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### An Argument for Stronger Enforcement of HLOGA

#### Introduction:

Maintaining transparency between lobbyists and the public has proven itself to be a challenging task. Over time, a lack of honesty from lobbyists has left the House and Senate Ethics Committees blindsided by corruption. The problem of transparency among lobbyists has been a long-standing issue. In efforts to tighten lobbying regulations, the Lobbying Disclosure Act (LDA) of 1995 was passed.<sup>1</sup> The LDA required the disclosure of lobbying activities that seek to influence the federal government.<sup>2</sup>

However, the LDA's regulations were not strict enough to curb corruption in the lobbying industry. Notably, the Jack Abramoff scandal left Congress and former President George W. Bush scrambling, trying to tighten lobbying regulations. Abramoff and Cunningham leveraged large sums of money on behalf of Native American Tribes.<sup>3</sup> Abramoff pleaded guilty to tax evasion and conspiracy to bribe public officials.<sup>4</sup> This scandal was the impetus for the former President George W. Bush to tighten regulations on lobbyists. Consequently, Bush signed

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<sup>1</sup> "Lobbying Disclosure Act."

<sup>2</sup> "Lobbying Disclosure Act."

<sup>3</sup> Dr. James A. Thurber, Testimony of "Indian Tribes and the Federal Election Campaign Act," Before The United States Senate Committee on Indian Affairs, February 8, 2006, <https://www.american.edu/spa/ccps/upload/indian-affairs-committee-2006-2.pdf>

<sup>4</sup> University of Texas at Austin McCombs School of Business Ethics Unwrapped, "Abramoff: Lobbying Congress," University of Texas at Austin, 2025, <https://ethicsunwrapped.utexas.edu/case-study/abramoff-lobbying-congress>

the Honest Leadership and Open Government Act (HLOGA) into effect on September 14, 2007, amending the LDA.<sup>5</sup>

Expert lobbyists, Craig Holman of Public Citizen, and Josh Rosenstein of Sandler Reiff Lamb Rosenstein & Birkenstock, P.C. noted that the Jack Abramoff Scandal was a wake-up call for lawmakers to enforce tough regulations on the lobbying industry.<sup>6</sup> This scandal was influential in pushing more regulations on lobbyists. However, HLOGA has yet to prove that it has fostered more honesty among lobbyists. It is evident that a lack of transparency is still pertinent among lobbyists in Washington D.C.

Goals of the HLOGA:

The HLOGA attempted to achieve three major goals: first, limit the revolving-door between members of Congress and private lobbying organizations in Washington; second, curb gifts and privately funded travel for Members of Congress; third, bolster the frequency of disclosure reports and augment transparency of lobbying activities.<sup>7</sup>

The revolving-door is referred to as a problematic hiring process on Capitol Hill. It occurs when Members of Congress are recruited to work at lobbying firms directly after exiting their role on Capitol Hill.<sup>8</sup> This process is incredibly advantageous, equipping lobbying firms with an upper hand in pushing their political agenda onto congressional offices. Hence, former Members of Congress use their personal relationships with their former colleagues on Capitol

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<sup>5</sup> Federal Election Commission, “Honest Leadership and Open Government Act of 2007,” October 1, 2007, [https://www.fec.gov/updates/honest-leadership-and-open-government-act-of-2007/#:~:text=On%20September%2014%2C%202007%2C%20President,Election%20Campaign%20Act%20\(FEC%20A\).](https://www.fec.gov/updates/honest-leadership-and-open-government-act-of-2007/#:~:text=On%20September%2014%2C%202007%2C%20President,Election%20Campaign%20Act%20(FEC%20A).)

<sup>6</sup> Craig Holman and Josh Rosenstein. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>7</sup> Dr. James A. Thurber. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 27 January 2025. Interview

<sup>8</sup> Sandy Bergo, “The rise of ‘revolving-door’ consultants,” The Center for Public Integrity, December 21, 2006, <https://publicintegrity.org/politics/elections/campaign-consultants/the-rise-of-revolving-door-consultants/>

Hill to benefit the lobbying firm. The process of the revolving-door has become so widespread that it has been identified as an ethical problem.<sup>9</sup>

In Title One of the HLOGA, “Closing the Revolving Door,” there is an emphasis placed on disclosure and notification.<sup>10</sup> Title One contains mandates for former Members of Congress to disclose their post-employment within three business days after a negotiation is made.<sup>11</sup> In this section of the HLOGA, the Clerk is required to make post-employment information public. Interestingly, the language in this section states that the Clerk must post the information in a format that is “searchable, sortable, and downloadable.”<sup>12</sup> This language is targeted to ensuring the transparency and accessibility of post-employment information to the public. Furthermore, Title One emphasizes autonomous decision-making for Members of Congress. Title One restricts contractors, including attorneys and law firms from knowingly and intentionally influencing communication regarding the negotiations for post-employment among Members of Congress.<sup>13</sup> Overall, Title One sought to reduce the effects of the revolving-door process, in order to make post-employment negotiations fairer.

The second major goal of the HLOGA was to regulate spending on private travel and gifts for Members of Congress. In the past, congressional representatives solicited bribes and engaged in private spending for themselves. For example, former representative Randy “Duke” Cunningham, took in \$2.4 million dollars and spent the money on a yacht and a Rolls-Royce.<sup>14</sup>

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<sup>9</sup> Sandy Bergo, “The rise of ‘revolving-door’ consultants,” The Center for Public Integrity, December 21, 2006, <https://publicintegrity.org/politics/elections/campaign-consultants/the-rise-of-revolving-door-consultants/>

<sup>10</sup> “Honest Leadership and Open Government Act”

<sup>11</sup> “Honest Leadership and Open Government Act”

<sup>12</sup> Title One Section 104 of the “Honest Leadership and Open Government Act”

<sup>13</sup> Title One of the “Honest Leadership and Open Government Act”

<sup>14</sup> Charles R. Babcock and Jonathan Weisman, “Congressman Admits Taking Bribes, Resigns,” Washington Post, November 28, 2005, <https://www.washingtonpost.com/archive/politics/2005/11/29/congressman-admits-taking-bribes-resigns/eec84374-abd3-4e00-b6c4-8a5ecf402e9d/>

Consequently, a major goal of the HLOGA was to increase oversight and the regulation of private funds given to Members of Congress.

In Title Two, “Full Public Disclosure of Lobbying,” Section 205 states, gifts and travel given to Members of Congress by registered lobbyists are not permitted.<sup>15</sup> Additionally, Section 25 under Title Two states that a registered lobbyist who knows that gifts could not be accepted by a Member of Congress due to ethics rules, is prohibited from giving these gifts.<sup>16</sup> The most critical aspect of Sections 205 and 25 in Title Two is clarifying that whether a registered lobbyist intentionally or unintentionally gave a gift to a Member of Congress, this action is still prohibited. This language leaves very little room for loopholes in cases where lobbyists could claim that they did not know gifts were prohibited.

The third major goal of the HLOGA was to foster transparency and disclosure among lobbyists. Title Two Section 208 of the HLOGA, requires the public display of lobbying disclosure information. The text in the HLOGA states that lobbying disclosure information must be made available to the public over the Internet, without a fee or other access charge. The language used in Section 208 is very clear noting that a public database with lobbying information must be “searchable, sortable, and downloadable to the maximum extent practicable.”<sup>17</sup> Section 204 under Title Two of the HLOGA laid out the framework to change the disclosure report requirement from semi-annual to quarterly.<sup>18</sup> Additionally, for filing other contributions lobbyists had up to 45 days after the end of the quarterly period beginning on the

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<sup>15</sup> Title Two Section 205 of the “Honest Leadership and Open Government Act”

<sup>16</sup> Title Two Section 25 of the “Honest Leadership and Open Government Act”

<sup>17</sup> Title Two Section 208 of the “Honest Leadership and Open Government Act”

<sup>18</sup> Jacob R. Straus, “Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007,” Congressional Research Service, April 22, 2011, <https://crsreports.congress.gov/product/pdf/R/R40245>

first day of January, April, July, and October of each year to file their report.<sup>19</sup> Lobbyists are obligated to file with both the Clerk of the House and the Secretary of the Senate. Hence, the HLOGA tried to crack down on lobbyists through tighter disclosure reforms.

Did the reform meet the goals?

Some scholars argue that the HLOGA met its intended goal of reducing the revolving door. HLOGA required a one year “cooling-off” period for congressional staffers before they could engage in lobbying activities.<sup>20</sup> Political science scholars, Bruce Cain and Lee Drutman, indicate that the HLOGA slowed down the revolving door phenomenon in Washington D.C.<sup>21</sup> They note that the pace at which congressional staffers were becoming lobbyists declined after the HLOGA was passed. The trend was most notable among Senate committee staff of the majority party. Cain and Drutman highlight the stricter regulations in the Senate than the House. They state that in the House of Representatives, staffers are forbidden from contacting the office or committee that they worked for, while in the Senate, staffers are prohibited from contacting any office.<sup>22</sup> Using data from Legistorm, a public database that tracks lobbying activities, Cain and Drutman found that post HLOGA, there was a 2.6% decrease in lobbying registration by former Senate majority staffers within one year.<sup>23</sup> The data also points to a 1.2% decrease in registration by former House majority staffers House staffers.<sup>24</sup>

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<sup>19</sup> Title Two Section 204 of the “Honest Leadership and Open Government Act”

<sup>20</sup> “Honest Leadership and Open Government Act”

<sup>21</sup> Bruce Cain is a professor of political science at Stanford University in Stanford, CA and Lee Drutman is a senior fellow at the Sunlight Foundation in Washington, D.C.

<sup>22</sup> Bruce Cain and Lee Drutman, “Congressional Staff and the Revolving Door: The Impact of Regulatory Change,” *Election Law Journal: Rules, Politics, and Policy* Vol. 13, No. 1, March 18, 2014, <https://doi.org/10.1089/elj.2013.0213>

<sup>23</sup> Bruce Cain and Lee Drutman, “Congressional Staff and the Revolving Door: The Impact of Regulatory Change,” *Election Law Journal: Rules, Politics, and Policy* Vol. 13, No. 1, March 18, 2014, <https://doi.org/10.1089/elj.2013.0213>

<sup>24</sup> Bruce Cain and Lee Drutman, “Congressional Staff and the Revolving Door: The Impact of Regulatory Change,” *Election Law Journal: Rules, Politics, and Policy* Vol. 13, No. 1, March 18, 2014, <https://doi.org/10.1089/elj.2013.0213>

On the other hand, Scholar Jacob R. Straus claims that the HLOGA did not make drastic progress in bolstering disclosure reports.<sup>25</sup> This is because when Straus compared registration trends before and after HLOGA was enacted, there was no evidence of a steep increase in disclosures and registrations.<sup>26</sup> Scholars point to comparisons in registration trends before and after HLOGA was enacted. When comparing registrations pre and post HLOGA, trends remained steady after the passage of HLOGA.<sup>27</sup> Straus notes the possibility of Congress' legislative agenda affecting the outcome of registration trends.<sup>28</sup> Given the contrast in views of different scholars, it is important to raise questions for lawmakers about how legislation can be moved forward to promote more transparency in the lobbying industry.

#### Impact of the HLOGA:

The HLOGA left Congress to deal with two large unintended consequences. First, the lack of enforcement surrounding the legislation, and second, the shadow lobbyist loophole. Title Three, "Enforcement of Lobbying Restrictions," in HLOGA states that "whoever fails to comply with the provisions of this Act shall be imprisoned for up to 5 years or fined by striking \$50,000."<sup>29</sup> However, there is no mention of how government agencies will be used to step up the enforcement of the HLOGA. This has led to governmental agencies including the Government Accountability Office (GAO) and the Department of Justice (DOJ) either

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<sup>25</sup> Jacob R. Straus, "Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007," Congressional Research Service, April 22, 2011, <https://crsreports.congress.gov/product/pdf/R/R40245>

<sup>26</sup> Jacob R. Straus, "Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007," Congressional Research Service, April 22, 2011, <https://crsreports.congress.gov/product/pdf/R/R40245>

<sup>27</sup> Jacob R. Straus, "Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007," Congressional Research Service, April 22, 2011, <https://crsreports.congress.gov/product/pdf/R/R40245>

<sup>28</sup> Jacob R. Straus, "Lobbying Registration and Disclosure: Before and After the Enactment of the Honest Leadership and Open Government Act of 2007," Congressional Research Service, April 22, 2011, <https://crsreports.congress.gov/product/pdf/R/R40245>

<sup>29</sup> Title Three of the "Honest Leadership and Open Government Act"

dismissing cases or not prosecuting these cases to their fullest extent.<sup>30</sup> At the moment there is no current legislation or amendments to any existing legislation to ramp up the enforcement of HLOGA.

Additionally, the opportunity for shadow lobbyists to arise. Scholars note that HLOGA actually provided the perfect opportunity for shadow lobbyists to emerge.<sup>31</sup> Shadow lobbyists are defined as those who never register their activities, yet hold prominent positions and engage in activities that would make them appear to be lobbyists.<sup>32</sup> A person is required to register as a lobbyist when they meet the threshold described in a three-part test; money, contacts, and their activity.<sup>33</sup> A lobbyist must keep track of how many hours they spend working with clients making personal contacts or engaging in types of work that could be considered lobbying.<sup>34</sup> A personal contact can be defined as communications made with congressional staffers, the congressional representative themselves, or a government actor such as the President.<sup>35</sup> When a person fills at least twenty percent of their time engaging in lobbying activities, they are required to register as a lobbyist.<sup>36</sup> However, many lobbyists work up to nineteen percent of their time

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<sup>30</sup> Aaron Scherb. The Bryce Harlow Workshop on Ethics and Lobbying. American University. February 1, 2025. Interview.

<sup>31</sup> Open Secrets, “All Cooled Off: As Congress Convened, Former Colleagues Will Soon be Calling From K Street,” Open Secrets, January 6, 2015, <https://www.opensecrets.org/news/2015/01/coming-out-of-the-cool-as-congress-convenes-former-colleagues-will-soon-be-calling-from-k-street/>

<sup>32</sup> Open Secrets, “All Cooled Off: As Congress Convened, Former Colleagues Will Soon be Calling From K Street,” Open Secrets, January 6, 2015, <https://www.opensecrets.org/news/2015/01/coming-out-of-the-cool-as-congress-convenes-former-colleagues-will-soon-be-calling-from-k-street/>

<sup>33</sup> Josh Rosenstein. “Federal Lobbying Law: High-Level Summary.” The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>34</sup> Dr. James A. Thurber. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>35</sup> The University of Rochester, “Lobbying Activities, Expenditures and Gifts” June 2019, <https://www.rochester.edu/policies/policy/lobbying-activities-expenditures-and-gifts/#:~:text=A%20%E2%80%9Clobbying%20contact%E2%80%9D%20is%20an,not%20considered%20to%20be%20lobbying.>

<sup>36</sup> Dr. James A. Thurber. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

engaging in lobbying activities which technically does not require them to register.<sup>37</sup> This is a highly effective way for lobbyists to fly under the radar of investigators in order to cheat the system of honesty and disclosure.

In fact, this loophole remains persistent today as there are lobbyists in Washington today who fall just below the twenty percent threshold at nineteen percent.<sup>38</sup> One explanation for this behavior is that lobbyists felt uneasy about registering because they did not want to go to jail.<sup>39</sup> Given the recent Abramoff and Cunningham scandal, lobbyists were incredibly cautious and were reluctant to hold themselves to ethical standards under HLOGA.<sup>40</sup> It is incredibly alarming that lawmakers have not taken this issue seriously. Hence, it is necessary that there are proposed reforms to remedy the insufficient enforcement of the HLOGA.

#### Major Conclusions:

In theory, the provisions outlined in the HLOGA of 2007 had the potential to introduce pivotal changes to the lobbying industry. However, the passage of this legislation resulted in unintended consequences regarding gaps in enforcement and the shadow lobbyist loophole. The biggest barrier to enforcing the act is that there is a lack of resources and funding dedicated to the government agencies that can prosecute these crimes. The following are two proposed recommendations that could reform the enforcement process of the provisions outlined in HLOGA: one, the development of an independent government agency specializing in

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<sup>37</sup> Dr. James A. Thurber. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>38</sup> Dr. James A. Thurber. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>39</sup> Dr. James A. Thurber. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>40</sup> Dr. James A. Thurber. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

prosecuting HLOGA violations, two, the reforming of the disclosure report forms in order for investigators to clearly identify any prohibited actions by lobbyists.

First, developing an independent government agency can be established specifically for prosecuting crimes in the lobbying industry. This agency will be functioning independently of the Legislative Branch, rather than utilizing the Clerk in the House, in order to remove the possibility of any potential bias among investigators. Designating a singular agency to deal with lobbying investigations will alleviate the plethora of casework already handled by the GAO and the DOJ. This could potentially bolster the enforcement of HLOGA because the staff will be able to give their full attention to the issue at hand when. On the contrary, it is necessary to recognize that it will be challenging to develop and sustain an independent agency for prosecuting lobbying crimes. There would be expected pushback on the agency from Free Speech activists, and potential lawmakers noting that this agency would be attempting to overly scrutinize and regulate lobbyists. Also, a new government agency would require large amounts of funding which would be difficult to obtain unless the government accounts for a new agency in its budget.<sup>41</sup> Consequently, an independent government agency would be a great way to ramp up enforcement directly related to lobbying crimes, yet this would be highly contingent upon the amount of government resources available including employees and funding.<sup>42</sup>

Another way to ramp up the enforcement of HLOGA is to target the framework of the disclosure report forms. If these reports are altered, it can be easier for government agencies to identify a potential violation and proceed with a case. The forms are neither straightforward nor

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<sup>41</sup> Josh Rosenstein. "Federal Lobbying Law: High-Level Summary." The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>42</sup> Aaron Scherb. The Bryce Harlow Workshop on Ethics and Lobbying. American University. 1 February 2025. Interview.

detailed.<sup>43</sup> If anything, the forms are confusing for most lobbyists as they ask for broad descriptions about lobbying activity.<sup>44</sup> This results in lobbyists writing very short and non-descriptive statements that may not actually provide insight into the activities they conducted.<sup>45</sup>

A form required for lobbyists to complete is the “Appendix B 1230-Disclosure Form To Report Lobbying.”<sup>46</sup> The form requires lobbyists to provide a “brief description of services performed or to be performed and date(s) of service, including officer(s), employee(s), or member(s) contacted for payment.”<sup>47</sup> This leads lobbyists to provide vague descriptions of their activities, which in turn defeats the purpose of HLOGA. Instead, the forms should be created to be more straightforward with a list of questions for lobbyists: Who did you meet with? What congressional office are they from? What was the date of the meeting? How long did the meeting last? What issues were discussed? By putting more direct questions on lobbying disclosure forms, this will make it clearer for lobbyists to provide their information to the Clerk of the House and the Secretary of the Senate. Direct questions can also expedite the process of filing, ensuring an easier and more efficient disclosure process.

Conclusion:

Overall, the HLOGA of 2007 boosted awareness about lobbying ethics. Yet, the act unintentionally caused the shadow lobbying loophole and a lack of concrete enforcement. In

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<sup>43</sup> Josh Rosenstein. “Federal Lobbying Law: High-Level Summary.” The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>44</sup> Josh Rosenstein. “Federal Lobbying Law: High-Level Summary.” The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>45</sup> Josh Rosenstein. “Federal Lobbying Law: High-Level Summary.” The Bryce Harlow Workshop on Ethics and Lobbying. American University. 18 January 2025. Interview.

<sup>46</sup> Code of Federal Regulations, “Appendix B 1230-Disclosure Form To Report Lobbying,” National Archives February 11, 2025, <https://www.ecfr.gov/current/title-45/subtitle-B/chapter-XII/part-1230/appendix-Appendix%20B%20to%20Part%201230>

<sup>47</sup> Code of Federal Regulations, “Appendix B 1230-Disclosure Form To Report Lobbying,” National Archives February 11, 2025, <https://www.ecfr.gov/current/title-45/subtitle-B/chapter-XII/part-1230/appendix-Appendix%20B%20to%20Part%201230>

order to reform this act, it is proposed that an independent government agency be developed to prosecute lobbying crimes and that disclosure report forms be made clearer.

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