

**From:** NPRRA [nprra@NPRRALIST.ORG] on behalf of Kevin Roberts  
[kevinroberts@CORPDIRECT.COM]

**Sent:** Tuesday, February 12, 2008 5:44 PM

**To:** nprra@NPRRALIST.ORG

**Subject:** Re: Regulatory Issues / Customer Engagement Best Practices Task Force  
Report

NPRRA Members,

Over the past few years, we have been managing the federal regulatory concerns regarding company formations, to include the OFAC control guidelines for the corporate registration industry, the Financial Crimes Enforcement Network (FinCen) interviews, and the Stop Tax Haven Abuse Act introduced by Senator Levin which provides language for the regulation of 'corporate formation agents'.

At the 2007 NPRRA mid-year meeting, the board approved the distribution of the 'ARA / NPRRA Best Practices Recommendations' to our membership. The federal authorities have been made aware of our best practices document and Treasury likely has reviewed it by now. We don't have any indication as to their satisfaction with the document. At the 2008 annual meeting in Las Vegas, Steve Craig from NRAI will give a presentation on best practices and we will offer a Q&A afterward so please make every effort to attend. Darrell Pierce and myself will participate, and by the way, my company has already implemented a 'Know Your Customer' policy in order to address best practices. You need to ensure you are complying with the OFAC control guidelines.

In my last communication with you, I indicated the NPRRA board and GAC will be monitoring the Stop Tax Haven Abuse Act (SB 681) and continuing to be pro-active on this very important issue. There have now been two reasonably high level meetings held in DC between NASS and Treasury officials to address the NASS report on company formations/ownership and its recommendations as well as an approach to regulation in view of Senator Levin's concerns regarding access to beneficial ownership information. The meeting included representatives from the ABA and NCCUSL. Reportedly, the first meeting did not go particularly well. Senator Levin sent a letter of response to the NASS report and he was not satisfied with their recommendations. The federal authorities at the meeting were not happy that the states did not come up with what they considered a workable solution that would allow them to meet the June 08 deadline for the US to become compliant with FATF requirements.

The second meeting was apparently much more constructive. A NCCUSL representative made good headway in convincing Treasury that there was a middle ground approach that could be fast tracked and that had a realistic chance of actually happening on a uniform basis at the state level. The gist of the middle ground approach being to have all of the states require annual reports and to give a company a choice of filing 'contact information for a custodian of corporate ownership records' with either the state as a public record, or with a commercial registered agent as a non public record. Emory Cobar, a policy analyst with Treasury, has recently been negotiating with NCCUSL and the ABA on draft legislation. The legislative concept at this point is for each entity to have a list of owners, perhaps to include beneficial owners, maintained by a custodian of record located in the US whose contact info is to be recorded in the public records of the Secretary of State as well as that annual reports be required by each state for all entity types. It is likely that DE and WY will not join on this aspect of uniform law. NCCUSL has been meeting with the ABA and trying to make this happen quickly through uniform law recommendations. They think that Treasury can offer to FATF that the US states are moving toward compliance in two years under this measure. Cobar has offered amendments to the recommended corporation models at a NCCUSL and ABA meeting with developed language to go to NASS. I understand the NCCUSL website has the recommended amendments available.

In the meantime, ARA representatives have been staying in touch with Senator Levin's committee staff trying to keep them abreast of events on our end and with Treasury discussions. I want to thank Jerry Daniel in this regard. It seems Senator Levin may have backed off his reservations somewhat at this point but I understand the Treasury proposals were not well received by Levin's sub-committee. Sub-committee staff has indicated SB681 is not moving forward at this time so it appears dead. However, the potential is there for Sen. Levin to stick something into an appropriations type bill which could quietly place us under the Bank Secrecy Act. Or, the sub-committee could redraft other legislation but at this point it appears our efforts have been successful. There has yet to be a draft of any further legislation from Levin's committee, either new or amending the previous language.

So, we will let NCCUSL and the ABA work on this approach, while we continue to monitor Levin's sub-committee activity. If anyone who has been working on this issue has some point of clarification, or additional comments to make, please feel free to do so.

Kevin Roberts  
President  
NPRRA

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-----Original Message-----

**From:** NPRRA [mailto:nprra@NPRRALIST.ORG] **On Behalf Of** Kevin Roberts  
**Sent:** Monday, October 29, 2007 2:32 PM  
**To:** nprra@NPRRALIST.ORG  
**Subject:** Customer Engagement Best Practices

Members,

Attached you will find the final version of the ARA / NPRRA Best Practices Task Force's completed guidelines. At the NPRRA mid-year meeting, the board approved the distribution of this document to our membership.

As you are aware, the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) issued a control guidelines bulletin for the corporate registration industry in 2004. The OFAC bulletin indicates that the corporate registration industry implement steps to identify sanctioned parties in order to prevent their incorporation in the United States. A copy of this bulletin is available at [www.nprra.org](http://www.nprra.org). If you are not in compliance with this bulletin, you could face stiff consequences. The bulletin directly implies that our members consider implementation of internal controls in this regard. This best practices document should be useful as it provides a basic framework for individual companies to refer to when developing their own internal policies or procedures. Many of our member companies are in the process of, or have already completed, implementing policies to address this issue.

The 'Best Practices Recommendations' will be available to members on the NPRRA website for future reference. At this year's annual meeting in Las Vegas, an education session will be available on this topic to help your understanding of the guidelines. Additionally, the board will be considering what we might do further for the membership, such as the development of a "model" risk assessment program and a web based OFAC sanctioned parties search program. This would give smaller members at least some more

specific direction than the guidelines themselves might afford and the ability to perform 'know your customer' searches.

From here forward, the NPRRA board and GAC will be monitoring the Stop Tax Haven Abuse Act (SB 681) and continuing to be pro-active on this very important issue.

**Kevin Roberts**  
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**From:** Kevin Roberts  
**Sent:** Thursday, June 28, 2007 1:46 PM  
**To:** 'nprra@nprralist.org'  
**Cc:** Lynne Roberts; Patricia Tadlock  
**Subject:** Regulatory Issues / Customer Engagement Best Practices Task Force Report

Members,

Although we have communicated with you in bits and pieces on these issues, the time has come for a full report since I now have a more complete understanding of where we stand. For those of you who were not able to attend the annual meeting, this report should bring you up to speed on the federal legislation and initiatives that 'generally speaking' are regarding the regulation of 'company formation agents'. The Board and GAC have been actively working on these issues, and for me, it has been my principal responsibility this year. At the annual meeting, we held an education session, open mike session and GAC meeting to discuss these issues and our actions, which I am outlining in this report to you.

Since 2005, there have been several communications with you regarding the Government Accountability Office (GAO) investigation and its report, and more recently the Office of Foreign Assets Control (OFAC) control guidelines bulletin for the corporate registration industry. The OFAC bulletin indicates that "[i]n response to the increased nationwide effort to prevent terrorists, terrorist supporters, narcotics traffickers, and other sanctioned parties from using the U.S. financial system, it is critical that the corporate registration industry implement steps to identify sanctioned parties in order to prevent their incorporation in the United States." The bulletin specifically states that "[a]ll U.S. persons are responsible for ensuring that they do not undertake a business dealing with an individual or entity on the SDN list." OFAC has identified and officially "designated" numerous foreign agents and front organizations, as well as terrorists, terrorist organizations, and narcotics traffickers, on its Specially Designated Nationals (SDN) and blocked parties list. OFAC does not mandate what type of compliance program our industry or even a U.S. organization should have but indicates that "every organization has a different level of risk that must be assessed to determine the best way to ensure that it does not do business with a sanctions target." I should note that the banking industry has clear and stringent regulations in this regard under the Bank Secrecy Act. After the GAO investigation and report, the Board has held numerous conversations in this regard even before the OFAC bulletin became known, which interesting enough was not advertised or brought to our attention by OFAC. In short, it is clear that each of us need to make sure we know who we are doing business with or we could face penalties. Some company members have already enacted some form of policy in this regard. The GAO issued their report in April 2006 and it was titled, "Company Formations: Minimal Ownership Information Is Collected and Available." It was a fair document that mainly reported

shortcomings in the capturing of the identity of the owners of registered business entities. The GAC has posted links to these and other important documents I will mention at [www.nprra.org](http://www.nprra.org), and Darrell Pierce previously outlined his take on the GAO report in an email to membership.

For more than four years, Sen. Carl Levin, D-Mich., sitting as Chair of the U.S. Senate Permanent Subcommittee on Investigations, and Sen. Norm Coleman, R-Minn., a senior Republican on the Subcommittee, have led in-depth Subcommittee investigations into U.S. companies being formed for the sole purpose of money laundering, terror financing, tax evasion, and other illicit purposes. The Subcommittee and certain federal agencies are concerned that law enforcement does not have access to the company ownership information that is necessary to battle this problem. Senator Levin cites that the Financial Action Task Force (FATF) found that the United States was deemed non compliant with respect to some of their 40 points on its last mutual audit, including a component which requires countries be able to identify the beneficial owners of the companies formed in their country. The issues surrounding that audit gave cause for Levin's major drive for information on beneficial owners and the state regulation of agents, especially since the US was the major sponsor of FATF's push for other countries to comply. FATF set a two-year deadline for the United States to come into compliance and the deadline expires in June 2008. The approach of the next audit and deadline adds a sense of urgency to the current initiatives.

In February, this topic became even more important as the Financial Crimes Enforcement Network (FinCen) was found to be conducting interviews of members of our association, and Senators Levin, Coleman, and Barack Obama, D-Ill., introduced the Stop Tax Haven Abuse Act (SB 681). A major component of SB 681 is to apply anti-money laundering requirements to 'company formation agents'. The bill originally identified registered agents to be regulated but the language was changed to reflect 'company formation agents', which potentially could include attorneys or anyone who acts to form an entity. The bill if passed in its current form would specifically add company formation agents to the current list of those who must comply with Bank Secrecy Act reporting requirements and require the U.S. Department of Treasury, of which OFAC and FinCEN are offices, to adopt regulations applying Bank Secrecy Act requirements to company formation agents.

As the Board was considering these issues, I was contacted in April by the Association of Registered Agents (ARA) to liaison with them in NPRRA's behalf regarding Levin's bill and these issues. ARA is an association which was formed solely to address registered agent related issues and includes several of our members. In our initial discussions, we agreed that due to the importance of this issue we must have a consistent and unified voice as any potential regulation would affect each and every one of us and not give an advantage to any one company.

ARA and its members have been actively working or having discussions with and lobbying the National Association of Secretaries of State (NASS), OFAC, FinCEN, IACA, Senator Levin & the Congressional Permanent Subcommittee on Investigations in an attempt to dissuade the passage of any regulation against the corporate formation and registered agent service industry. Additionally, the American Bar Association (ABA) and National Conference of Commissioners on Uniform State Laws (NCCUSL) have been contacted and asked to take an active stand against any regulation. Some of the ARA members have hired attorneys/lobbyists in Washington and they have been to several committee hearings. The federal government apparently has not had success in convincing NASS to consider legislation regarding the collection of beneficial ownership information to be screened against the SDN list so they are looking at company formation agents as a means to do such, even though that seems meaningless given the percentage of companies we form or represent. The Subcommittee and federal agencies have been told that our industry does not represent the lion share of the formation agents or registered agents for all U.S. companies. ARA estimated that commercial registered agents probably act as agent on only 10% of all U.S. companies. Delaware and Nevada may have a much larger representation of commercial registered agents to personal agents. Additionally, they have tried to distinguish us from the strictly internet based formation agents as well as 'fly by night'

incorporators who the feds have paid particularly close attention to recently. You should also be aware that the IRS has a campaign ongoing in Nevada whereby they are subpoenaing the records of registered agents in an attempt to find tax evasion. We understand they are specifically looking for those who represent the entity type 'Corporation Sole' which is a non-profit, tax-exempt corporation under 508 of IRS code and is apparently being used for purposes of money laundering and/or tax evasion. I am not aware of any NPRRA members who have been served yet but have had conversations with several of our Nevada members to discuss this issue. The Nevada Resident Agents Association had an IRS agent at their meeting recently who basically indicated the Nevada resident agents have brought this on themselves through their web advertising on anonymity and otherwise promoting means that appear to allow tax evasion. We are comfortable with the fact that all of our members are providing valuable and 'above board' services.

Nevada has recently enacted AB 25 and their version of the Model Registered Agent Act. AB 25 requires non public entities domestic and foreign to keep lists of record owners. The lists or a statement giving the name and address of the custodian of the list must be maintained with the resident agent. The company must provide a contact person to the Secretary of State. Upon a request from law enforcement the Secretary of State can request a copy of the list. If the entity doesn't comply within three days it can be revoked. The model registered agent act contains an odd provision regulating the registered agents for certain types of financial companies. Apparently it is the result of a case of loan fraud that occurred in Nevada. It is very narrow and may not apply to many agents but it appears symptomatic of the misunderstanding of the role of agents. John Robinson of NCR reported to me that the Securities Regulator from Wyoming that attended IACA said Wyoming was working on similar regulations and Oregon is possibly considering regulatory initiatives too. Copies of the Nevada bills are attached. I will ask David Silverburg to have these placed on the GAC portion of the website.

At the most recent congressional hearing, Sen. Levin's Subcommittee agreed to allow our industry to develop best practices guidelines for our industry and we hope this can possibly to head off regulation. Many other industry groups have done this and some example guidelines was obtained by ARA to assist with best practices development. After the NPRRA Board approved an action proposal I submitted, I began participating with ARA in a Customer Engagement Best Practices Task Force to work on a best practices document. Bruce Jacobi of National Corporate Research is chairing the task force, and there are some extremely knowledgeable participants. We have had several meetings, including one at the recent IACA annual meeting, and have a working draft document now. The document is to be a joint ARA/NPRRA Customer Engagement Best Practices Guidelines which we intend to present to Sen. Levin and the federal authorities by September 15th.

ARA members have all contributed significant financial resources including consultations with an Anti-Money Laundering (AML) consultant who is assisting in the development of the document. We feel that with our combined resources and numbers we can represent a unified voice and message. We have initially agreed to the development of a fairly general recommendations document, which does provide a certain level of specificity in order to be taken seriously by the government. We are all working diligently to ensure the guidelines are developed in the best interest of all member companies both small and large, including ensuring it does not place an undue burden on smaller member companies. Under the guidelines, there would likely be a client risk assessment matrix developed with recommendations for due diligence (running names through OFAC list, etc.) that is based on the type of client contacting us such as firms, banks, U.S. entrepreneurs or existing corporations versus foreign incorporators (and perhaps with individuals from certain countries identified as posing an elevated risk). The development of this document is quite an undertaking but I do believe that as an association our adopting 'voluntary' best practices would be to our benefit versus facing outright regulation. Remember, we should already be considering the OFAC regulations and we essentially are not suggesting doing anything other than that under the best practices guidelines.

At my request, Stephen Craig from NRAI, who has been to most meetings with Sen. Levin, OFAC and FinCEN, and knows the complete background, gave a presentation on this issue at the GAC meeting in Orlando to inform our members and our Board. At the conclusion of Stephen's presentation, I presented the board's plan of action to our attending members, who seemed to clearly understand the issue and agree with the Board's position.

Here is an outline of my proposal to the Board in this regard:

- 1) The board approve my liasioning with ARA and sitting on the Task Force;
- 2) The board adopt the GAC's recommendation for a OFAC/FinCen subcommittee of GAC, whereby myself as the liasion could pass/present information on the best practices document to the subcommittee for review, input and eventual recommendation to the board as well as the vehicle for communication with our members;
- 3) The board adopt the GAC's recommendation to develop a communciation vehicle with IACA in this regard through the subcommittee (I feel it will be very important to know what IACA is hearing and discussing with the group);
- 4) The board direct the GAC to develop a communication vehicle with NASS in the same regard; and
- 5) The board approve an initial \$25,000 budget that is available for us to retain Darrell to represent us in any matters that may require my directing him to act in this regard.

The NPRRA Board unanimously approved this action plan which includes my attending any congressional hearings and employing representation for our association as needed. I additionally proposed to the Board and to members at the annual meeting that we open discussion for the development of a legal fund that will allow us to act quickly on this issue or any future issues that may arise in this area. The Board is actively considering and discussing this now.

Since the annual meeting, I attended the IACA meeting which I felt went very well and favorable for our membership. Their annual meeting revolved very much around this issue since the states are receiving the same pressure, both at the NASS and IACA levels. NASS has created a task force to address this issue and come up with a potential solution to present to Sen. Levin and the federal authorities. The chair of this task force met at the IACA annual meeting with IACA members.

At the IACA conference, I made a point of meeting and having a conversation with each IACA board member, including the current and incoming Presidents. I discussed our intentions of becoming more involved and looking for ways to add value, developing an open line of communication, the OFAC/FinCen "beneficial ownership" issue and Senator Levin's committee. I additionally had numerous conversations with administrators from key states in the "beneficial ownership" issue such a Delaware, Massachusetts and Nevada. It was apparent that ARA members had been spending time working the group in this area as well. I gave a short message during the Roll Call of the jurisdictions which occurs at the very beginning of the meeting. I would comment that Delaware's representative made a point of calling out the 13 or so states which had been targeted by the federal groups as not requiring annual reports or capturing of principals information during corporate formation. I later determined this was because of the pressure each state was receiving to begin requiring annual reports for all entity types and Delaware's hesitancy to require annual reports if ALL other states were not. Additionally, NPRRA was allowed a seat at the annual IACA Board meeting which was the first such allowance to my knowledge.

When the Best Practices Task Force met at IACA, it was reported that ARA had negotiated a fair position for the service companies between all of the parties with an interest in the "beneficial ownership" issue, and that if the agreement held, all involved in discussions with Senator Levin's group felt it would satisfy Sen. Levin and the federal authorities with regard to their ability to get to

ownership information for companies. It seems that the NASS Task Force, which had been set up with North Carolina Secretary of State Elaine Marshall as its Chair, had been having discussions with IACA reps, and they had agreed in principal to all states requiring annual reports for all entities types, as well as for each state to sponsor legislation which would require a company governance officer be provided on an annual report and who would maintain a list of ownership. This is similar to Nevada's legislation. Jerry Daniel of CT, Laurie Flynn (Chief Legal Counsel of Massachusetts), Rick Geinsenberger (Asst. SOS in Delaware), and Scott Anderson (Deputy Sec. of NV) all had been communicating with Levin's staff in this regard. Massachusetts has already sponsored their legislation. There was a general feeling from them that the feds want to be able to get ownership information without a subpoena but that was not likely to be possible from the state's perspective. Day 2 of IACA held a series of very interesting meetings, including a morning meeting of all of the above parties explaining this beneficial ownership issue to the IACA members along with a lot of interesting discussion. In a Best Practices Task Force meeting, we discussed that if the states required annual reports and legislated that companies must maintain accessible ownership information along with the service companies developing risk based best practices, we could possibly appease Sen. Levin and the federal authorities in order to stave off further regulation. Day 2 was met with SOS Marshall meeting with the filing officers to finalize an IACA recommendation to the NASS task force regarding the states' plan that was to be presented to Senator Levin's committee. SOS Marshall announced in a meeting that the service companies were not allowed to attend the task force/IACA meeting. I introduced myself and our organization to SOS Marshall to find that she was not aware that there was an association of the service companies. This leads me to believe that our plans to develop a relationship with NASS is imperative. The Best Practices Task Force met and nominated Robert Rowell, an attorney from NRAI, to be our representative at the meeting and SOS Marshall agreed to allow him to attend. I very much want to thank Robert for his effort in this regard and Jerry Daniel for his effort to get us in the meeting. The task force/IACA reps met for a short time before adjourning to allow the BOS (Business Organization Section) of IACA to consider and adopt the following resolution before going forward:

"IACA's BOS Section endorses the efforts on NASS, the ABA, NCCUSL, the NPRRA and others to develop recommendations for consideration by the various states to address the concerns raised by the Senate Permanent Subcommittee on Investigations."

Afterward, they drafted four recommendations to go to the NASS Task Force on dealing with the OFAC/FinCEN concerns.

1. Create a policy to publicize the requirement that the OFAC watch list must be checked by a person filing a document.
2. To require the checking of the list against new information revealed on periodic (Annual/Biennial) reports. This might be accomplished by having the filer certify that they have done so, or to certify they were aware that they are required to.
3. Educational Outreach - Filing Officers make extra effort to educate public of OFAC requirements through workshops, mailings, and small business association.
4. Require Periodic (Annual/Biennial) reports to divulge a "governing person". This morphed in discussion to a person who either has custody of, or knew the address of, the list of record owners.

I believe that these recommendations have now been presented to or discussed with Sen. Levin's staff. The NASS task force intended on presenting their plan to the Subcommittee by July 15th.

At this point, the ARA/NPRRA Best Practices Task Force is working to update the draft document since our last meeting. We plan on another review of the draft by the task force participants and the making of further written contributions before holding other meetings. As soon as the final draft best practices document is completed, I will present it to our Board, GAC and NPRRA

members with my recommendation. Through the GAC, the Board will take member input before making a decision to support the document.

At this point, I want to assure you that we are working to ensure our members best interests are well represented. The board is also discussing how we can assist membership after any adoption of voluntary best practices, such as member education, development of a "model" risk assessment program possibly to include sample policy statements and procedures, development of cost-effective means for members to conduct SDN screening, etc. We will work as diligently as possible to provide the value our members need on these very important issues.

If I have in anyway missed the boat on my reporting, I hope that someone familiar with the issues will bring corrections to my attention. There are many individuals and companies involved in this effort and I very much appreciate their efforts. I must also commend David Silverburg and his committee for their work on the many important issues we have been facing.

If I am needed, I am always available.

**Kevin Roberts**

President  
NPRRA

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