Trump's five-point ethics reform plan with zero consequences for those involved. In addition to these revolving door issues, the recent indictment of Trump's former campaign manager Paul Manafort under FARA clearly shows that President Trump does not wish to distance himself from lobbyists but instead has worked to employ them within his administration.¹⁹

Overall the HLOGA had good intentions to hinder the unethical activities of lobbyists in Washington, but the DOJ and GAO are woefully underfunded and understaffed to investigate all

¹⁷ Thurber, James. "Causes, Characteristics, and Consequences of Ethics and Lobbying Reform." Lecture, Workshop on Ethics & Lobbying, American University, Washington DC, February 3, 2018.

¹⁸ Thurber, James A. "Changing the Way Washington Works? Assessing President Obama's Battle with Lobbyists." *Presidential Studies Quarterly* 41, no. 2 (June 2011): 358-74. doi:10.1111/j.1741-5705.2011.03858.x.

¹⁹ Holman, Craig. "Perspectives on Ethics and Lobbying Reform in 2018." Lecture, Workshop on Ethics & Lobbying, American University, Washington DC, February 3, 2018.

regulation violations or investigate the tens of thousands of individuals that choose not to register their lobbying activities under the LDA. Of the 15,084 cases of potential LDA non-compliance referred to the U.S. Attorney for the District of Columbia since its passage in 1995, only nine enforcement cases have led to consequences for the lobbyists involved with no criminal convictions.^{20 21} A DOJ report found that there are hundreds of FARA violations that have gone unpunished mainly “because the FARA Unit has limited staff and considerable responsibilities.”²² Similarly, the US Attorney’s Office in charge of enforcing LDA violations has a similar understaffing issue with over 1,300 unresolved violation referrals.²³

5. Conclusion

In conclusion, while the Honest Leadership and Open Government Act did create stricter regulations in reaction to public outrage surrounding the Jack Abramoff scandal, the major problem surrounding lobbying reform is not the lack of regulation but the lack of substantial enforcement. The regulations within HLOGA were a good idea but unfortunately the lack of funding and personnel for enforcement efforts only added to the backlog of unresolved violation investigations.

If Congress would like to seriously tackle the lack of lobbying regulation enforcement, the enforcement process for these regulations must be significantly improved. Currently the Washington DC press has become the most regular check and watch dog of LDA and FARA

²⁰ DeLacy, Christopher, and Ronald A. Oleynik. "FARA and LDA Enforcement History." Holland & Knight. November 16, 2017. <https://www.hklaw.com/politicallawblog/fara-and-lda-enforcement-history-11-16-2017/>.

²¹ "Cumulative Total." United States Senate. March 2, 2018. https://www.senate.gov/legislative/Public_Disclosure/cumulative_total.htm.

²² United States. Department of Justice. Office of the Inspector General. Office of the Inspector General. September 2016. <https://oig.justice.gov/reports/2016/a1624.pdf>.

²³ Doyle, Kenneth P. "DOJ Renews Promise of Action on Lobbying Law Compliance." April 5, 2017. The Bureau of National Affairs. <https://www.bna.com/doj-renews-promise-n57982086253/>.

reporting compliance.²⁴ For lobbyists to take the potential consequences of violating the LDA and FARA seriously, Congress must increase both financial and personnel support for enforcement efforts. Additionally, the creation of a well-supported, independent enforcement office or the expansion of authority for current enforcing offices is key to demonstrating Congress' commitment to lobbying regulation.²⁵

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²⁴ Gordon, Rebecca. "The Quirky Law of Federal Lobbying." Lecture, Workshop on Ethics & Lobbying, American University, Washington DC, February 10, 2018.

²⁵ Testimony before the House and Senate Rules committees on lobbying reform, 109th Cong. (2006) (testimony of Dr. James A. Thurber).

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