

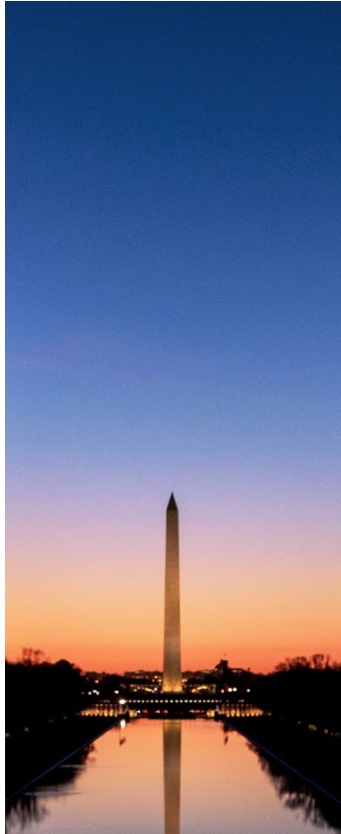
# Compliance Overview

December 5, 2024

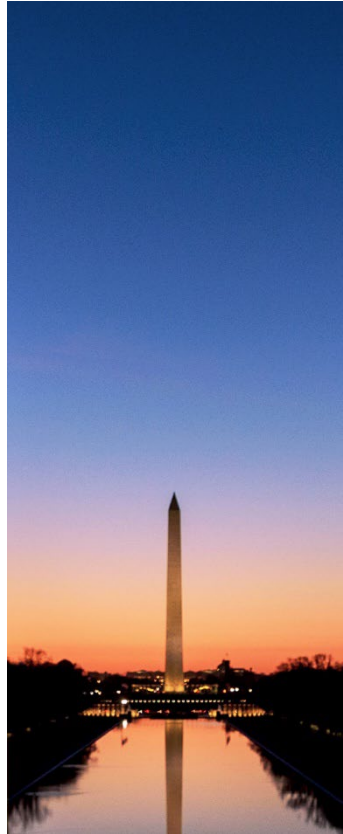
Charles Ricciardelli



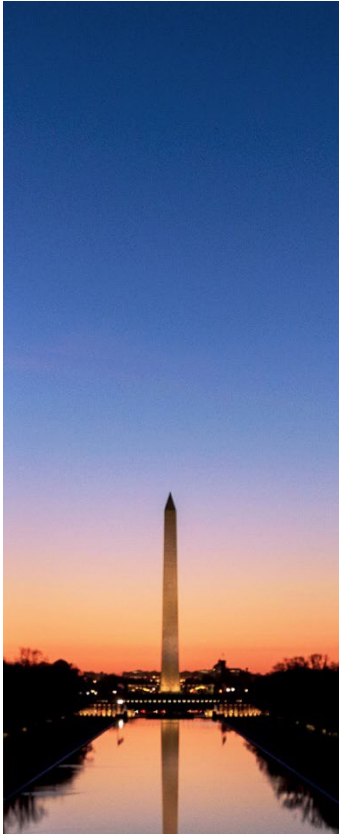
## Corporate PAC Intensive Public Affairs Council



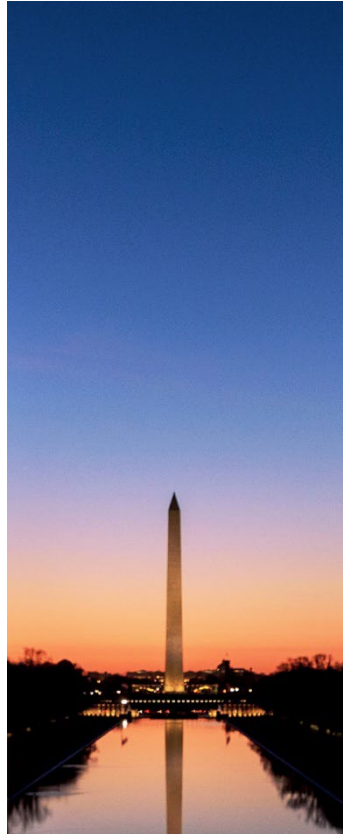
- Essentially an unincorporated bank account
- A separate legal entity with its own EIN number but controlled by the company
- A tax-exempt 527 political organization under tax law, and a federal PAC under federal election law
  - Only submit federal tax return if it earns \$100 or more in investment income
- Only legally required officer is a Treasurer
- Federal law permits a corporation (but typically not a partnership or an LLC not filing as a corporation with the IRS) to establish and operate, and pay administrative expenses for, a PAC to make contributions to federal candidates
- PAC name/PACronym and nicknames: The full name of the connected corporation or association must be in the formal name of the PAC



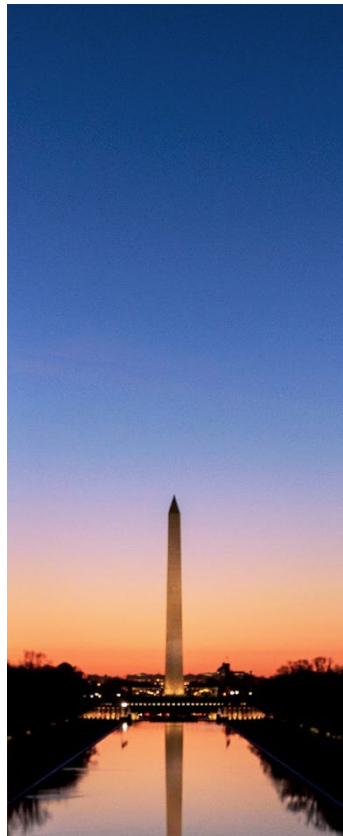
- Steps to Establish a PAC
  - Requirements
    - » Internal Revenue Service SS-4 Application for EIN
      - > May not use a connected organization's EIN
    - » Open Bank Account
    - » Federal Election Commission Form 1 (Statement of Organization)
      - > Must be filed within 10 days of a PAC being established and amendments must be filed within 10 days of a change



- Best Practices
  - » Corporate resolution to authorize the formation of a PAC
  - » By-laws and organizational documents
    - > Governance options: PAC officers/PAC Board/Contribution Advisory Committee
    - > Only one officer is necessary but at least three is customary
    - > Do not put names of individuals in by-laws, the identity of officers and directors should appear only in PAC or corporate resolutions
    - > Indemnification



- Consider the PAC's candidate evaluation framework
  - Substantive giving criteria: adding criteria addressing diversity, inclusion, and civic integrity
  - Procedural approach: increase diversity on PAC Board or PAC Advisory Committee or appoint Diversity Officer
- Permit donors to restrict contributions
  - No earmarking
- Ensure any option taken is in compliance with governance provisions under PAC's By-laws



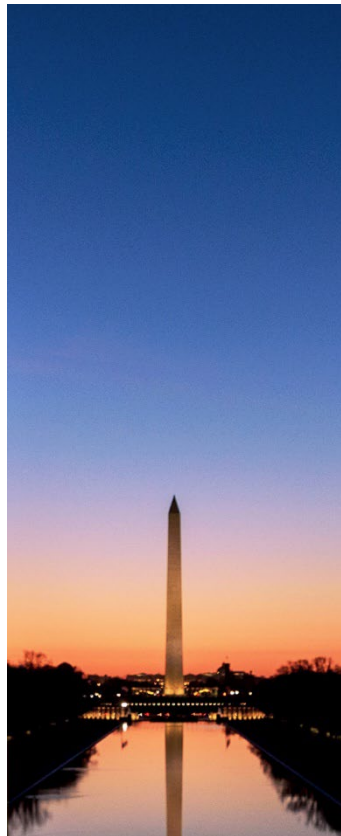
- **Contribution Limits for Individuals and Non-Multicandidate PACs**

**2023 – 2024 Limits**

|                                     |                          |
|-------------------------------------|--------------------------|
| <b>To Candidates</b>                | \$3,300* per election    |
| <b>To PACs</b>                      | \$5,000 per year         |
| <b>To State Party Committees</b>    | \$10,000 per year        |
| <b>To National Party Committees</b> | \$41,300* per year plus: |

- Additional \$123,900\* per year for buildings
- Additional \$123,900\* per year for recounts and legal fees
- Additional \$123,900\* per year for conventions (only for national party committees, not senatorial or congressional national party committees)
- Aggregate contribution limit for all of the national party committees of a given party (Democratic or Republican): \$991,200\* per year

\*Limits indexed for inflation per election cycle



- **Contribution Limits for Multicandidate PACs**

**2023 – 2024 Limits**

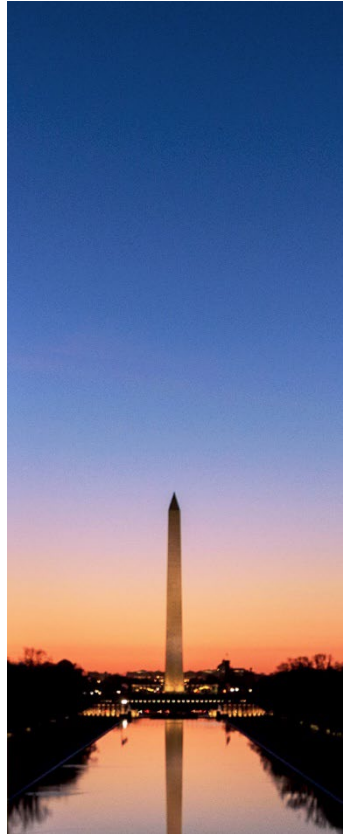
|                                     |                         |
|-------------------------------------|-------------------------|
| <b>To Candidates</b>                | \$5,000 per election    |
| <b>To PACs</b>                      | \$5,000 per year        |
| <b>To State Party Committees</b>    | \$5,000 per year        |
| <b>To National Party Committees</b> | \$15,000 per year plus: |

- Additional \$45,000 per year for buildings
- Additional \$45,000 per year for recounts and legal fees
- Additional \$45,000 per year for conventions (only for national party committees, not senatorial or congressional national party committees)
- Aggregate contribution limit for all of the national party committees of a given party (Democratic or Republican): \$360,000 per year
- PAC limits do not index for inflation



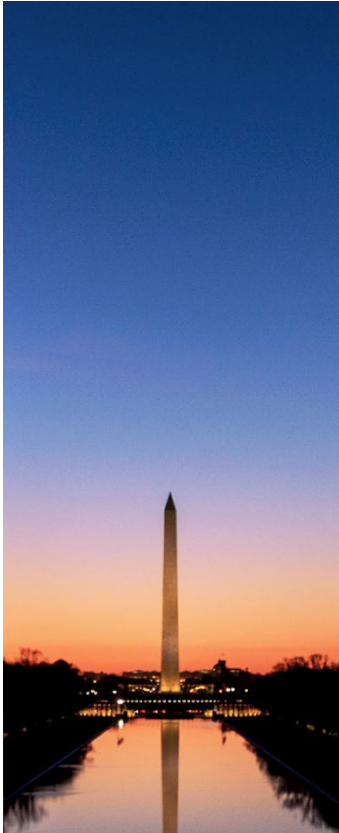
- Corporate PAC may solicit company's Restricted Class (shareholders and executive and administrative personnel)
  - As a guideline, this generally includes employees who are exempt under FLSA. See FEC AOs 2010-04 and 2012-02 (Wawa)
  - Includes spouses
  - FLSA exempt employees are still not solicitable if they are:
    - » Hourly paid,
    - » Unionized,
    - » First-line supervisors of hourly paid employees (unless they have some other exempt function), or
    - » Possibly outside salespersons
  - Such employees of affiliates, including parent, sister, and subsidiaries more than 50% owned or controlled, are also included
  - But no foreign nationals

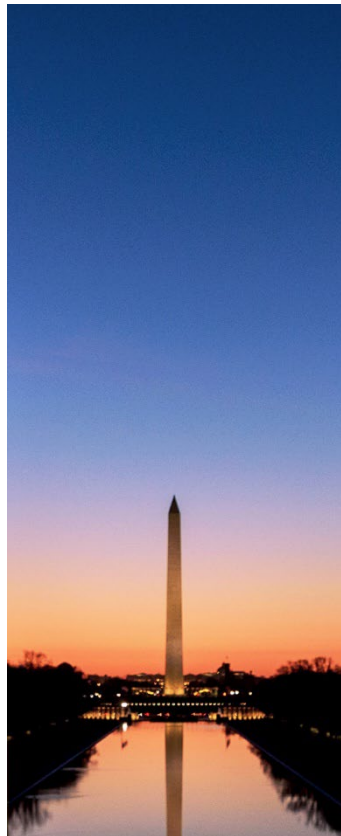




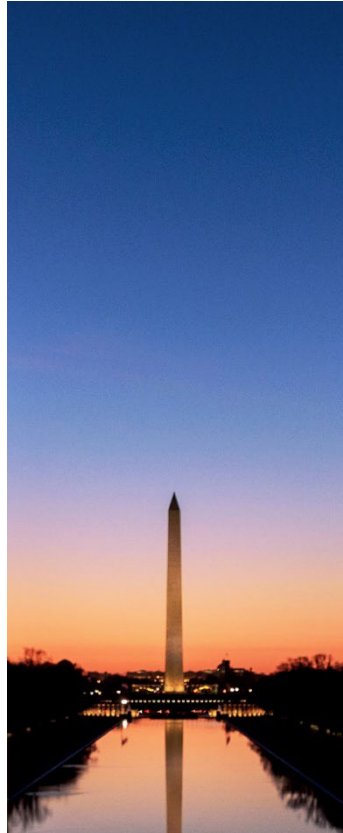
- Must provide union with same method for soliciting its members at the company
  - May require the union to pay for related costs
- PAC may solicit non-Restricted Class employees under very narrow circumstances
  - Must be limited to twice yearly,
  - Solicitation must be sent to their homes,
  - May not use payroll deduction, and
  - Must have independent custodian of the funds that ensures anonymity of certain contributions.
  - Must grant union PACs ability to solicit non-unionized employees up to twice a year

- What is a solicitation?
  - Broadly interpreted
  - Pitching the benefits of a PAC is a solicitation
  - An article in a company's newsletter describing the PAC's activity and commending the enthusiasm of employees participating is a solicitation. FEC AO 1979-13

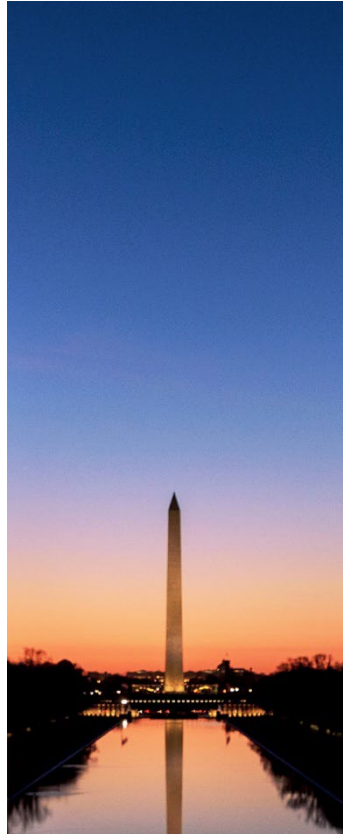




- What is not a solicitation?
  - Information about a PAC without pitching the PAC is not a solicitation
    - » \$X was contributed to Republicans and Democrats
    - » \$X was contributed to the PAC
    - » X number of employees contributed to the PAC
    - » The PAC board decides which candidates should receive contributions
    - » For information on eligibility or PAC activities, call [PAC official]. FEC AO 2000-7

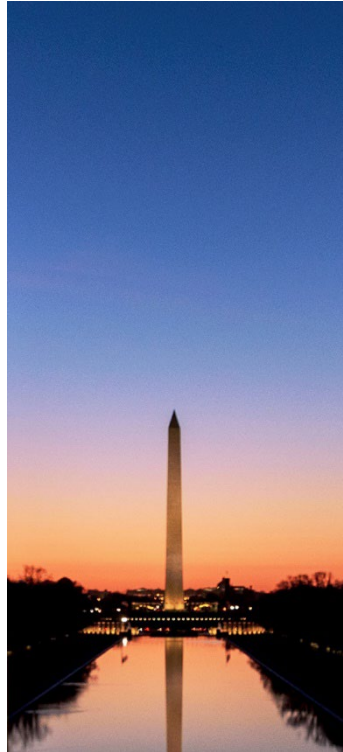


- One page
- Paragraph 1: Briefly describe a couple legislative issues before Congress and the importance of those issues to the company, its employees, shareholders, and customers.
- Paragraph 2: The need for a strong PAC so our voices are heard and so we may support candidates who are pro-business, pro-our industry, and represent our employees.
- Paragraph 3: Remember PACs make contributions to help favorable candidates get elected. While favorable legislation is the ultimate goal, the contributions are to support candidates.
- Paragraph 4: In deciding whether to make a voluntary contribution to the PAC, please review the enclosed/attached materials.
  - On the enclosed/attached materials, include the full legal disclaimers in clear type size



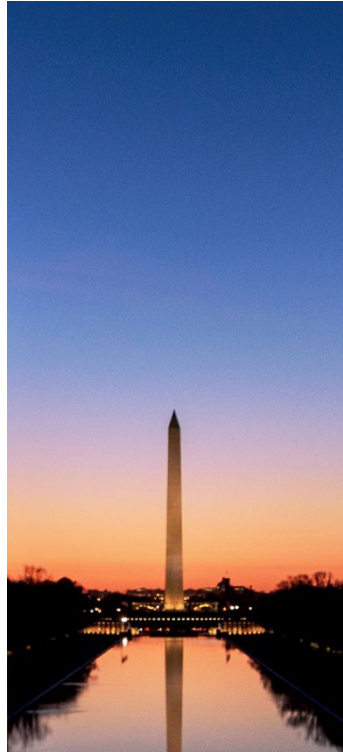
- All PAC solicitations must have necessary caveat language, e.g., using a PAC contribution card stating:
  - I am contributing to the PAC as indicated below. Prior to contributing, I am aware:
    - » That contributions to the PAC will be used in connection with federal elections and are subject to the prohibitions and limitations of the Federal Election Campaign Act [additional statement necessary if PAC gives at state or local level].
    - » Of my right to refuse to contribute without reprisal.
    - » That the guidelines for contributing are merely suggestions. I may contribute more or less than the guidelines suggest or nothing at all, and I will not be favored or disadvantaged by reason of the amount of my contribution or my decision not to contribute [only required if recommended level of contributing].
    - » That contributions to the PAC are not deductible for federal income tax purposes.
    - » That I must be a U.S. citizen or permanent resident alien (i.e., a green card holder residing in the U.S.) to make, or be solicited for, a contribution.
  - Federal law requires the PAC to use its best efforts to collect and report the name, mailing address, occupation, and name of employer for each individual whose contributions exceed \$200 in a calendar year

# Solicitation Guidelines for Avoiding Even the Appearance of Coercion

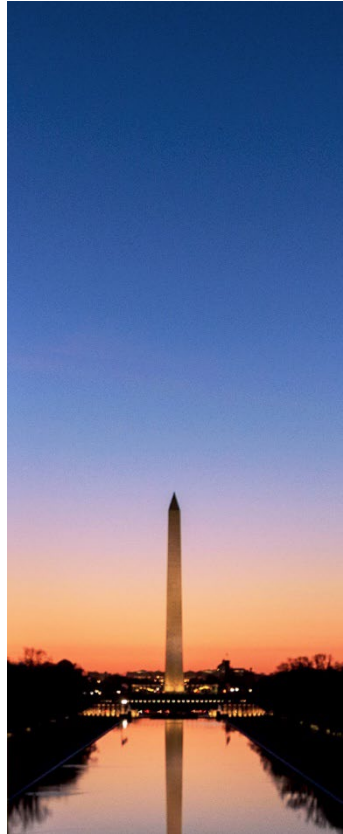


- Not a United Way drive
- No words suggesting that contributing is a condition of employment (e.g., "must contribute" or "expected to contribute")
- Do not imply that contributing will affect opportunity to advance within the company (e.g., do not discuss issues regarding promotions and contributing)
- One-on-one oral solicitations should be avoided except scripted peer-to-peer
- Group presentations are permitted (such as at a meeting), but they should be scripted

# Solicitation Guidelines for Avoiding Even the Appearance of Coercion

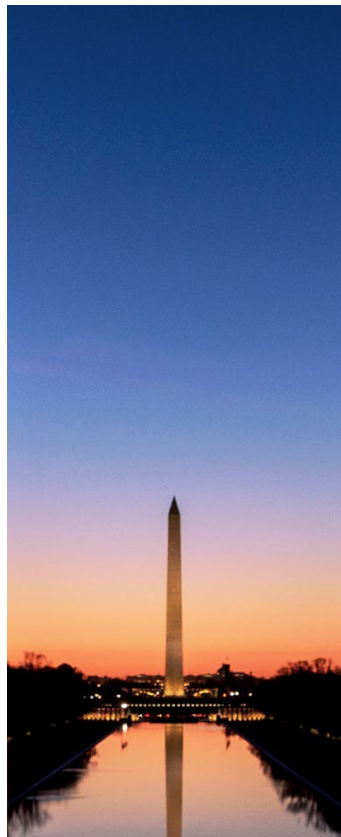


- Follow-up communications (e.g., follow-up call or e-mail)
  - Should not be done to ask if employee has given, and if not, to ask why
  - May be done to offer assistance or to answer questions that employee may have
  - Any oral follow-up communication should be scripted

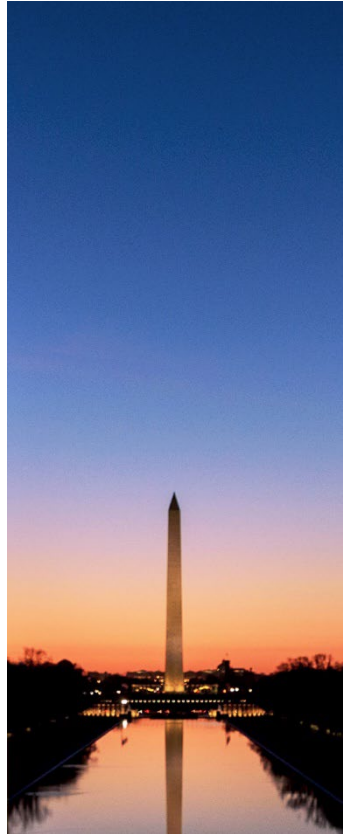


- Expanding your solicitation base
  - Soliciting board members
  - Soliciting employees of affiliates
  - Soliciting shareholders
    - » Senior retirees who are shareholders
- Peer-to-peer solicitations

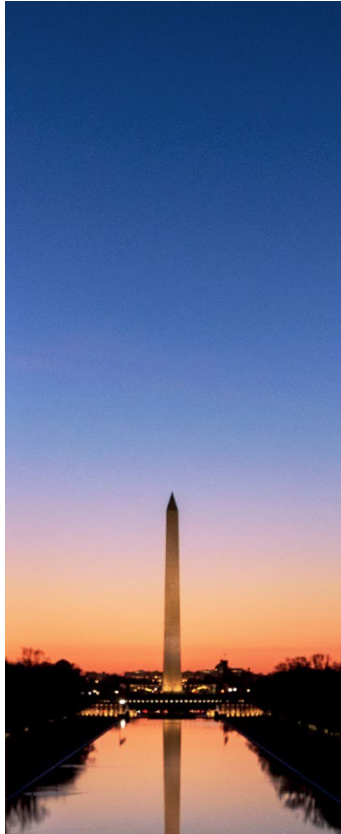




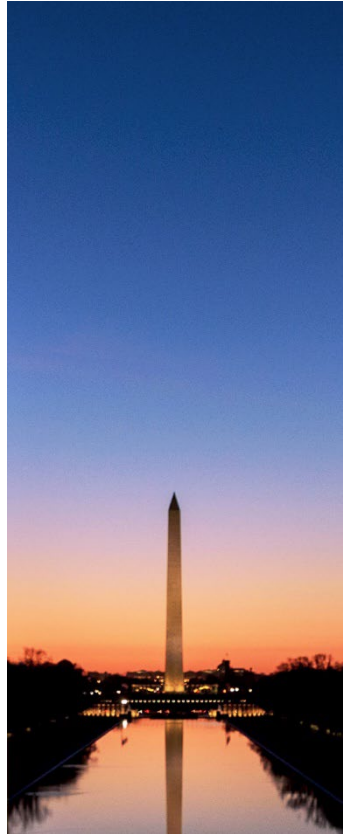
- Most PACs use incentives such as gifts, live events with politicians, and special events with the CEO
- Public Affairs Council Corporate PAC Benchmarking Report
  - What one benefit is the most effective in your fundraising efforts?
    - » PAC match (32%)
    - » Event with CEO and/or senior executives (19%)
    - » Annual gift (9%)
    - » Live events with politician or guest speaker (8%)
    - » Special communications, such as newsletters (7%)
    - » Virtual events with politician or guest speaker (7%)
    - » Exclusive election or policy updates (6%)
    - » Raffles, auctions, sweepstakes (5%)



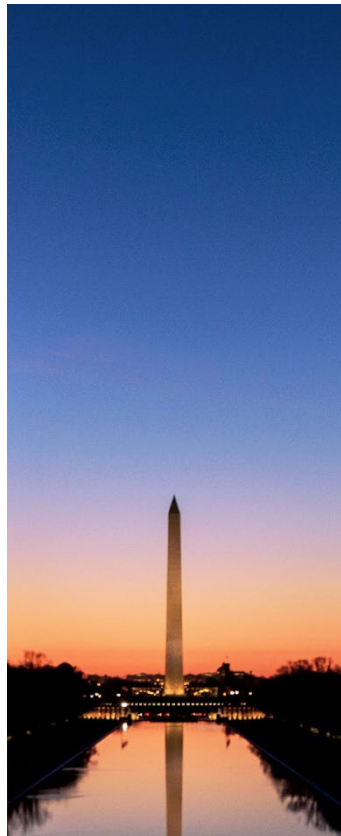
- Incentives for contributing
  - One-third rule
    - » Applies only to fundraising with promotional items, prizes, and entertainment that have been paid for by the connected organization, its affiliates and, in the case of trade associations, its members
    - » Food, drinks, and facilities expenses are not subject to the one-third rule: FEC AO 1995-17



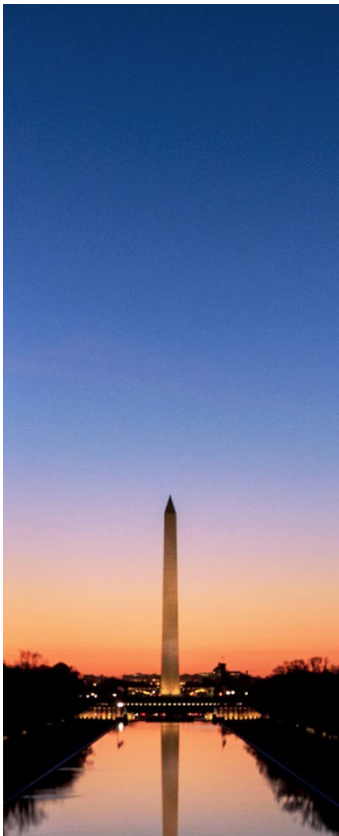
- In-person and virtual events: watch fair market value
  - » One-on-one events can be problematic
- Charity PAC match
  - » Ensure 501(c)(3)
  - » May not use company foundation
  - » Non-deductible
  - » Be mindful of state law
  - » Consider combining a gift to contributor with PAC Match for those giving certain amount
- Online contributions: credit cards, PayPal, Venmo, Square, Zelle



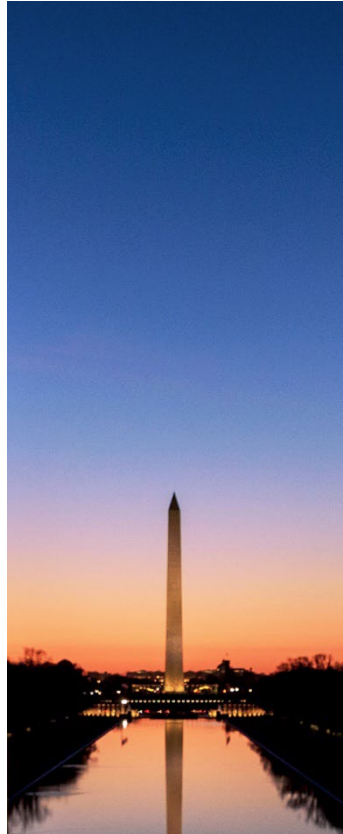
- Form 3X
  - Reports are filed either monthly or quarterly in election years
  - Reports are filed either monthly or semi-annually in non-election years
  - Recommended option: semi-annual in non-election years and monthly in election years



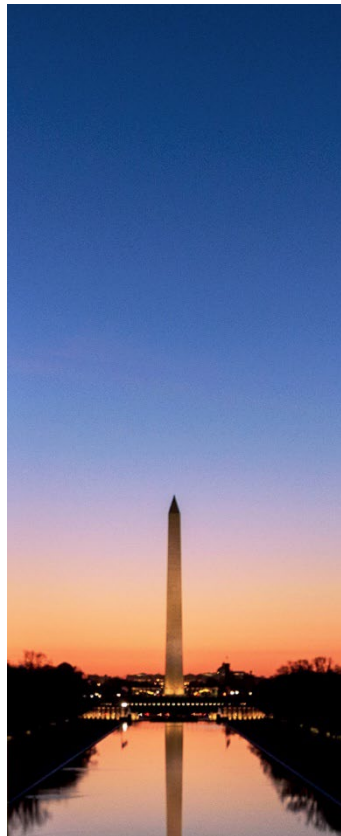
- Receipts and Schedule A
  - A person who collects contributions (including payroll deductions) must forward to the committee treasurer the contributions and the receipt information within:
    - » 30 days for contributions of \$50 or less
    - » 10 days for contributions greater than \$50
  - Receipts must be deposited within 10 days of the treasurer receiving the contribution
  - Those companies on 24 or 26 annual pay periods need to forward PAC deductions to the PAC at least twice a month
  - Refunded contributions from committees appear on Line 16
    - » This is not the same as voiding contributions that were lost
  - Bank interest is disclosed on Line 17



- Itemized contributions from individuals appear on Line 11(a)
- Any contribution that exceeds \$200, either individually or in aggregate when added to the contributor’s previous contributions made during the same calendar year, must be itemized
  - » Contributor’s full name
  - » Mailing address
  - » Occupation
  - » Employer
  - » Amount
  - » Date of contribution

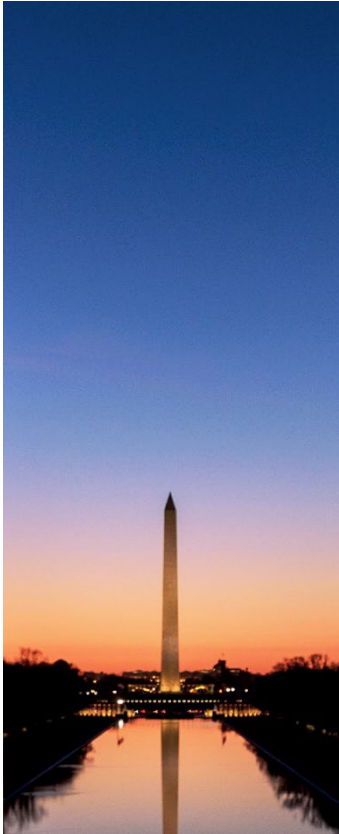


- Knowing to whom one is making a contribution and necessity of making designations on the contribution check
- Knowing the date of a contribution is important, especially in an election year:
  - For applying contribution limits; and
  - For reporting purposes.
- Contributions are deemed to be made when one relinquishes control over the contribution check (e.g., mailbox rule)
- One may not give to a particular candidate's election after the date of that election, unless:
  - The campaign has net outstanding debt; and
  - The check is designated in writing for that election's "debt retirement."

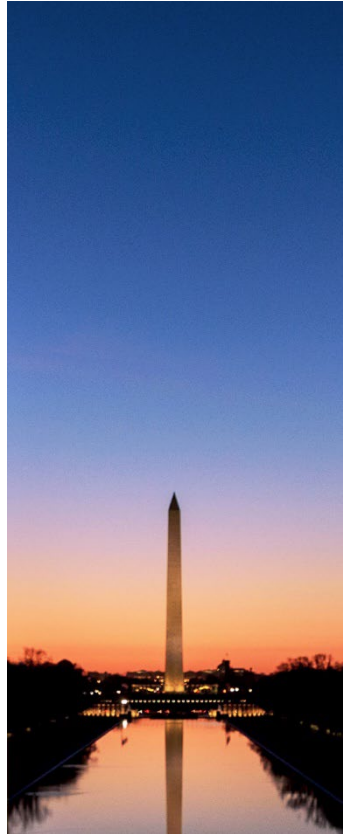


- Disbursements and Schedule B
  - When making disbursements, abide by the set procedures outlined in your by-laws or policies
  - The same person should not be responsible for cutting the contribution checks, approving PAC contributions, and reporting to the FEC
  - Confirm candidate/committee name, address, office sought, election, and election year

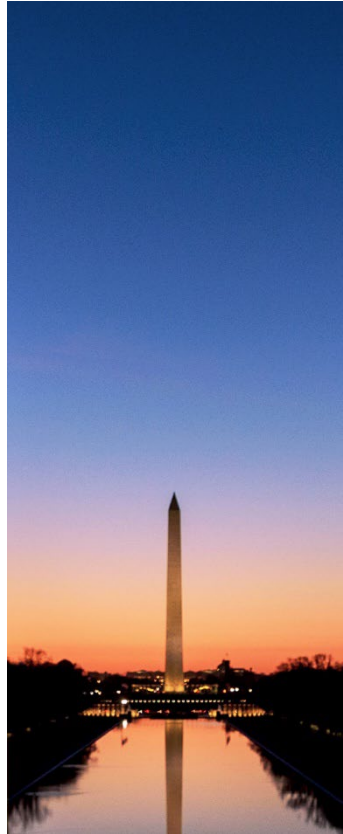




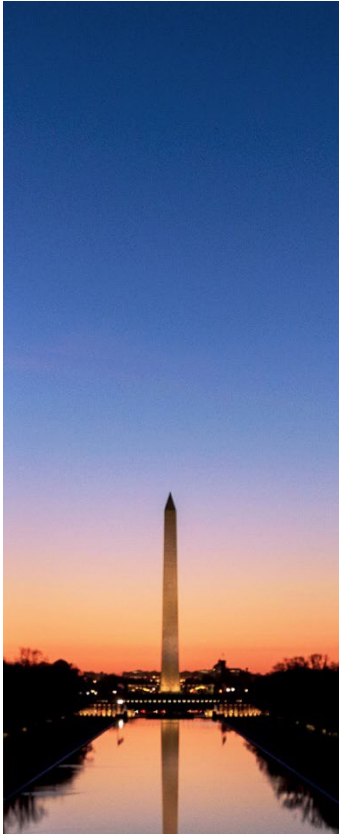
- In deciding as to whom to contribute, best not to have written justifications
- To the extent that one puts such justification or reason in writing, one should:
  - Not mention any particular past, present, or future official action (e.g., a vote on a particular legislation or other governmental decision) or any particular official matter (e.g., a particular legislation, rulemaking, or RFP)
  - Not characterize the contribution as helping to gain access to the candidate or a "seat at the table"
  - Limit the writing to general reasons for supporting the candidate (e.g., the candidate's positions on general issues and the leadership positions held by the candidate)



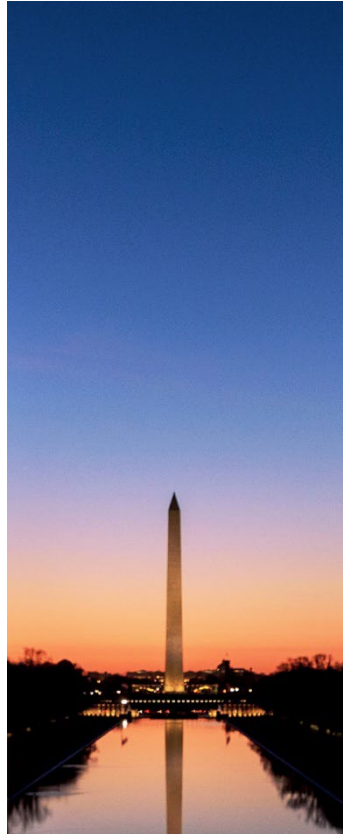
- If a transmittal letter is sent, the following guidelines should be followed:
  - Do not mention any particular past, present, or future official action (e.g., a vote on a particular legislation or other governmental decision)
  - Do not mention any particular official matter (e.g., a particular legislation, rulemaking, or RFP)
  - Limit the letter to merely expressing general support for the candidate



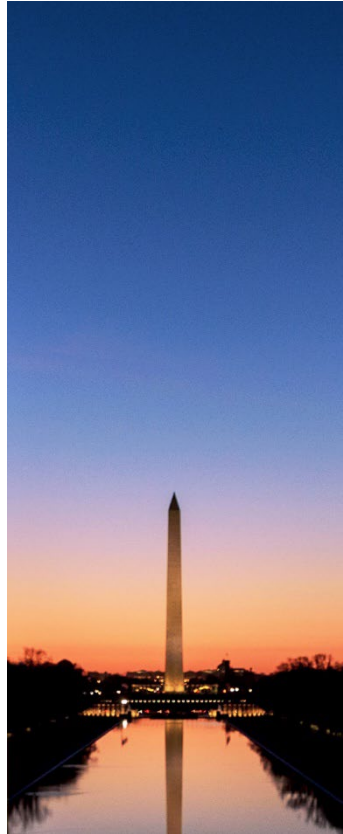
- Disburse contribution checks on a timely basis
  - Holding on to a check may cause a PAC to miss election cutoff dates
- If a check has not been deposited after 90 days then contact the committee to determine if the check has been lost
  - Outstanding checks affect both the FEC reconciliation and reported limits to a committee



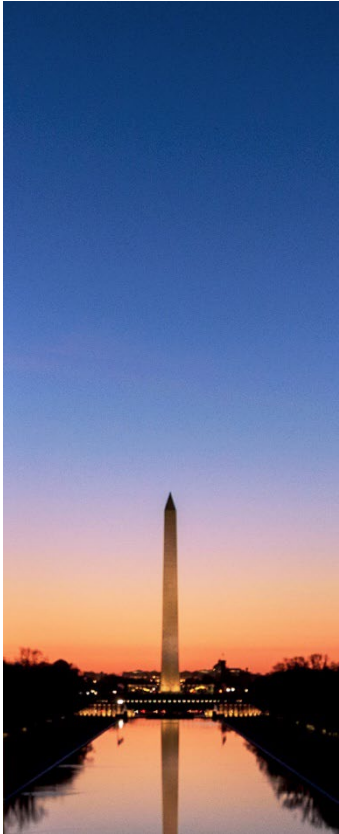
- It is critical to do a bank reconciliation
- Some third-party platforms will make you think they are banking programs but they are simply databases that track the data you enter
  - Outstanding checks
  - Deposits in transit
- Bank reconciliations should be done by someone other than a check signer
- Access to the PAC's bank account online is crucial in identifying issues in advance of waiting for a bank statement



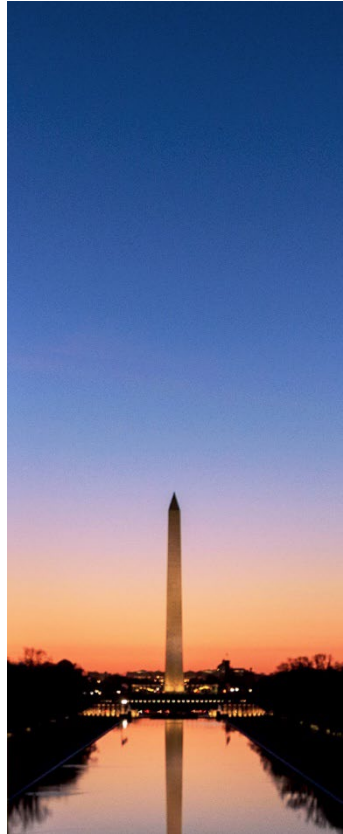
- Embezzlement policy – safe harbor
  - Checks in excess of \$1,000 are authorized in writing or signed by two people. All wire transfers require two authorizations.
  - An individual who does not handle PAC accounting receives incoming checks and places a restrictive endorsement on them, i.e., "For Deposit Only"
  - Petty cash must have written log and the fund should not exceed \$500
- Periodic PAC Audits



- Mandatory Document Retention
  - FEC: 3 years from the date that the relevant information is reported
  - Automated payroll deductions, records must be kept for at least 3 years from the date of disclosure of the last deduction
  - Payroll deduction authorization must be kept for the entire period it is relied upon plus three years

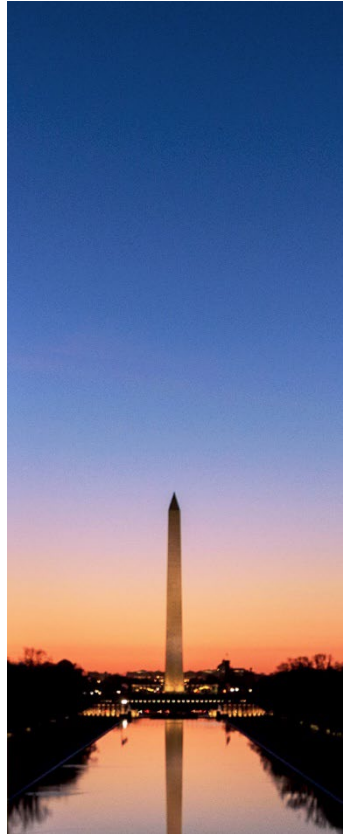


- Must keep records of:
  - Copies of reports
  - Bank statements
  - Information of receipts and disbursements
  - If received contribution exceeds \$50, a copy of the check
  - If disbursement exceeds \$200, a receipt or cancelled check
  - Any other records to substantiate information in reports
- To the extent PAC gives at the state level, must keep records under state law
  - State retention laws vary widely
    - » We are unaware of any that exceed 10 years

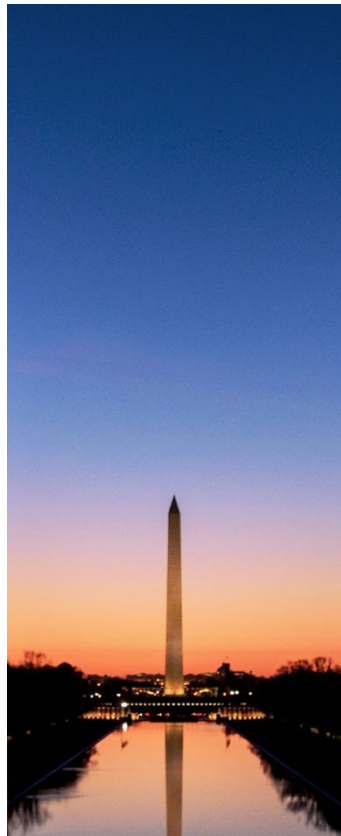


- Not updating the Statement of Organization within 10 days of any change
- Not updating PAC By-Laws
- Not designating an Assistant Treasurer
- Failing to file the multi-candidate Form 1M disclosure when triggered
- Failing to file an 1120-POL report with the IRS if receiving over \$100 in taxable income (most likely bank interest) in a calendar year
- Not having a reliable record of all outstanding checks
  - Leaving checks as outstanding for a period of more than 3 months without issuing a stop payment and voiding the record





- Reports must still be filed until termination is approved by the FEC
- Make sure all terminations are filed in jurisdictions where the PAC also files, i.e., any state where the PAC is registered



- PACs of affiliated companies share the same limit regarding the contributions that they make and the contributions that they receive
- Implications if there is a merger of companies and joint ventures
  - Prior to the merger, the PACs of the different companies do not share a contribution limit
  - If prior to the merger, the PACs' combined contributions to a candidate exceed their shared limit, then those PACs after the merger are considered to have already reached their shared contribution limit but not to have exceeded it
  - To transfer payroll deductions, one does not need to get re-authorization but merely a notice. See AO 1994-23 (Northrop Grumman).
  - Spin-off: create new PAC before spin-off if PAC members are going to new company