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Association PAC Compliance Overview

**Public Affairs Council –
Association PAC Intensive**

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Trade Association

Definition:

a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce



Trade Association Solicitation

May solicit contributions from:

- Its own restricted class
- The restricted class of its member corporations
- The restricted class of an affiliated organization
- Its non-corporate members



Trade Association Solicitation

“Restricted class” Means:

- Executive and administrative personnel
 - Employees “who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.”
 - Includes:
 - Individuals who run the company’s business such as officers, other executives, and plant, division, and section managers;
 - Individuals following the recognized professions, such as lawyers and engineers
- Stockholders, and
- Their families



Trade Association Solicitation

In the Case of a Trade Association Whose Members Are Individuals

1. The individual members are part of the restricted class.
2. No prior approval is required to solicit individual members.



Trade Association Solicitation

In the Case of a Trade Association Whose Members Are Corporations

1. Must receive prior approval from member corporation.
2. Association may solicit only the corporation that is in the association – *i.e.*, only parent if parent is member, only subsidiary if subsidiary is member.



Trade Association Solicitation

Prior Approval

- Must receive prior approval separately and specifically for every year.
- A trade association must make a written request to the member corporation for permission to solicit the member's restricted class.
 - The "prior approval" is sent to the corporate representative with whom the association normally conducts its activities and informs the member:
 - Corporate approval is necessary before the trade association or its SSF may conduct a solicitation; and
 - The corporation may not approve solicitations by another trade association for the same calendar year.
- Association must keep records for 3 years.



Trade Association Solicitation

Appearance of Prior Approval:

- Approval must be written.
- Member corporation must designate calendar year for which solicitation may take place.
- Corporation may grant approval for multiple years.
- Corporation may limit scope of solicitation.
- Corporation may limit frequency of solicitation.
- Form must make it clear that the approval of the corporation, not just the person, is being sought
- A request for prior approval may include a sample solicitation, but must state that contributions may not be solicited until prior approval is granted.



Trade Association Solicitation

Prior Approval and the Internet:

- May email the prior approval form to the authorized corporate representatives (with confirmatory email).
- May make corporate authorizations available to the representatives on a members-only website.
- Representatives may use electronic signatures to authorize the trade association solicitations under both types of electronic communication. However:
 - The trade association must ensure that the authorization forms were available only to authorized representatives of the corporation, and
 - The electronic signature came from the authorized representative.



Trade Association Solicitation

Trade association solicitation of the stockholders, executive and administrative personnel and families of a member corporation does **not** limit the rights of the corporation to solicit its own restricted class for its own PAC.



Partnership & LLC Contributions

- LLCs:
 - An LLC that elects to be treated as a corporation by the Internal Revenue Service (IRS) or that has publicly traded shares will be treated as a corporation under FEC regulations. As a result, this kind of LLC must give prior approval.
 - An LLC that elects to be treated as a partnership by the IRS is treated as a partnership under FEC regulations and therefore may generally make contributions, but the contributions must come from the LLC and be allocated to the individual partners.
 - LLCs that elect to be treated neither as partnerships nor as corporations by the IRS are treated as partnerships according to FEC regulations.



Partnership & LLC Contributions

- Partnerships:
 - A Trade Association does not need prior approval from a partnership.
 - However, a partnership that is owned only by a corporation may not contribute to a PAC.
 - A contribution from a partnership may not exceed \$5,000 per calendar year.
 - The contribution is to be attributed to each partner in direct proportion to his or her share of the partnership.
 - Alternatively, the partnership can identify how the contribution should be allocated among the partners.
 - A portion of a contribution drawn on a partnership account may not be attributed to the spouse of a partner unless the spouse is also a member of the partnership.



Affiliation

- When SSFs are established by different parts of one organization, they are automatically affiliated –
 - An SSF of a national membership organization (including a national trade association) is affiliated with the SSFs established by its related state and local entities.
 - When two or more committees are affiliated, they share a single limit on the contributions they make. A single limit also applies to the aggregate contributions a person makes to committees affiliated with each other.
 - An SSF of a trade association is not affiliated with the SSFs of its member corporations.



Indicia of Affiliation

- Has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through its constitution, bylaws, contracts or other rules, or through formal or informal practices or procedures.
- Has the authority or ability to hire, appoint, demote or otherwise control the officers or other decision-making employees or members of another sponsoring organization or committee.
- Has a common or overlapping membership, or common or overlapping officers or employees, with another sponsoring organization or committee, indicating a formal or ongoing relationship between the sponsoring organizations or committees.



Indicia of Affiliation

- Has members, officers or employees who were members, officers or employees of another sponsoring organization or committee, indicating a formal or ongoing relationship or the creation of a successor entity.
- Provides or arranges for the provision of funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through payments for fundraising and administrative costs.
- Had an active or significant role in the formation of another organization or committee.



Solicitation Disclaimers

- All PAC solicitations must include the following disclaimer language:
 - Contributions to Trade Association PAC are not deductible for federal income tax purposes. Contributions to Trade Association PAC are for political purposes. All contributions are voluntary and you may refuse to contribute without reprisal.
- If an amount is suggested in the solicitation, then the following additional disclaimer must be added:
 - The guidelines are merely suggestions. You are free to contribute more or less than the guidelines suggest and the Trade Association will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.



Required PAC Solicitation Disclaimers

- The following disclaimers must be included on PAC solicitations and must be clearly readable:
 - The PAC is required to use its best efforts to obtain and report the name, address, occupation, and employer of individuals whose contributions aggregate over \$200 per year
- Use standard donor reply cards



Solicitation Rules

- Solicitations may only be directed to the executive and administrative personnel of the trade association, and member companies that have given the trade association prior approval.
- Must exercise caution when communicating about the PAC.
- The FEC defines solicitation broadly to include any communication or act to “encourage support” for or “facilitate” contributions to the PAC.
 - Statements describing the importance of the PAC or thanking contributors are solicitations.
 - General factual and legal information such as the fact that Association administers a PAC, the legal rules that apply, and the recipients of PAC contributions are not solicitations.



Required PAC Solicitation Guidelines

- Ok to inform potential contributors that having a strong PAC is important to the trade association and would benefit the industry
- Ok to describe the PAC as helping to elect candidates who understand and support the trade association's interests
- Do not describe the PAC as facilitating access to candidates
- Do not state or imply that PAC contributions are linked to particular legislation or government actions
- Legal counsel should review all PAC solicitations before they are disseminated



Collection Rules

- PAC money may be collected by:
 - Connected organization (i.e. – the trade association)
 - Affiliated state/local organizations
 - State affiliates in a federation of trade associations: See FEC Advisory opinion 2017-13 (National Sorghum Producers)
- Collecting agent rules apply



PAC Contribution Process: Time Frame for Forwarding

Contributions must be forwarded to the federal PAC within the following time frames:

Amount of Contribution	Must be Forwarded to the PAC Within...	With The Following Records...
\$50.00 or Less	30 Days	<ul style="list-style-type: none"> • Amount • Date of Receipt • Donor Name and Address
<u>Over \$50.00</u>	10 Days	<ul style="list-style-type: none"> • Amount • Date of Receipt • Donor Name and Address
<u>Over \$200.00</u>	10 Days	<ul style="list-style-type: none"> • Amount • Date of Receipt • Donor Name and Address • <u>Donor Occupation and Employer</u>



PAC Recordkeeping Guidelines Related to Disbursements

- PACs should be careful when putting in writing the rationale or basis for contributing to a candidate:
 - Don't mention any particular official action (such as a vote on a particular piece of legislation or other specific governmental action)
 - Don't describe the contribution as helping to gain access to the candidate or as making possible certain legislative or governmental outcomes
 - Recommend limiting the documentation to general, objective reasons and criteria for supporting the candidate (e.g., the candidate's knowledge and support for the industry, general issue positions, and congressional leadership/committee membership)



Recommended PAC Internal Controls

- If a PAC takes certain steps to try to prevent misappropriation of funds, the presence of such safeguards will reduce or preclude FEC civil penalties against the PAC for filing inaccurate disclosure reports as a result of embezzlement.
- For the FEC safe harbor to apply, PACs must establish the following internal controls:
 - Only the treasurer (or his designated agent) should have the authority to open and close bank accounts.
 - All bank accounts should be opened in the name of the PAC using the PAC's employer identification number (EIN).
 - The number of persons authorized to sign checks should be limited and should be identified in writing in the PAC's internal policies.
 - Check signing should be the responsibility of individuals having no access to the accounting records.
 - All checks over \$1000 should be signed by two individuals (or authorized by two people).
 - All wire transfers should be authorized in writing by two individuals.



Recommended PAC Internal Controls, Cont.

- PACs should establish the following accounting and financial practices:
 - Prior to filing each FEC report, reconcile bank account and accounting records with disclosure reports. Bank records should also be reviewed for unauthorized transactions each month.
 - Reconciliations should be conducted by someone other than a check signer or individual responsible for handling the PAC's daily accounting.
 - The individual monitoring receipts should make a list of all receipts and place a restrictive endorsement on checks.
 - Receipts should be deposited daily.
 - Disbursements should be made with pre-numbered checks.



Recommended PAC Internal Controls, Cont.

- If a misappropriation of funds is discovered, the PAC, after consulting with legal counsel, should:
 - Notify the relevant law enforcement authorities;
 - Notify the FEC; and
 - Voluntarily file amended reports to correct any reporting errors due to the misappropriation
 - Implement Positive Pay



PAC Solicitation and Fundraising Techniques

- Payroll Deduction
- Combined Dues/Solicitation Statements (for individual members)
- Convention Booths
- Promotional Items
- Charitable Matching Plans
- Written Communications
- Internet Communications



Payroll Deductions

- Member companies of trade associations – that have provided prior approval to the trade association to solicit trade association PAC contributions – may use payroll deduction as a means of collecting trade association PAC contributions from a member company’s “restricted class.”
- Participating member companies may pay for the cost of the payroll deduction program and do not need to report those costs to the FEC.



Procedures Before Payroll Deduction

- First, the member companies must grant for a given year the trade association “prior approval” to solicit the member company’s restricted class for PAC contributions.
- Second, the trade association must ask member companies in writing to use payroll deduction for PAC solicitations.
- Third, each member company must determine the members of its restricted class that it wants to solicit under this program and then ask those individuals to complete a payroll deduction authorization form and contribute to the PAC.



Procedures After Payroll Deduction

- After the payroll deduction program has begun, the member company must forward within 10 or 30 days (depending on the amount) the collected funds to the trade association PAC (by check or wire transfer).
- The company must simultaneously forward to the PAC each contributor's name, address, occupation, and employer as well as the amount and date of the contribution (*i.e.*, the pay date on which the deduction was made).
- Finally, each member company and the trade association must keep records of all contributions and related information for three years after the last FEC report to which the information pertains, including amendments.
- Note, you report payroll deductions as of the date that the contributions is deducted (*i.e.* – the pay date), not the date the SSF receives the money.



Payroll Deductions Special Union Rule

- Importantly, any member company participating in payroll deduction for a trade association PAC must, upon written request, make payroll deduction available at cost to any labor union representing employees at the company or its subsidiaries, branches, divisions, or affiliates.



Association Raffles

- a) Corporate members may contribute prizes to association raffles, auctions, etc. for the association's PAC.
- b) Prizes from member corporations are subject to the FEC's 1/3 Rule.
- c) Non-member corporations may not otherwise help defray the solicitation costs of the PAC and may not be solicited to do so.
- d) Non-member individual members may contribute prizes to the association's PAC (unsolicited, of course), and such prizes are not subject to the 1/3 Rule but rather are considered in-kind contributions.



One-Third Rule

- If the cost of a promotional item provided by the PAC's connected organization is more than one-third of the amount raised in contributions, then the PAC is required to reimburse the connected organization for a portion of the cost of the promotional item
- If at least three times more money is raised than the cost of the promotional item, no reimbursement is required
- One-third rule does not apply to food and drink; the rule only applies to promotional items and professional entertainment



Combined Dues/Solicitation Statements

Basic Rules Apply:

1. Restricted Class Only
2. Solicitation Notices and Disclaimers Always – Layout Important: must be clear which fees are required dues payments and which payments are voluntary PAC Contributions
3. Forward Contributions and Records On Time



Convention Booths

Basic Rules Apply:

1. Restricted Class Only

- Signs on booth stating policy
- Booth personnel must enforce
- No PAC promotions outside restricted class

2. Solicitation Notices and Disclaimers Always

3. Forward Money and Records on Time



Convention Booths

- Convention booths may also be used to obtain prior approval for trade association PACs (no PAC solicitations can be made until prior approval is obtained); can also operate hybrid prior approval/solicitation booths



Charitable Matching Plan

- OK to match a PAC contribution with a connected organization donation to a charity
- The connected organization may allow contributors to designate a charity or can select charities
- For years the FEC has allowed PAC contributions to be matched dollar-for-dollar, according to a specific percentage (up to 100%), or only above a certain contribution amount. A majority of FEC Commissioners upheld a charitable matching program that went beyond a 1:1 match (FEC MUR 6873 (Wal-Mart) (upholding 2:1 match ratio)
- Neither the contributor nor connected organization can take a tax deduction from the charity; PAC contributors can be recognized by the charity and can receive a token gift
- Can be used for twice-yearly solicitations beyond the restricted class



Use of Internet/Intranet and Email

Basic Rules Apply:

- Restricted Class Only
 - Use password protected page for all PAC solicitations; one password for all members of the restricted class ok
 - Linked page must include caveats that contributions will be screened and those from outside the restricted class will be returned
- Solicitation Notices and Disclaimers Always
- Forward Contributions and Records on Time



Trade Association Communication

A Trade Association may communicate as follows:

1. May communicate with its members on any subject without first obtaining prior authorization.
2. May send to its corporate members (primary contacts) communications that expressly advocate the election or defeat of a federal candidate.
3. May endorse a federal candidate.



Trade Association Communication

4. May send to its corporate members – through the one or two individuals who normally represent the corporation to the association – requests that individuals make contributions to certain candidates (with all appropriate disclaimers).
5. May request that its corporate members – through the representatives – forward any of these communications to the corporation's restricted class.
6. May also communicate with its own executive and administrative personnel.
7. Such communications may use trade association letterhead.



Trade Association Communication

Caveats:

- May not simply reproduce campaign literature.
- May not facilitate the making of any contributions to candidates (e.g., no stamps or envelopes).
- When asking member corporations to forward trade association communications, the trade association may not send bulk (*i.e.*, more than one) communications to the member corporations. The corporations must make their own copies.



Trade Association Communication

Paying for partisan communications:

- a) Association may pay for communications.
- b) The costs are not generally reportable – except
- c) Association must report the costs directly attributable to such communications **only** if the costs exceed \$2,000 for any election.



Campaign and Fundraising Events Beyond the Trade Association Membership

- Trade association treasury funds and resources may not be used to host or attend a fundraising event that is not limited to employees of member companies with whom the trade association normally conducts its business.



Campaign and Fundraising Events Beyond the Trade Association Membership

- Any corporate resources used (e.g., facilities, catering, transportation, employee time) generally must be paid for in advance by:
 - The campaign; or
 - The trade association PAC and treated as an in-kind contribution to the campaign subject to the PAC's \$5,000 contribution limit.



Campaign and Fundraising Events Beyond the Trade Association Membership

- One possible exception is for employee time that does not exceed 1 hour per week or 4 hours per month to conduct “volunteer” political activities that do not increase overhead expenses.
- The FEC has questioned the extent to which government affairs professionals engage in these activities as “volunteers.”



Campaign and Fundraising Events Beyond the Trade Association Membership

- Again, contributions should not be collected before, during, or after any such event by the trade association or trade association personnel, but must be collected by the campaign.





Thank You!

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