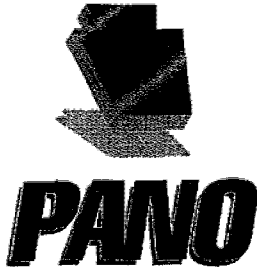


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**Pennsylvania Association of Nonprofit Organizations**

777 East Park Drive, Suite 300, Harrisburg, PA 17111  
Telephone 717-236-8584 Fax 717-236-8767 [www.pano.org](http://www.pano.org)

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October 24, 2008

Mr. Arthur Coccodrilli, Chairman  
Pennsylvania Independent Regulatory Review Commission  
333 Market St, 14th Floor,  
Harrisburg, PA 17101

Dear Chairman Coccodrilli,

Attached you will find comments by Pennsylvania Association of Nonprofit Organizations (PANO) on the Final-Form Regulations of the Department of State Regulation #16-40 (IRRC #2665).

Please feel free to contact me with any questions or concerns.

Thank you,

David A. Ross, J.D.  
Public Policy Officer  
Pennsylvania Association of Nonprofit Organizations

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*PANO is the statewide membership organization serving and advancing the charitable nonprofit sector through leadership, advocacy, education and services in order to improve the quality of life in Pennsylvania.*



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October 24, 2008

Arthur Coccodrilli, Chairman  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101

**Re: PANO Comments to the Final-Form Regulations Delivered to the Independent Regulatory Review Commission by the Lobbying Disclosure Regulations Committee on September 18, 2008.**

Dear Chairman Coccodrilli:

On behalf of the Pennsylvania Association of Nonprofit Organizations ("PANO") and our member organizations, I respectfully submit the following comments to the final-form regulations to the Lobbying Disclosure Act (hereinafter "Act 134 of 2006" or the "Act"), IRRC Regulation No. 2665 (the "Regulations"), and recommend that the Independent Regulatory Review Commission ("IRRC"), the Senate State Government Committee and/or the House Judiciary Committee disapprove the Regulations pursuant to these comments.

PANO is the statewide membership organization serving and advancing the charitable nonprofit sector through leadership, advocacy, education and services in order to improve the quality of life in Pennsylvania. PANO is a 501(c)(3) charitable nonprofit organization representing over 700 member charitable, cultural and educational organizations. Advocacy is core to PANO's charitable mission, but as a charity, advocacy represents an insubstantial part of PANO's overall activity.

Pennsylvania's 41,000 501(c)(3) purely public charities and foundations operate on the front lines of our communities, working to solve problems and promote the quality of life. Between the hospitals, colleges, daycare centers, clinics, soup kitchens, social service providers and foundations, they employ one out of every nine full-time workers in Pennsylvania (643,098 FTE), 4.6% above the national average. However, 90% of Pennsylvania's 501(c)(3) charities and foundations had annual revenues below \$1,000,000 and 86% below \$500,000. Compare these numbers to the national average of 81% below \$1,000,000 and 73% below \$500,000. Pennsylvania's 90% (nearly 36,000 charities and foundations) generated only 3.7% of the sector's total revenue, and held only 6.7% of its assets. In other words, the vast majority of Pennsylvania's nonprofits are operating on small shoe-string budgets, with little money to allocate for anything beyond their mission. [See <http://www.nccsdataweb.urban.org>](http://www.nccsdataweb.urban.org). As a result, these charitable nonprofit organizations frequently lack the resources to adequately track their advocacy communications, calculate

the dollar value of those activities, report the value of these activities as lobbying expenses and retain documents of these activities for four years.

Section 5.2 of the Regulatory Review Act, 71 P.S. §745.5b, states in pertinent part:

(a) In determining whether a proposed, final-form, final-omitted or existing regulation is in the public interest, [IRRC] shall, first and foremost, determine whether the agency has the statutory authority to promulgate the regulation and *whether the regulation conforms to the intention of the General Assembly* in the enactment of the statute upon which the regulation is based...

(b) Upon a finding that the regulation is consistent with the statutory authority of the agency and with the intention of the General Assembly in the enactment of the statute upon which the regulation is based, [IRRC] shall consider the following in determining whether the regulation is in the public interest:

(1) Economic or fiscal impacts of the regulation, which include the following:

(i) *Direct and indirect costs to the Commonwealth, to its political subdivisions and to the private sector.*

(ii) Adverse effects on prices of goods and services, productivity or competition.

(iii) The nature of required reports, forms or other paperwork *and the estimated cost of their preparation* by individuals, businesses and organizations in the public and private sectors.

(iv) The nature *and estimated cost* of legal, consulting or accounting services which the public or private sector may incur.

(v) The impact on the public interest of exempting or setting lesser standards of compliance for individuals or small businesses when it is lawful, desirable and feasible to do so. (Emphasis supplied.)

PANO supports the goals of transparency and accountability through lobbying disclosure. However, when the economic and fiscal impact of that disclosure so exceeds its societal value, then the public interest is not served, and PANO as well as IRRC should not support it. Accordingly, the Final Preamble to the Regulations (the "Final Preamble") still fails to address the fiscal impact that the Regulations will have on the regulated community in the areas of tracking expenses, disclosing lobbying activity, maintaining records, and compliance training. As such, the Lobbying Disclosure Regulations Committee (the "Committee") has created an obstacle to public participation in advocacy that is contrary to both the intent of Act 134 and the public interest in violation of Sections 5.2(a) & (b) of the RRA.

- 1. The Final Preamble as well as the Regulatory Analysis Form still fail to address the fiscal impact that the Regulations will have on the private sector for tracking, disclosing, recordkeeping and training in violation of Section 5.2(b)(1) of the RRA.**

In addressing the areas of fiscal impact and paperwork requirements upon the regulated community, the Preamble to the Proposed Regulations stated as follows:

*Fiscal Impact*

\*\*\*

*Private Sector*

The regulated community will have expenses in the form of a registration fee of \$100.

*Paperwork Requirements*

\*\*\*

**Regulated Community:**

The proposed rulemaking, in accordance with the act, requires that all principals, lobbying firms and lobbyists register with and report to the Department...

(Preamble to Proposed Regulations, pp. 23-24).

Furthermore, the Committee's answer to Question 20(a) of the Regulatory Analysis Form that was attached to the Proposed Regulations stated as follows:

Explain how the costs estimates listed above were derived.

**Regulated Community: \$234,200**

The costs are derived from the registration fees. (Proposed Regulatory Analysis Form, p. 6)

Footnote 1 to the Committee's answer to Question 20(a) of the Regulatory Analysis Form also stated that "[t]here will also be costs for the regulated community for administrative staff to prepare the reports however, the costs are too speculative to be quantified at this time."

PANO, along with the Pennsylvania Association of Resources (PAR), provided testimony at public hearings on August 2, 2007 and March 24, 2008, arguing that the Preamble to the Proposed Regulations failed to properly address the fiscal impact that the Proposed Regulations would have on the private sector for tracking, disclosing, recordkeeping and

training and recommended that the Committee provide a clear and unambiguous statement of the costs of compliance with the Regulations in the Final Preamble.

IRRC, in its March 20, 2008 Comment Letter (hereinafter "IRRC Comment Letter"), agreed with PANO and PAR's comments stating the following:

Several commentators believe the regulation will be so burdensome to their organizations that it will create an obstacle to participation in advocacy. These commentators have small budgets or are smaller non-profit organizations whose primary function is not lobbying. The Regulatory Analysis Form, Question 20 response states that "there will be costs for the regulated community for administrative staff to prepare the reports however, the costs are too speculative to be quantified at this time." *The Committee should identify costs to the regulated community and explain why reporting is not as burdensome as alleged by the commentators. In addition, to the extent possible under the Act, the Committee should investigate alternative ways to comply with the Act and regulation to minimize costs.* (IRRC Comments, p. 4) (Emphasis supplied.)

In response to the IRRC Comment Letter, the Committee revised the fiscal impact and paperwork requirement sections of the Final Preamble as follows:

*Fiscal Impact*

\*\*\*

*Private Sector*

The regulated community will have expenses in the form of a registration fee of \$100. There will also be costs for the regulated community for administrative staff to prepare the reports. *However, the costs are too speculative to be quantified at this time.* Costs for compliance with the act may include costs for: determining whether or not a person or entity is required to register; administrative staff; and time spent allocating costs for indirect communication, direct communication, hospitality, transportation and gifts. These costs will vary greatly between lobbyists, lobbying firms and principals.

*Paperwork Requirements*

\*\*\*

*Regulated Community:*

The final rulemaking, in accordance with the act, requires that all principals, lobbying firms and lobbyists register with and report to the Department.

(Final Preamble, pp. 22-23) (Emphasis supplied.)

Furthermore, the Committee's answer to Question 20(a) of the Regulatory Analysis Form that was attached to the Final Regulations was the same response that was given by the Committee when it submitted its Proposed Regulations.<sup>1</sup>

While we recognize that the language in the Final Preamble changed slightly since IRRRC's Comment Letter of March 20, 2008, it still fails to adequately address the fiscal impact that the Regulations will have on the regulated community. The Committee simply stated that the costs of compliance are "too speculative" and cannot be quantified. Furthermore, there is a total absence of detail provided by the Committee when addressing the paperwork requirement. Lastly, the Committee's response to Question 20(a) in the Regulatory Analysis Form completely omits any details as to the cost of compliance to the regulated community other than the costs derived from the registration fees. Needless to say, the economic impact of the Regulations is going to be much greater than \$100. According to the explicit language in the IRRRC Comment Letter, the Committee should "explain why reporting is not as burdensome as alleged by the commentators" and "investigate alternative ways to comply

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<sup>1</sup> The Committee's answer to Question No. 17 to the Regulatory Analysis Form is also worth noting:

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

A principal, lobbying firm or lobbyist required to be registered under the act must pay a biennial registration fee of \$100 to the Department. Approximately, \$234,200 should be paid to the Department in registration fees in the biennial registration period (January 2007-December 2008) (Final-Form Regulatory Analysis Form p. 3).

The Committee's answer to Question 17 fails to provide a specific estimate of the costs and/or savings to the regulated community associated with compliance with Act 134, including any legal, accounting or consulting fees.

with the Act and regulation to minimize costs.” See IRRC Comment Letter, p. 4. The Committee failed to provide information addressing either of these concerns. Accordingly, PANO is asking IRRC, the Senate State Government Committee and/or the House Judiciary Committee to disapprove the Regulations until the Committee adequately explains why the Act’s reporting requirements are not burdensome and also provide alternative ways small organizations can comply with the Act in order to minimize costs. PANO is also asking that the Committee provide a clear and unambiguous statement in the Final Preamble addressing the costs of tracking expenses, disclosing lobbying activity, compliance training and record maintenance as well as the impact these costs will have on charities and nonprofit organizations.

**2. Because the Regulations fail to clarify, simplify or minimize the negative economic and fiscal impact of complying with Act 134, such Regulations create an obstacle to public participation in advocacy which runs contrary to the intent of Act 134 and is also in direct contravention of Section 5.2(a) of the RRA.**

Section 1302-A(a) of Act 134, 65 Pa. C.S. §1302-A(a), states in pertinent part:

The Constitution of Pennsylvania recognizes that all free governments are founded upon the authority of the people. It further provides that the power to make law in this Commonwealth is vested in the General Assembly, and the power to enforce law is vested in the Executive Department. The Constitution also guarantees the people the right to petition those invested with the powers of government for redress of grievances.

The Committee’s answer to Question 14 of the Final-Form Regulatory Analysis Form states as follows:

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Because these regulations expound upon the lobbying disclosure requirements under the act, there will be little if any adverse impact associated with these regulations. (Final-Form Regulatory Analysis Form p. 3).

In its response to Question 14, the Committee failed to include charities and small nonprofit organizations within the group of persons who will be adversely affected by the Regulations. Many of PANO’s mission-driven organizations serve under-represented groups that otherwise do not have a voice in the legislative process, which includes, but is not limited to, the homeless, recovering substance abusers and those afflicted with various diseases and illnesses. Due to the lack of clarity of the economic and fiscal impacts of the Regulations

combined with the lack of examples in the Regulations to assist small organizations in complying with Act 134's requirements, the Regulations will prove too costly and burdensome to the regulated community and, as a result, will inhibit the right of small and mid-sized charitable nonprofit organizations and foundations to petition the General Assembly and Executive for a redress of grievances in contravention of the aforementioned intent of Act 134. If the Regulations and the Final Preamble are promulgated as they are currently written, a double-standard will be created within the advocacy community between those organizations who can afford to comply with Act 134 and those organizations who cannot afford to comply with Act 134.

In order for the Regulations and the Final Preamble to conform to the intention of the General Assembly in enacting Act 134, PANO is recommending that IRRC, the Senate State Government Committee and/or the House Judiciary Committee disapprove the Regulations and Final Preamble in their current form and send them back to the Committee so that they may be re-written in such a manner as to make compliance with Act 134 easier and reduce the negative fiscal and economic impact these Regulations will place on the regulated community, particularly the nonprofit sector.

Thank you for considering PANO's comments and recommendations.

Sincerely,

David A. Ross,  
Public Policy Officer  
Pennsylvania Association of Nonprofit Organizations (PANO)