

# New Year's Compliance Tune-up

Political Contributions, Lobbying,  
and Gifts to Public Officials

Presenters:

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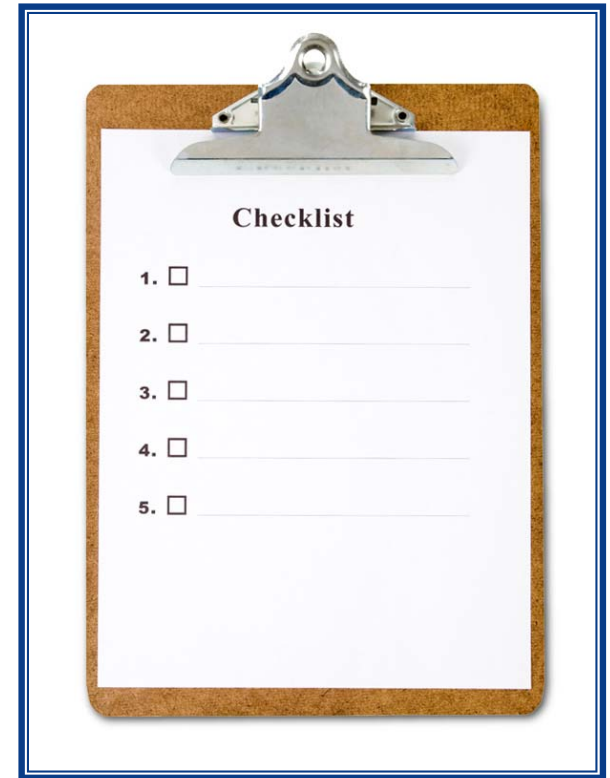
12:00-1:00 p.m. (EST)

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# AGENDA

- Government Relations: Rewards and Risks
- Trends in Regulation of Political Activity
- Lobbying
- Gifts to Public Officials
- Political Contributions & Pay-to-Play
- Corporate Advocacy
- Compliance Tips – A Wrap-Up



# INTERACTING WITH PUBLIC OFFICIALS: RISKS AND REWARDS

- Protect the business, create new opportunities, enhance reputation
- But many traps for unwary in federal, state and local laws
- Scrutiny by regulators media, competitors, watchdog groups
- It's not just a "Washington thing"



# MAJOR TRENDS

- Historic changes in lobbying, ethics and campaign finance laws
- More activity swept up by state and local lobbying laws
- New gift restrictions, with special limits on lobbyists & contractors
- Public contracts at risk from pay-to-play & procurement lobbying laws
- More Board oversight, disclosure
- New options for corporate/trade association communications



# LOBBYING LAWS

- September 2007 – Honest Leadership and Open Government Act
- Significantly changed the rules governing federal lobbyists and organizations that employ and hire them



# NEW RULES, NEW CONSEQUENCES

- Ban on gifts from lobbyists and lobbyist employers to Members of Congress and staff
- Lobbyist may not plan or request travel for Member & staff; may not accompany Member on a trip
- New Semi-Annual Report:
  - ✓ Certification on behalf of entire company and each individual lobbyist: “We understand the Congressional ethics rules and we have complied with them.”
  - ✓ Disclose political contributions, donations, and other expenditures tied to covered legislative and executive branch officials
- Quarterly reporting on lobbying activities
- Up to \$200,000 fines and a felony
- Random audits by GAO



# WHO IS A LOBBYIST?

Registration required within 45 days of meeting all 3 of these requirements:

1. Employed or retained to make or actually make more than one “lobbying contact”
2. 20% or more of a person’s time for a client is spent on “lobbying activity” within any three month period
3. Salary, overhead, and other expenses for lobbying activity expected to exceed \$11,500 in a calendar quarter



# STATES MOVE BEYOND TRADITIONAL CONCEPTS OF LOBBYING

- Influencing government processes
- Licenses, permits
- Shaping policies that affect entire industries
- Generating “goodwill”
- Procurement lobbying
- Grassroots lobbying

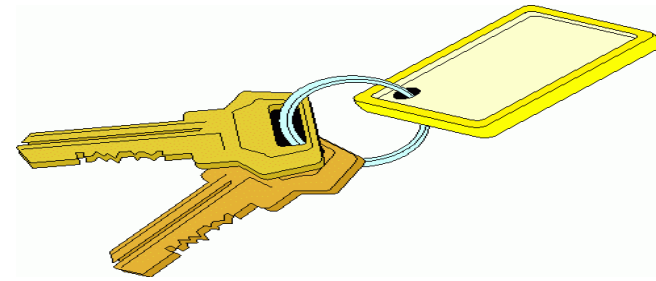


# SALES REP OR LOBBYIST?

- Growing number of states regulate “procurement lobbying”
- Sales reps or agents required to register and report as lobbyists (FL, NY, IL, IN, MA, PA, TX)
- Some exceptions apply (responding to RFP, participating in agency-held bid conference)



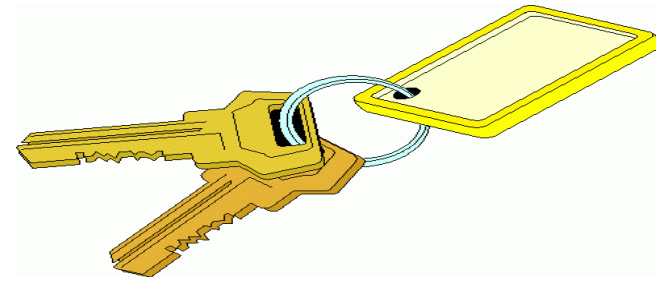
# KEYS TO COMPLIANCE



- Which of your activities or communications are considered “lobbying”?
- Which employees must register and report?
- How do you keep track of employee time, overhead, and expenses relating to lobbying (direct contacts & work behind-the-scenes)?
- How do you keep track of disbursements related to covered officials that must be disclosed in semi-annual reports?



# MORE KEYS TO COMPLIANCE



- Do you have an adequate basis for someone to certify organizational-wide compliance with congressional ethics rules?
- Do your registered lobbyists understand their obligations re: personal semi-annual reports, and how personal reports can reflect on the organization?
- Are you adequately describing issues and agencies lobbied?
- Do you ensure that outside lobbyists comply with your organization's code of conduct?



# GIFT RESTRICTIONS



# GIFTS TO GOVERNMENT OFFICIALS

- Highly regulated – federal, state & local
- Rules cover leg. & ex. officials, and staff
- Reporting requirements may apply
- Majority of states impose additional restrictions on lobbyists and their employers, and government contractors
- Exceptions – yes, but highly specific



# WHAT IS A GIFT?

- Site visits (meals, beverages, travels)
- Invitations to company-sponsored and charitable events
- Tickets to sporting and entertainment events
- Valuable commemorative items – expensive pens, designer desk accessories, wine/spirits, clothing
- Transportation and lodging



# BAN ON GIFTS TO MEMBERS OF CONGRESS AND STAFF

- Old Rule: \$50/Gift and \$100/Year
- New Rule: No gifts from lobbyists or organizations that employ or retain them
- Exceptions are available, but House and Senate do not recognize all of the same exceptions or interpret common exceptions in the same manner



# EXECUTIVE BRANCH GIFT RULES

## Obama Executive Order

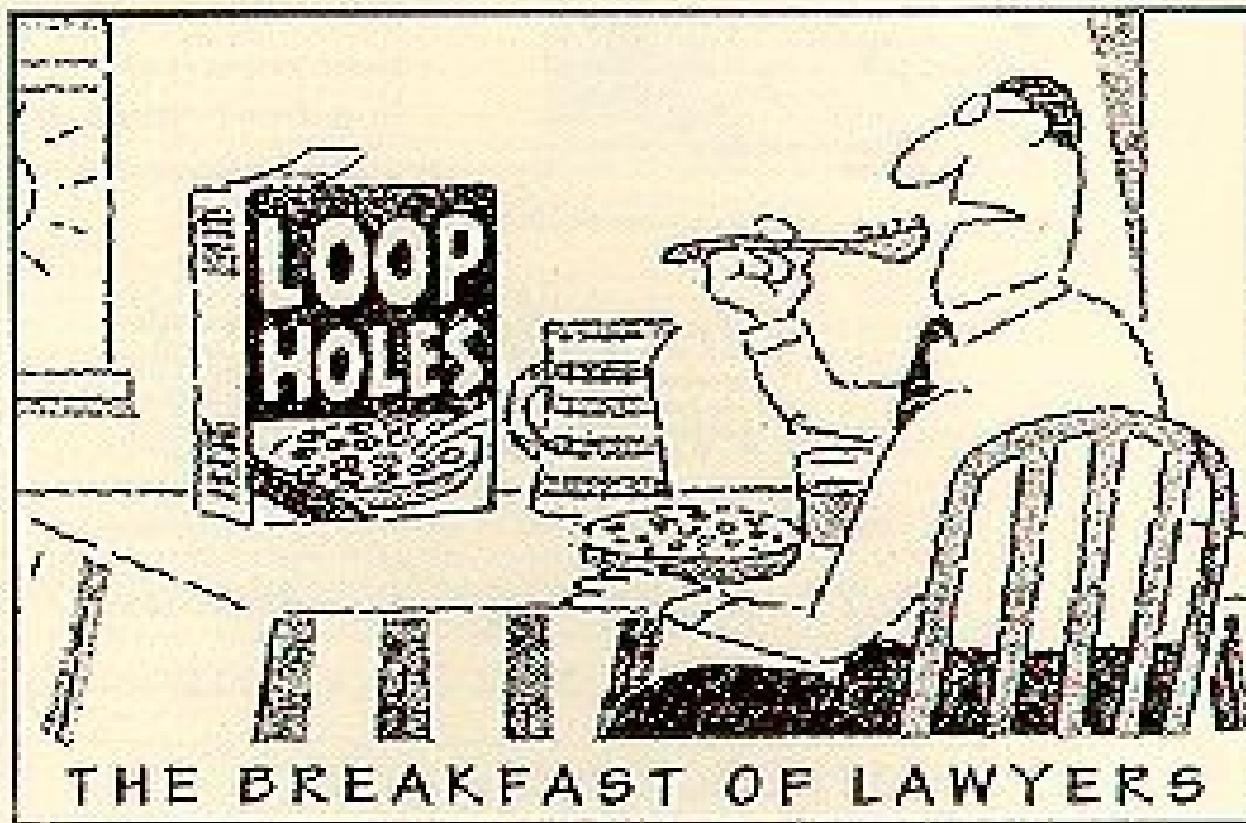
- No gifts from lobbyists or their employers to political appointees in executive branch
- No exception for widely-attended gatherings or items of nominal value

## All other Executive Branch Officials

- No gifts from “prohibited source” unless meet a specific exception

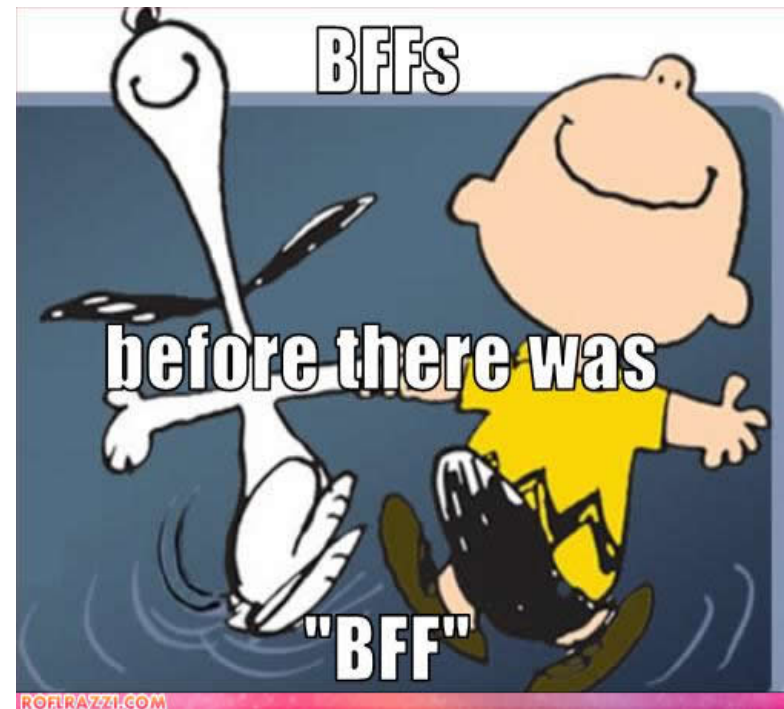


# COMMON “EXCEPTIONS”



# PERSONAL FRIENDSHIP

- Personal friendship exception applies if history of reciprocal gift-giving and paid for personally



# SITE VISITS

## House Rule:

- Meal may be provided by management of a plant or office, if served on the premises and in a group setting with employees of the organization
- May provide local transportation

## Senate Rule:

- Must be in Senator's home state
- May provide local transportation and meal < \$50
- Attended by at least 5 constituents
- Registered lobbyist may not attend (unless fits into another exception, such as reception or w/a event)



# CHARITY EVENTS

- Members and staff may only accept invitation from event sponsor
- Sponsor = significant and active role in organizing the event
- If not sponsor, may request that charity invite House members to sit with them; but not Senators
- Exec branch – permissible if not an Obama political appointee, 100+ expected to attend, and cost  $\leq$  \$335

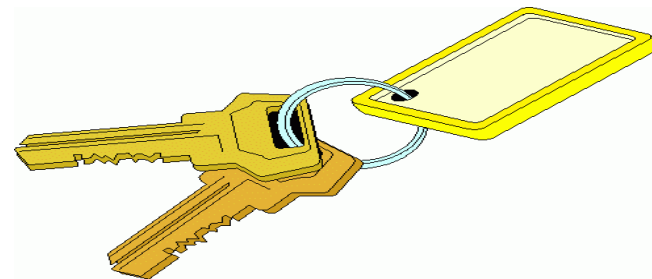


# SPECIAL RULE FOR TICKETS

Tickets may be provided to Member or congressional staff in exchange for face value, or if no face value on the ticket, then the face value of the highest-priced ticket for the event



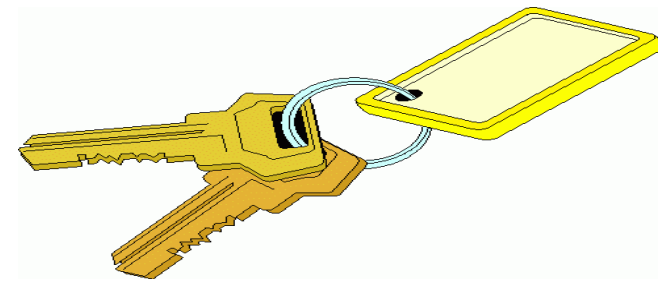
# KEYS TO COMPLIANCE



- Are all events to which public officials are invited (e.g., sports/entertainment events, site visits, receptions, charitable fundraisers) screened in advance for gift rule implications?
- Are your invitations to public officials or events at which public officials will be attending reviewed for gift rule requirements?
- Do you have written procedures for obtaining approval of, and asking questions about, gifts to public officials and employees?



# MORE KEYS TO COMPLIANCE



- Do you provide regular training and updates for:
  - ✓ Registered lobbyists
  - ✓ Salespersons (if sell to government agencies)
  - ✓ High-level officials who interact periodically with government officials and employees
  - ✓ Compliance officials
- Do your agreements with outside consultants address the company's policy on gifts to public officials and employees?



# CORPORATE & PERSONAL POLITICAL CONTRIBUTIONS



# GENERAL RULES FOR CORPORATIONS

## No federal corporate contributions

- Candidates, parties, or PACs
- Exception – contributions by corporate/assn PACs

## Corporate contribution rules vary by state

- A few states allow unlimited corporate contributions (Virginia)
- Prohibited in about 20 states
- Remaining states impose limits
- No limit on ballot initiatives



# NO END RUNS ALLOWED

- Cannot reimburse through bonuses
- Cash & in-kind benefits are contributions
- Tickets to political fundraisers



# CORPORATE FACILITATION

- Corporation cannot use its resources & facilities to assist in raising contributions from individuals
- Result: illegal in-kind contribution
- Common corporate violation
- Civil (FEC) & criminal (DOJ) sanctions
- Three Commissioners prepared to block enforcement for time being – caution advised



# PERSONAL CONTRIBUTIONS

- Generally permitted
- No coercing others to contribute
- No consideration in employee evaluations, strategic planning
- Varying limits (candidate, cycle, annual)
- Fundraisers in personal residence – special rules & allowances
- Special restrictions for some EEs



# FEDERAL CONTRIBUTION LIMITS

## Individual Limits – 2011-2012 Cycle:

- \$2,500 per candidate, per election
- \$5,000 per PAC, per year (no change)
- \$10,000 per state/local party comm, per year (no change)
- \$30,800 per national party comm, per year
- \$117,000 biennial limit  
(\$46,200/candidates & \$70,800/PACs and parties)



# SPECIAL CONTRIBUTION RESTRICTIONS



# STATE PAY-TO-PLAY LAWS

- Prohibit or restrict political contributions by state and local contractors and bidders
- PAC, officers, directors, senior managers, & their spouses and children
- Restrictions may begin before bid and end months after contract is terminated (“look-back” provision)
- Disclosure/registration/reporting



# WHAT'S AT STAKE?

- Bids disqualified and contracts voided
- Barred from future contracts
- Fines and criminal penalties
- Damage to reputation



# PAY-TO-PLAY LAWS

## STATE LAWS

- California
- Connecticut
- Florida
- Georgia (licensees)
- Hawaii
- Indiana (lottery contracts)
- Illinois
- Kentucky
- Louisiana (hurricane contracts)
- Maryland
- Missouri
- Nebraska
- New Jersey
- New Mexico
- Ohio
- Pennsylvania
- Rhode Island

- South Carolina
- Vermont
- Virginia
- West Virginia

## LOCAL LAWS

- All California counties, Culver City, LA City, LA County MTA, LA Unified School District, Oakland, Pasadena, San Francisco
- Chicago & Cook County, IL
- Columbia, SC
- Dallas, Houston, & San Antonio, TX
- Denver
- Fort Lauderdale & Orange County, FL
- New Jersey – in over 165 cities & towns
- New York City
- Philadelphia



# PAY-TO-PLAY IN THE FINANCIAL SECTOR



# BROKER DEALERS & INVESTMENT ADVISERS

- MSRB Rule G-37 (municipal bond broker dealers & finance professionals)
- SEC Rule 206(4)-5 (pension fund investment advisers)
- 2-year “time out” on business
- *De minimis* contributions allowed by certain individuals
- Cannot solicit others to contribute
- Quarterly reporting
- Poison pill provision



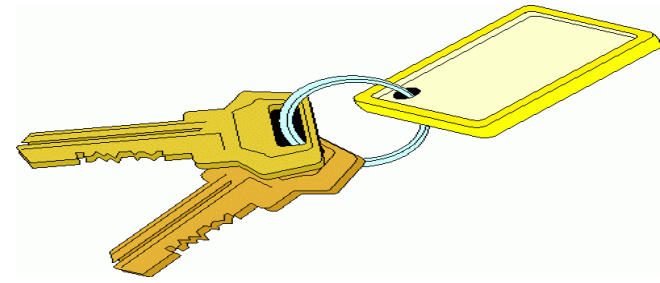
# LOBBYISTS & SALES REPS

Contribution limits:

- Prohibitions
- Time restrictions
- Certain candidates



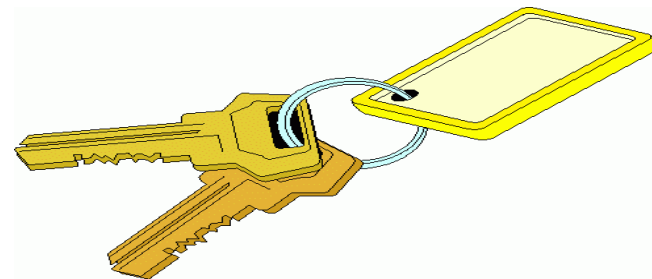
# KEYS TO COMPLIANCE



- Does organization have policies regarding approval of corporate and PAC contributions?
- Are there policies regarding worksite political activities and use of corporate facilities to support political efforts?
- Have key groups of employees who could trigger compliance concerns been identified? E.g. officers, directors, lobbyists, others?
- Have key employees been trained about contribution rules? Do they know who to go to with questions?
- Have you identified high risk pay-to-play jurisdictions?



# MORE KEYS TO COMPLIANCE



If organization has a PAC:

- Did you choose appropriate people to be treasurer and PAC administrator?
- Have you filed required registration and disclosure reports with state regulators where required?
- Do solicitations contain required disclosures?
- Have you identified the “restricted class” that legally can be solicited?
- Have you reviewed/updated bylaws and adopted appropriate internal controls to protect PAC funds?  
E.g., multiple signatures, split responsibilities



# CORPORATE ADVOCACY: CITIZENS UNITED v. FEC





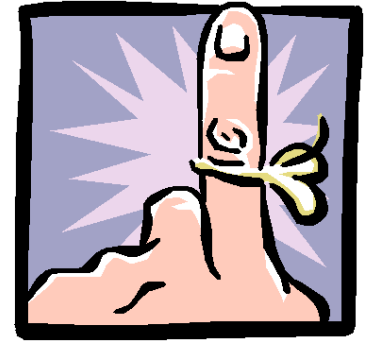
# COURT'S RULING



- Incorporated entities can run ads that advocate for/against candidates & parties
- Radio & TV ads
- Newspapers & magazine ads
- Spend unlimited funds on ads
- New rules apply to federal & state elections



# SOME THINGS HAVE NOT CHANGED



- ✓ Corp. contributions to fed. candidates & parties still prohibited
- ✓ Still need PAC for contributions
- ✓ Cannot coordinate with candidates & parties about expenditures
- ✓ Disclaimers & FEC reports still required for independent ads

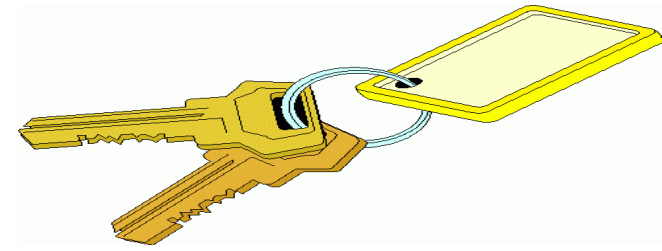


# KEY ISSUE: REPORTING EXPENDITURES

- Cost of corporate communications must be reported by sponsoring entity to regulator
- Rules vary on disclosure of contributions to advocacy groups/associations/others
- Disclosure (federal & state laws differ)
- FEC requires:
  - ✓ For IEs: donors contributing > \$200
  - ✓ For ECs: donors contributing \$1000 or more
  - ✓ If it is “for the purpose of furthering” the communication



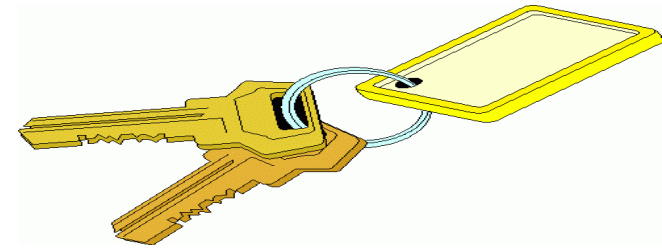
# KEYS TO COMPLIANCE



- ✓ Should organization sponsor candidate advocacy or only issue advocacy?
- ✓ Do you have a process for determining and making the required disclosures?
- ✓ What are the risks and rewards to the organization from candidate/issue advocacy?
- ✓ Will advocacy communications cause public image problems for organization? E.g., Target's contributions to MN advocacy group



# MORE KEYS TO COMPLIANCE



- ✓ What steps will organization take to avoid coordination with candidate/party?
- ✓ How will organization educate employees about scope of new advocacy rights and pitfalls?
- ✓ What is strategy for responding to press, public interest and other watchdog groups?



# YOUR TUNE-UP BASICS

- Conduct legal compliance audit, identify risk areas, prioritize compliance needs
- Develop and disseminate simple and clear policies and procedures for political contributions, gifts, procurement activity, and use of corporate resources for fundraising
- Provide regular training to key groups (assist them to spot issues and ask questions)
- Don't forget consultants



# MORE TUNE-UP BASICS

- Establish tracking system for gifts & political contributions
- Identify who must file lobbying registrations & reports
- Separate responsibility for government relations and legal compliance
- Let employees know who is responsible for answering political law questions
- Develop a culture of “Ask First!”



# CONTACT INFORMATION

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