

Federal Lobbying & Ethics Rules in 2017: Is Your Organization Ready?

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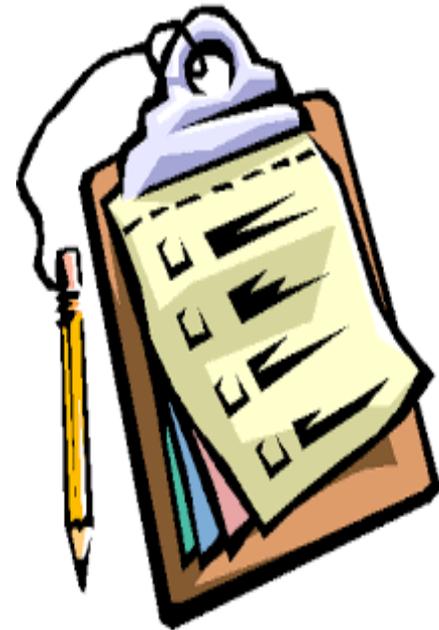
2017: A YEAR OF CHANGE

- ❑ Many important issues will be considered by Congress and the new administration
- ❑ Many organizations will be required to expand their government affairs activities or engage in lobbying for the first time
- ❑ New lobbying and ethics rules are likely to be adopted
- ❑ Compliance impacts your organization's ability to achieve its advocacy goals and impacts its reputation with decision makers



TODAY'S TOPICS

- ✓ **Federal Lobbying Regulation**
- ✓ **Special Rules for Nonprofits**
- ✓ **Congressional & Executive Gift Rules**
- ✓ **What's Ahead in 2017**
- ✓ **Compliance Pointers**



FEDERAL LOBBYING DISCLOSURE ACT



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WHO IS A LOBBYIST?

An entity must register if an employee satisfies requirements #1 and #2, and the organization satisfies requirement #3:

- 1) Employee makes more than one “**lobbying contact**” with a “**covered legislative or executive official**” – re laws, rules, policy, programs, etc.
- 2) 20% or more of employee’s time for company/client is spent on “**lobbying activity**” within any three month period
- 3) Salary, overhead, and other expenses for lobbying activity expected to exceed \$12,500 in a calendar quarter (corporation) or lobbying income expected to exceed \$3000 in a calendar quarter (lobbying firm)



FEDERAL LOBBYIST OBLIGATIONS

- Ban on gifts from lobbyists and lobbyist employers to Members of Congress and staff (many exceptions available)
- Quarterly reports (LD-2) on lobbying activities & expenses
- Semiannual contribution reports (LD-203)
- **Important**: Random GAO audits, up to \$200,000 fine per violation & knowing and willful violations are felonies!
- Lobbyist may not plan or request travel for Member & staff; may not accompany Member on a trip



QUARTERLY REPORTS

Issues: Identify bills, policies, other matters that are subject of executive branch or Congressional lobbying activities

Costs: “Good faith estimate” of lobbying activity expenses:

- ✓ Lobbying contacts and activities by lobbyists and support personnel
- ✓ Outside lobbyists & consultants
- ✓ Percentage of association dues
- ✓ Other costs – travel, overhead, etc.
- ✓ LDA v. IRC definitions



April 20

July 20

October 20

January 20



SEMIANNUAL REPORTS

Who submits:

- ✓ Registered entity & individual lobbyists

Contributions:

- ✓ Political contributions to federal candidates, parties, leadership PACs
- ✓ Payments related to federal officials

Certification:

- ✓ Entity/lobbyist certify familiarity & compliance with the Congressional ethics rules



July 30

January 30



POINTS TO REMEMBER!



- Registration thresholds - opportunities to tailor activities to avoid registration & reporting altogether
- Client does not report, unless it is also a registrant – i.e., corporation or association with in-house lobbyists
- Only aggregate “good faith” lobbying expenses or income reported
- Grassroots lobbying activity is not regulated or reported



SPECIAL RULES FOR NONPROFITS AND THEIR MEMBERS & DONORS



DIFFERENT PERSPECTIVES & COMMON OBJECTIVES

- Extension of Member Government Affairs Program
- Establishing independent and credible organization and voice to further common mission, objectives and goals
- Maximizing range of activities and effectiveness
- Maintaining legal and tax-exempt status
- Maximizing tax deductibility of dues and donations
- Minimizing member/donor disclosure (unless transparency is desired)
- Legal Compliance and best practices
- Avoiding audits, investigations and adverse publicity



TYPES OF ACTIVITIES AND COMMUNICATIONS

- Education = Ideas & Public Policy
- Lobbying = Legislative Matters
- Political = Candidates & Elections
 - General political communications
 - Express advocacy and independent expenditures
 - Electioneering communications
 - Candidate fundraising & coordinated activities
- **Is it the message, intent or result?**

TYPES OF NONPROFIT ORGANIZATIONS

- 501(c)(3)—Charitable/Educational
- 501(c)(4)—Social Welfare/Advocacy
- 501(c)(5)—Labor, Agriculture & Horticulture
- 501(c)(6)—Trade Associations & Individual Membership
- 527—Political (PACs and SuperPACs)



KEY NONPROFIT ATTRIBUTES

	501(c)(3) Educational	501(c)(4) Social Welfare	501(c)(6) Trade Association
Public Education & Issue Advocacy	Yes	Yes	Yes
Legislative	Insubstantial/ 501(h) Election	Yes	Yes
General Political & Independent Expenditures	No	Not Primary Purpose	Not Primary Purpose
Candidate Fundraising & Coordinated Activities	No	Only Indirect thru PAC	Only Indirect Thru PAC
Charitable Deduction	Yes	No	No
Business Deduction	Yes	Maybe	Yes
Dues Disallowance	No	N/A	Yes
Member/Donor Disclosure	IRS Only*	IRS Only*	IRS/Only*

PLANNING OPPORTUNITIES

501(C)(3) ORGANIZATIONS

- Unlimited education & issue advocacy
- Insubstantial lobbying or Section 501(h) election
 - Specific definitions & safe harbors
 - Simplify LDA/Form 990 tracking & reporting
- Revenue Ruling 2007-41 examples
 - Established pattern of activities
 - Facts & circumstances test
- Establish affiliated Section 501(c)(4) or 501(c)(6) organization and connected PAC



PLANNING OPPORTUNITIES

501(C)(4) & (C)(6) ORGANIZATIONS

- Unlimited education, issue advocacy and lobbying
- Political activities subject to primary purpose test
- Citizens United
 - Express advocacy communications & activities
 - No candidate fundraising or coordination
- Establish connected PAC
- Establish affiliated Section 501(c)(3)
- Maximize dues deductibility



COMMON ISSUES & CHALLENGES

- Disclosure of donors to IRS on Form 990, Schedule B
- Reporting lobbying and political activities to the IRS on Form 990, Schedule C (and Form 1120-POL)
- LDA and ethics/gift rules may apply
- Time keeping and reporting issues under multiple regimes and definitions
- Managing multiple organizations
- State compliance and disclosure issues



GIFT RESTRICTIONS



GIFTS TO GOVERNMENT OFFICIALS

- Highly regulated – rules cover gifts to legislative and executive branch officials
- Gift is potentially anything of value
- Meals, beverages, travel, tickets to sporting, company, and charitable events
- Exceptions – highly specific
- Advance planning essential!



FEDERAL GIFT RULES

House & Senate Gift Rules

- No gifts from lobbyists or organizations that employ or retain them unless exception applies – many exceptions available
- Separate House & Senate rules and exceptions

All Executive Branch Employees (OGE Rules)

- No gifts from “prohibited source” unless a specific exception applies
- Revised rules effective January 1, 2017!

Obama Executive Order

- Political appointees cannot accept gifts from lobbyists or their employers – very few exceptions
- No exception for gifts of nominal value
- In general, appointee cannot attend a WAG unless a speaker



MANY GIFT “EXCEPTIONS”



COMMON GIFT RULE EXCEPTIONS

- ❑ Personal friendship and hospitality
- ❑ Widely-attended industry gatherings, site visits, and receptions
- ❑ Invitations to charitable fundraising events
- ❑ Promotional items
- ❑ Plaques and commemorative items
- ❑ Informational materials
- ❑ Benefits available to the general public



WIDELY ATTENDED EVENTS

- ✓ 25 people other than Members or staffers are expected
- ✓ Open to individuals throughout an industry or to range of person interested in a matter
- ✓ Member/staffer is a speaker participant or event is appropriate to representative function
- ✓ Sponsor can provide food, entertainment, and informational materials at event



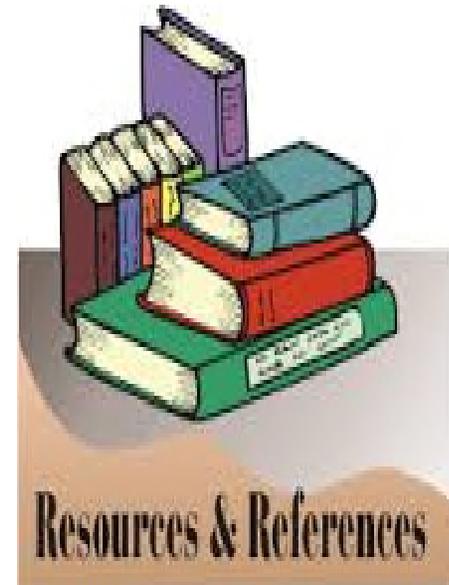
“RECEPTION EXCEPTION”

- ✓ Finger food & drinks – nominal items – not “meals”
- ✓ Standup events or continental breakfasts
- ✓ Note picky rules: House considers sandwiches or hot dogs to be a meal!
- ✓ 25 person rule does not apply



INFORMATIONAL MATERIALS

- Books, articles, periodicals, CDs
- From publisher, author or distributor
- Must be sent to the Member's office or be available at event – cannot be sent to home address



WHAT'S AHEAD IN 2017?



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“DRAIN THE SWAMP” EXPAND “LOBBYIST” DEFINITION

- ✓ Stated goal is to close loopholes used by former government officials. No details provided.
- ✓ Delete the “2 contact” rule or “20% threshold?”
- ✓ Result – greatly increase the number of registered lobbyists



“DRAIN THE SWAMP” BROADER LOBBYING BANS

Proposals:

- ✓ 5 year ban on lobbying by executive branch officials, and Congressional Members and staffers
- ✓ Lifetime ban on senior executive branch officials lobbying for a foreign government

Result:

- ✓ May cause experienced staffers and executive branch officials to leave office sooner to avoid ban



NEW GIFT RESTRICTIONS FOR APPOINTEES?

- Trump team has not yet proposed new gift restrictions for his appointees
- Possible actions: Rescind or modify President Obama's executive order for appointees
- What will take its place? Stricter or more liberal gift rules?



NEW OGE RULES



- ✓ Written agency approval for invitation to a WAG and social invitation from a non-prohibited source
- ✓ Alcohol is not a modest refreshment
- ✓ Speakers can attend a “speakers dinner”
- ✓ New informational materials exception; approval required if over \$100/year
- ✓ De minimis exception still at \$20.00
- ✓ Effective January 1, 2017

NEW IRS RULES



- ✓ Possible Congressional Actions
 - ✓ Continue freeze on political activities regulations
 - ✓ Repeal the Johnson Amendment
 - ✓ Relieve the IRS of responsibility for regulating lobbying and political activities
- ✓ Possible Court Actions
 - ✓ Constitutional validity of facts & circumstances test
 - ✓ State access to Schedule B
 - ✓ Continued litigation over IRS targeting scandal



COMPLIANCE TAKEAWAYS

- ✓ Training – educate key groups about the rules, especially if activity will trigger registration/reporting or ethics/gift rules
- ✓ Advance planning – many opportunities for engagement, but need to work within the rules
- ✓ Review – periodically review scope of GA efforts to assess risks and compliance
- ✓ Non-federal GA efforts – separate laws and rules apply to state and local activities
- ✓ Put Someone in Charge – employees should know where to direct compliance questions in the organization



QUESTIONS?



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