

National Association of Business Political Action Committees

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Compliance Considerations for the New Lobbying and Ethics Reform Law

Most political action and lobbying professionals have received legal briefings on the Honest Leadership and Open Government Act of 2007, which President Bush signed on September 14, 2007. NABPAC hosted a lobbying and ethics reform briefing with NABPAC Legal Hotline Counsel Jan Baran of Wiley Rein, LLP, on September 27 and devoted its entire October 16 Rap Session to the practical and strategic considerations for complying with these new laws and rules. The following outline includes many of the considerations discussed at the Rap Session that NABPAC members may find helpful. This document is not intended as legal guidance but rather offers suggestions as a starting place for adopting compliance procedures. Please refer to the "Lobbying Disclosure Act Guidelines" by Wiley Rein LLP, September 2007, at <http://www.nabpac.org/members/files/legal/2007/20070922.pdf> for additional guidance.

Re-examine which individuals in your organization meet the new law's definition of a lobbyist.

- Your decision will trigger reporting requirements under the law.
- Each lobbyist will be required to complete and sign reports and certifications.
- In addition to government affairs personnel, be sure to review the roles of other individuals in your organization who may meet the definition.
- If your organization determines that some executives or other employees need not be registered as lobbyists, take steps to remove them on the 2007 year-end report.

Establish a multi-departmental task force to address internal practices and needed new requirements, revise procedures, create documents and establish training.

- This group should be at work NOW.
- Consider involving functional representatives from legal, finance, ethics, government affairs, the PAC, communications, charitable giving and each business unit on the task force.

- Devise an implementation plan to communicate the new policies and procedures across the entire organization.

Make sure internal groups understand what information is needed and when it will be needed.

- The functions that provide the necessary information for reporting must understand that reporting will be more frequent (four quarterly reports and two semi-annual reports), must be turned around more quickly, and must provide more information. Provide a schedule of what is needed and by when to these groups.
- Contract lobbyists need to know what your organization will expect from them for compliance purposes. Don't assume they will know.
- PAC managers may need to provide different information for the semi-annual reports than what is required by the Federal Election Commission and will need to be able to retrieve that information quickly.

Set up a record-keeping system to establish a clear audit trail.

- Although the semi-annual reports are not due until July 30 and January 30 of each year for example, individuals must know well before the beginning of the six-month period what information and records are going to be necessary.
- Establish procedures for collecting information earlier.
- If only one individual has held responsibility for filing lobbying reports, consider spreading out the responsibility for submitting and collecting information within your organization.

Institute a mechanism for a legal review of all charitable contributions that are related to or may be solicited by a public official.

- This is especially critical if your organization has multiple budgets, business units or functions that are able to make charitable contributions.
- These contributions may need to be disclosed.

Establish or revise procedures for reviewing expense reports of lobbyists.

- Each lobbyist will need to certify the accuracy of the report.

Determine who will sign the semi-annual reports to certify that no one in your organization has made a gift to any public official.

- This may be the lead executive for government affairs but could possibly be any individual in your organization.

Establish a process to ensure current and newly hired lobbyists within your organization have read, understand and will comply with the new rules.

- Required in-person training sessions with local, state and federal lobbyists, contract lobbyists, ethics advisors and top leaders in your organization are recommended.
- Consider doing this annually.
- Conduct a regular survey among all individuals in your organization who may have contact with public officials to certify they have complied with the law.

Prepare to do a dry run when filing your organization's 2007 year end lobbying report.

- Instead of finalizing it by the February 14, 2008 deadline, try to finalize it by January 20 to meet the deadline for the quarterly reports that will be due under the new law. You need not file the report until closer to the February 14 deadline.
- Use the dry run to detect problems or deficiencies and take steps to correct these before the first quarterly filing on April 21, 2008.

Establish or update an existing training program to ensure all affected individuals in your organization understand the new lobbying and gift ban requirements.

- The gift ban affects many individuals beyond your organization's lobbyists, for example.
- Consider offering a mandatory online training program.

Prepared for NABPAC's PACHelp Hotline by Karen Bauer Fabean of Michael E. Dunn & Associates, Inc., and reviewed by NABPAC's Legal Hotline.