

House Ethics Committee Investigates Lobbyists, Members and Earmarks

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The Committee on Standards of Official Conduct of the U.S. House of Representatives (the House Ethics Committee) announced on June 11, 2009, that it was conducting "a review of certain, specified allegations within the Committee's jurisdiction that relate to" conduct of House members and employees in connection with activities of the PMA Group (PMA). PMA, a once thriving and influential defense appropriations lobbying firm with more than \$13 million in total lobbying income in 2008, terminated its remaining registrations under the LDA in March 2009. PMA's dissolution followed months of reports that federal law enforcement authorities were investigating the firm and its founder, Paul Magliocchetti, on allegations of campaign finance violations and of improper linkage between campaign contributions from employees and clients of the firm to members of the House and defense appropriations earmarks sponsored by those members.

The House Ethics Committee announced its review of PMA-related allegations in response to an extraordinary demand from the full House. On June 3, 2009-by a vote of 270 to 134, with 17 members voting present-the House passed H. Res. 500, directing the Ethics Committee "to report to the House of Representatives on the actions the Committee has taken concerning any misconduct by members and employees of the House in connection with activities of the PMA Group." H. Res. 500 cited "allegations in the media concerning improper involvement of members of the House of Representatives in certain activities of the PMA Group" and "media accounts and the statements of those involved, [that] the Department of Justice is conducting an investigation into such activities." The House resolution required that the Ethics Committee report within 45 days.

Authors

Robert L. Walker
Of Counsel
202.719.7585
rlwalker@wiley.law

House Majority Leader Steny Hoyer (D-MD) sponsored H. Res. 500 requiring the Ethics Committee to report on any PMA-related inquiry. Congressman Hoyer introduced the resolution after repeated attempts by Congressman Jeff Flake (R-AZ) to gain bipartisan support for passage of resolutions that would have gone a substantial step further by actually directing the Ethics Committee to begin an investigation of PMA-related allegations.

In January 2009, Congressman Flake also sponsored H. Res. 85 to amend clause 17(a) of House Rule XXIII- which requires members to certify that they have no financial interest in a congressional earmark-to expand the definition of "financial interest" to include any campaign contribution, made "during the current or previous session, in excess of a de minimis amount made by or on behalf of": "any political, for profit, or nonprofit entity" and "any employee or person affiliated with any such entity"; "any political action committee established by, administered by, or affiliated with any such entity"; "any registered lobbyist for any such entity"; and "any political action committee established by, administered by, or affiliated with any registered lobbyist for any such entity." Upon introduction, H. Res. 85 was referred to the House Ethics Committee; no action by the Committee on the resolution has been announced.

While news media have reported alleged ties between employees and clients of PMA and several members of the House Appropriations Committee, the only confirmed investigative activity by the Department of Justice concerns Congressman Peter Visclosky (D-IN). On May 29, 2009, Congressman Visclosky confirmed that grand jury document subpoenas had been issued to his House and campaign offices and to certain employees. Congressman Visclosky publicly pledged to cooperate with the investigation. On June 2, 2009, Congressman Visclosky, Chairman of the House Appropriations Subcommittee on Energy and Water Development, announced that, in light of DOJ's investigation, he would ask Congressman Ed Pastor (D-AZ) to handle the FY 2010 Energy and Water appropriations bill. Previously, Congressman Visclosky had announced that because of PMA-related allegations he would not seek earmarks for for-profit firms in the 2010 appropriations bill. On June 3, 2009, Congressman Visclosky's office confirmed the retirement of his longtime chief of staff.

Procedurally, any Department of Justice or other executive branch investigation of official activities of Congressman Visclosky (or of any other member) or of his House staff will have to navigate the strict constraints of the Constitution's Speech or Debate Clause, which, in effect, immunizes members of the House and Senate from being prosecuted or questioned "in any other place" for their legislative activity. This immunity does not cover all official or officially related activities of members, but it does appear to cover sponsorship of earmarks (because such earmarks must be passed as part of appropriations legislation) and the motivation for sponsoring any such earmarks. Speech or Debate Clause issues and challenges have complicated or substantially slowed other recent Department of Justice investigations and prosecutions of members of Congress, including former Congressman William Jefferson (D-LA) and former Congressman Rick Renzi (R-AZ). Speech or Debate Clause immunity does not apply to campaign activities of a member or to the activities of a campaign office or entity, nor does the immunity limit in any way the ability of the House or the Senate, or of the House or Senate ethics committees, to investigate or discipline their respective members.

Robert Walker is a former Chief Counsel and Staff Director of both the Senate and House ethics committees, and an expert in congressional ethics and lobbying rules. Possessing more than a decade of high-level congressional experience and an equally long tenure as a federal prosecutor, he provides counseling, investigatory and litigation services to corporate clients and government officials, focusing on government ethics, lobbying compliance and white collar defense matters. He joined the firm in June 2008.