March 4, 2019

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Corporate Political Compliance Overview

Public Affairs Council

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates

The Americas
Boston
Chicago
Houston
Los Angeles
New York
Palo Alto
São Paulo
Toronto
Washington, D.C.
Wilmington

Europe
Brussels
Frankfurt
London
Moscow
Munich
Paris

Asia Pacific
Beijing
Hong Kong
Seoul
Shanghai
Singapore
Tokyo

The Basics

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- Federal Election Commission Form 1 (Statement of Organization)
  - Determine the type of PAC that will be formed: Connected vs. Nonconnected
  - Connected PACs must have the full name of the Connected Organization listed in the name of the PAC
  - Abbreviated name can be used, however, both the abbreviated name and full name must be listed on:
    - Statement of Organization;
    - All reports and notices filed by the committee; and
    - Any disclaimer notices used by the committee in public political advertisements.
  - Connected Organization may not be a partnership or LLC unless treated as a corporation for tax purposes
  - Connected Organization may pay the administrative expenses for Connected PACs
    - Nonconnected PACs need a policy for calculating and paying administrative expenses. There is no set formula for this calculation.

Opening a PAC

- 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
- The Form 1 also requires: address, email, treasurer, custodian of records, name and address of a bank
- Use an email address that is frequently checked
  - Committees may enter up to two e-mail addresses on Form 1
- PAC Organization
  - PAC Board is not required, but most PACs have a board
  - Some banks request PAC bylaws or board resolutions along with the EIN to open a bank account
  - Treasurer is the only required position but it is good practice to have other officers
    - Name an assistant treasurer who is available to review and sign off on PAC filings

Opening a PAC

- No benefit to incorporating a Connected PAC
- EIN Information
  - A PAC must have its own EIN. It may not use a Connected Organization EIN.
  - PAC should register with the IRS (Form SS-4) as a “Political Organization” with “Banking Purpose” as the reason
  - Keep track of your PAC’s EIN
  - Update IRS information on 1120-POL filings or through a letter to the IRS

Periodic Reports - Receipts

- 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
  - Offsets to operating expenses are disclosed on Line 15
  - 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

Periodic Reports - Receipts

- 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

Periodic Reports - Disbursements

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- Disbursements and Schedule B
  - When making disbursements, abide by the set procedures outlined in your bylaws or policies
  - The same person should not be responsible for cutting the contribution checks, approving PAC contributions, and reporting to the FEC
  - Disburse contribution checks on a timely basis
    - Holding on to a check may cause a PAC to miss election cutoff dates
  - Transmittal letters should be sent only with legal disclaimers (*e.g.*, for primary or general election, or debt retirement)

Bank Reconciliation

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- 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
  - Reconcile against ledger vs. against bank statement
  - Outstanding checks
  - Deposits in transit
  - Keeping a record of Column B figures
- Bank reconciliations should be done by someone other than a check signer

Bank Reconciliation

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Skadden PAC			
Current Bank Balance			
Bank Statement Balance		41,137.18	
Deposits in Transit	525.00		
Outstanding checks (noted below)	(1,000.00)		
Running Bank Balance		40,662.18	
FEC Reconciliation	Dec-18	2018 YTD	
FEC Starting Balance	36,400.59	45,738.60	
Receipts			
Individual - Line 11ai	5,250.00	11,106.00	
Individual - Line 11aii	203.00	768.00	
Other Political Committees	-	-	
Offsets to Operating Expenses	-	-	
Refunds of Contributions Made	-	-	
Interest	-	-	
Total Receipts	5,453.00	11,874.00	
Disbursements			
Operating Expenses - Line 21b	(191.41)	(450.42)	
Federal Contributions - Line 23	(1,000.00)	(16,500.00)	
Refunds of Contributions - Line 28	-	-	
Other Disbursements Contributions - Line 29	-	-	
Total Disbursements	(1,191.41)	(16,950.42)	
FEC Balance	40,662.18	40,662.18	
Difference Between Bank Running balance and FEC balance		-	
Outstanding Checks			
Committee	Date	Amount	Check Number
Committee for Good Government	12/13/2018	5000.00	1001

Periodic Reports - Disbursements

- If a check has not been deposited after 90 days then contact the committee to determine if the check has been lost.
  - » Outstanding checks effect both the FEC reconciliation and reported limits to a committee
- Bank fees and operating expenditures are reported on Line 21(b), not Line 29
- The processing fees for credit card transactions or online payments should be treated as an operating expense

Common PAC Errors

- Filing a report with validation errors (missing occupations/employers, missing addresses, etc.)
- Not comparing the starting cash on hand amount of the current report to the ending cash on hand amount of the last report
- Not properly reconciling FEC report with bank statements
- Listing wrong election year on a candidate contribution record. This error is especially prevalent when giving to Senate candidates.
- Having a payroll system issue a refund to an employee, and then reporting that refund as a negative receipt instead of a contribution refund (a positive disbursement)
- 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

Common PAC Errors

- Not updating the Statement of Organization within 10 days of any change
- Not designating an Assistant Treasurer, who can communicate with the FEC when the Treasurer is unavailable
- Failing to file the multi-candidate Form 1M disclosure when triggered
  - After filing Form 1M, forgetting to check the multi-candidate committee box on filed reports
- 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. Also, be aware of states that tax PAC income.
- Joint fundraising committees
  - Carefully follow the legend on these solicitations
  - Break out info on LD-203 form

Document Retention

- 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.

Federal Hard Money Rules

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

	2019 – 2020 Limits
To Candidates –	$2,800* per election
To State Party Committees –	$10,000 per yr.
To PACs –	$5,000 per yr.
To National Party Committees –	$35,500* per yr. plus:

-An additional $106,500* per yr. for buildings

-An additional $106,500* per yr. for recounts and legal fees

-An additional $106,500* per yr. 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): $852,000* per year

*These limits are indexed for inflation per election cycle

Federal Hard Money Rules

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- **Contribution Limits for Multicandidate PACs**

	2019 – 2020 Limits
To Candidates –	$5,000 per election
To State Party Committees –	$5,000 per yr.
To PACs –	$5,000 per yr.
To National Party Committees –	$15,000 per yr. plus:

-An additional $45,000 per yr. for buildings

-An additional $45,000 per yr. for recounts and legal fees

-An additional $45,000 per yr. 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

Attribution and Designation Rules

- Knowing to whom one is making a contribution and necessity of making designations on the contribution check
  - DGA and RGA representations
    - Operating accounts
- Spousal attribution
  - Contribution attributable to signer of 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."

Soliciting for Corporate PAC

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- 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.

Sample Format for PAC Solicitation Letter

- 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

Soliciting for PAC – Legal Disclaimers

- 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.

Soliciting for Corporate PAC

- Expanding your solicitation base
  - Soliciting board members
  - Soliciting employees of affiliates
  - Soliciting shareholders
    - Senior retirees who are shareholders
- Peer-to-peer solicitations
- Incentives for contributing
  - One-third rule
    - Certain travel expenses and the cost of meals are not subject to the one-third rule
    - Food, drinks, and facilities expenses are not subject to the one-third rule: FEC AO 1995-17
  - Charity PAC match
    - May not use company foundation
    - Non-deductible

PAC Incentives

- At least 75% of PACs use incentives such as gifts, live events with politicians, and special events with the CEO
  - The most effective, in order of effectiveness:
    - PAC match
    - Event with CEO and/or senior executives
    - Live events with politician or guest speaker
    - Permissible gifts within the parameters of the one-third rule

PAC Compliance Issues

- 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.
  - All bank accounts must have their own Taxpayer ID number.
  - Bank reconciliations are done by someone other than a check signer or person responsible for PAC accounting.

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.
- May tell employee that it is important to contribute to the PAC given that a strong PAC is vital to the success of the company.
  - Do not characterize the PAC as helping to gain access to candidates.
  - May characterize PAC as helping to elect candidates whose views are good for the company's business interests.
  - Do not say that PAC donations help get laws passed.

Contributing PAC Funds

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- In deciding as to whom to contribute, one should be careful when putting in writing the justification or reason for a contribution.
- 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).
  - 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).

Contributing PAC Funds

- 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.

Soliciting for PAC: Rules for Corporations and LLCs

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- 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 sales persons.
  - Such employees of affiliates, including parent, sister, and subsidiaries more than 50% owned or controlled, are also included.
- Rules for LLCs and partnerships
  - Attribution rules
  - Most LLCs and all partnerships may only sponsor a Nonconnected PAC.
  - Calculating administrative expenses for Nonconnected PACs

Soliciting for Corporate PAC

- 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.

Affiliated PACs, Mergers, and Spin-offs

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- 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.

Partnerships

- Partnerships
  - Attribution rules
  - Federal contractor restrictions
    - » Giving to Super PACs: Chevron case

Fundraising at the Office

- Internal communication and fundraising—only solicitable class (*i.e.*, shareholders and executive or administrative personnel). See AO 1984-13 (NAM).
- External communication and fundraising—persons outside solicitable class.
  - Advance payment.
  - An individual employee volunteers his or her own time without using corporate facilities or personnel.
  - Directed employee time.
- Certain LLCs and partnerships cannot take advantage of these exemptions.

Fundraising at Residence

- Special rules for home fundraisers
  - If married, the host may spend $2,000 for food, beverage, and invitations without it counting against any limit. Unlike the office space, a home does not have to be part of the value of the in-kind donation. Event must take place at residence of host(s). If not married, the exempt limit is $1,000.
  - If a joint fundraiser with the party committee, an individual may spend $3,000 without it counting against any limit, and $6,000 if married.

Employees Volunteering for Campaigns

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- Employees volunteering for campaigns
  - Legal restrictions regarding employer in-kind contributions
    - Employees may make occasional, isolated, or incidental use of corporate facilities for volunteer activity in connection with a federal election. However, the corporation must be reimbursed for out-of-pocket expenses. Activity not exceeding one hour/week or four hours/month is considered occasional, isolated, or incidental
      - Hillary for America: attendees at a campaign event may pay for food, beverages, and parking in that it does not constitute an in-kind contribution. FEC AO 2015-7. Transportation limited to $1,000.
  - Restricting an employee from taking adverse corporate positions

Bundling per FECA: Possible Prohibited Activity

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- Corporation cannot facilitate contributions.
- Bundling and providing stamped or addressed envelopes.
- Westar case: FEC MUR 5573 (2005).
- Freddie Mac case: FEC MUR 5390 (2006).
  - $3.8M civil penalty -- implications for corporations.
- Bundling may be permitted if a campaign issues a fundraising authorization to an individual and appoints that individual to a special position with the campaign.

Political Site Visits: House, Senate, and President

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- With eligible class only (as defined under Federal Election Campaign Act)
  - Candidate and corporate executives may advocate election and solicit contributions
  - Opponent does not need to be invited or request to appear granted
  - Food may be served
- With all employees
  - Candidate may advocate his or her election and solicit donations but the candidate may not accept donations before, during, or after the presentation. The candidate may just leave campaign literature.
  - Corporate executives may introduce but not advocate election and no solicitation of contributions
  - Opponent upon request must be given same opportunity
  - Light refreshments may be served
  - Press is permitted
- Beware of calling political visits non-political meet-and-greets, especially in an election year

Political Activity at the Office

- Use of corporate aircraft (first-class airfare vs. charter rate).
- Sending corporate executives to political events
  - Boeing decision
- Corporate endorsements
- Registration and get-out-the-vote drives
- Voter guides

Other Prohibited Contributions

- Making a contribution in the name of another – reimbursing or compensating someone for his or her contribution. Possible criminal implications.
- Foreign nationals
  - Federal law applies to federal, state, and local contributions.
  - Checking I-9 forms.

Operating a Multi-State PAC

- If a PAC (including a federal PAC) contributes at the state or local level, it must comply with that state's or locality's law.
- Some states make it easy for federal PACs to give (Ohio and Texas).
- Some states make it difficult or illegal to use a federal PAC (Alaska, Connecticut, Massachusetts, New York, and Rhode Island).
- New York Department of Labor payroll deduction statement and regulation.
- New Jersey payroll deduction restriction.
- Many states do not exempt administrative expenses or certain solicitation expenses. For example, Texas imposes restrictions on PAC match.

Operating a Multi-State PAC

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- Some states impose burdensome restrictions on PACs.
  - New York treats administrative expenses as contributions that count against the contribution limit, and requires in-state bank account. Transfers exceeding $1,000 from out-of-state accounts are not permitted.
  - North Carolina requires in-state assistant treasurer.
  - Vermont requires compliance with state limit on what a PAC can receive to $4,080 per two-year cycle.
- Beware of state and local pay-to-play laws, which may apply to PAC donations.

Corporate Contributions

- 22 states generally prohibit corporate contributions.
- Five states currently permit unlimited corporate contributions (*i.e.*, Alabama, Nebraska, Oregon, Utah and Virginia).
  - Illinois limits for a particular elected office are lifted if IE or self-funding threshold is reached for that particular office.
- The remaining 23 states plus D.C. allow corporate contributions but impose limits.
- Some states aggregate among affiliated PACs, some aggregate between company and its PAC, some do not.
- Partnerships: each state has different rules on pass-through.

Corporate Contributions

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- 28 states plus D.C. permit corporate contributions:

Alabama	Nebraska
California	Nevada
Delaware	New Hampshire
Florida	New Jersey
Georgia	New Mexico
Hawaii	New York
Idaho	Oregon
Illinois	South Carolina
Indiana	South Dakota
Kansas	Tennessee
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Mississippi	Washington

Corporate Contributions

- 22 states generally prohibit corporate contributions:

Alaska	Michigan	Oklahoma
Arizona*	Minnesota	Pennsylvania
Arkansas*	Missouri*	Rhode Island
Colorado*	Montana*	Texas
Connecticut	North Carolina	West Virginia
Iowa	North Dakota	Wisconsin
Kentucky	Ohio	Wyoming
Massachusetts		

  - *Some of the above states permit corporate contributions to PACs and/or party committees.
  - Some states that prohibit corporate contributions to political committees permit contributions to administrative accounts of political party committees (*e.g.*, Texas, Ohio).
  - Ballot measure contributions are permitted, even if corporate contributions are prohibited in that state.

Enforcement

- Civil penalties for FECA violations
  - Civil penalties for violations involving reimbursed contributions are no less than 300% and no more than 1000% of amount in violation.
- Criminal penalties for FECA violations
  - Maximum jail time for lesser violations (involving less than $25,000) is 2 years.
  - Maximum jail time for greater violations (involving $25,000 or more) is 5 years.
  - Violations subject to Federal Sentencing Guidelines.

Closing Down a PAC

- 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

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