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
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

Due Dates
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

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*IRS Only* indicates that the disclosure is only required for IRS purposes.
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
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?
“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?

Jim Kahl
202-659-6775
jkahl@wtplaw.com

Jeff Altman
202-659-6818
jaltman@wtplaw.com

Whiteford Taylor & Preston, LLP
1800 M Street, NW, Suite 450N
Washington, DC 20036