

# Lobbying & Law

## Who's Watching the Lobbyists?

By Bara Vaida

■ The enforcement of federal lobbying disclosure rules is limited by small staffs.

■ There have been only three enforcement actions in 12 years.

■ By statute, overseers cannot investigate “Abramoff-style” lobbying abuses unless asked by Congress.

Ask any ethics lawyer in Washington what he or she thinks about the enforcement of Congress’s lobbying rules and the answer is unanimous.

Chuckling, they say: “What enforcement?”

The numbers tell the story. In the 12 years between passage of the 1995 Lobbying Disclosure Act and 2007, when Congress amended the law, the Senate Office of Public Records and the House Office of the Clerk sent 3,883 potential violations to the U.S. attorney for the District of Columbia, who is charged with enforcing the law. Only three enforcement actions resulted.

In the two years since enactment of the Honest Leadership and Open Government Act, which expanded disclosure of lobbying activities and banned most gifts by lobbyists to lawmakers and staffers, 1,713 potential violations were referred to the U.S. attorney. Zero enforcement actions have been publicly reported. The House and Senate Ethics committees oversee the gift ban portion of the lobbying rules. No citations involving lobbyists have been publicly reported by either panel this year.

The apparent lack of action has created the perception that lobbying disclosure enforcement “falls somewhere slightly above jaywalking in priority” for the U.S.

attorney, said Brett Kappel, of counsel at Vorys, Sater, Seymour, and Pease.

In addition to the enforcement concerns, some government-watchdog groups worry that more and more lobbying activity won’t make it into the public record. Since 2008, 1,800 individuals have deregistered as lobbyists, according to the House Office of the Clerk. The Senate does not estimate deregistrations.

Although lobbyists have many legitimate reasons to deregister (leaving the profession, for example), concern is growing that President Obama’s expanding list of limitations on registered lobbyists’ access to the executive branch is driving some of them to find loopholes. The combination of factors has watchdogs fearing that the stage is being set for new corruption scandals as the case of disgraced lobbyist Jack Abramoff fades from memory.

“If you don’t have rigorous enforcement and there is less incentive to disclose lobbying activities, you have a prescription for disaster,” said Gary Bass, executive director of OMB Watch. Adds Craig Holman, Public Citizen’s legislative representative: “There has to be an attitude change” about enforcing the law.

A handful of staff at the Senate Public Records Office and the House Office of the Clerk reviews more than 40,000 quarterly disclosure reports to determine if the forms are in order. If an error is found, or if it appears that an organization or lobbyist has stopped filing, the offices give the filer 60 days to address the matter. If there is no response, the case is referred to the U.S. Attorney’s Office for review as a potential violation. Willful violations can result in a \$200,000 fine and prison time.

The Civil Division of the U.S. Attor-

■ Keith Morgan



■ The deputy chief U.S. attorney sends letters to noncompliant lobbyists: “I get a lot of phone calls and faxes” at that point.

ney's Office investigates possible violations. Only six employees in its false claims office are tasked to handle lobby reports: two lawyers and four support staffers. And it's a part-time job for all of them because they also work on non-lobby cases. Three lawyers from other offices can be brought in if the workload gets too heavy.

The priority placed on lobbying enforcement "is based on the resources we have," said Keith Morgan, deputy chief of the U.S. attorney's Civil Division. Morgan, who is in charge of the lobbying compliance team, added: "No one is doing this exclusively."

of the filer, the office may take further action.

"Anecdotally, what I hear is that when a letter goes out from our office, it gets the person's attention," Morgan said. "I get a lot of phone calls and faxes" at that point.

**B**etween December 2007 and January 2009, the U.S. Attorney's Office sent 768 noncompliance letters to lobbyists, according to the Government Accountability Office, which sends an annual report to Congress on how the lobbying disclosure law is working. Morgan said that his office sent an additional

shade here looking at the forms [who] says, 'You lobbied more than you said you did,' " Morgan said. "And there isn't anyone here setting up a video camera on boxes at FedEx Field saying, 'Hey, you had 10 lobbyists in your box and you didn't report it.' "

As a result, it's left to fellow lobbyists or government-watchdog groups to blow the whistle on violators. Public Citizen did just that back in 2006 when Tyson Slocum, director of the group's energy division, personally witnessed an employee of Archer Daniels Midland lobbying on Capitol Hill but found that the firm hadn't registered to do so. Slocum complained to the company, and ADM registered for the first time.

"If I see your face on Capitol Hill and I notice you aren't registered, then there is a potential violation going on," Holman said.

Whether lobbyists are deregistering to avoid the White House's new influence rules remains an open question. Only a short time ago, there was no downside to signing up to lobby, which led to a lot of "over-registering," said Lisa Gilbert, democracy advocate for the U.S. Public Interest Research Group. She thinks that most individuals who have recently deregistered didn't meet the legal definition in the first place.

But that doesn't mean that Gilbert wouldn't like to see more government enforcement activity.

"We would be highly supportive of increased appropriations to collect the information required [to be] disclosed by HLOGA from lobbyists," she said. "We, of course, want to see the bill implemented successfully and an effective and transparent disclosure process in place."

In the post-Abramoff era, the majority of lobbyists appear to be on high alert to comply with lobbying disclosure and gift ban rules, because no one wants to go to prison and "the media are looking over their shoulder," Vorys's Kappel said. Explaining lobbying compliance to clients has become a lucrative business for many ethics lawyers in Washington, indicating that people are paying attention to the new rules. In April, the GAO estimated that 94 percent of lobbyists had filled out their forms correctly in 2008. ■

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## ■ Gary Bass



LIZ HANNA

■ OMB Watch's executive director says that without real enforcement of lobbying rules, "you have a prescription for disaster."

Morgan explained that under the law, the scope of his investigations is limited to referrals of lobbyists who missed reporting deadlines or filled out forms incorrectly. His staff does not dig into the kinds of illegal activities that led to Abramoff's conviction, such as conspiracy to bribe public officials.

This year, the office implemented a computerized system for tracking referrals from Congress and in 2006 installed a phone line dedicated to lobbying oversight. Once the U.S. Attorney's Office receives referrals, Morgan and his colleagues send compliance letters to the potential violators, giving them the opportunity to correct their filings. Depending on the response and history

40 compliance letters last month. The GAO found that Morgan's staff tagged six lobbyists as repeat offenders, but Morgan declined to say whether enforcement or court actions were filed against them.

Unless asked by the House or Senate, Morgan does not investigate people who are lobbying but haven't registered or who deregistered but continue to lobby. (The law spells out several criteria requiring an individual to register, but the key rule applies to those who spend at least 20 percent of their time on lobbying activities and make at least two lobbying contacts during a calendar quarter.)

"There isn't anyone with a green eye-