March 5, 2018

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Compliance for Corporate Programs

Public Affairs Council

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Federal Hard Money Rules

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

	<u>2017 – 2018 Limits</u>
To Candidates –	$2,700* per election
To State Party Committees –	$10,000 per yr.
To PACs –	$5,000 per yr.
To National Party Committees –	$33,900* per yr. plus:

-An additional $101,700* per yr. for buildings

-An additional $101,700* per yr. for recounts and legal fees

-An additional $101,700* 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): $813,600* per year

*These limits are indexed for inflation per election cycle

Federal Hard Money Rules

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- **Contribution Limits for Multicandidate PACs**

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

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).
- 10-day deposit rule for campaigns and PACs
- 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."

Establishing and Operating a Standard Corporate or Trade Association PAC

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- PAC name/PACronym
- 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.
- By-laws and organizational documents
- Issues related to incorporation
- Taxpayer ID number
- Investing PAC funds
- Federal and state income taxes

PAC Governance

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- Is a Board required?
  - No
    - 89% of corporate PACs have a board
    - Median size is 9
- 40% of corporate PAC boards have participation outside of senior management
- Are officers required?
  - Yes, but only one is necessary
  - At least three is customary
  - Better to not put names of individuals in by-laws. The identity of officers and directors should appear only in the PAC or corporate resolutions.
  - Indemnification: corporation may pay or seek director and officer coverage

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 AO 2010-04 (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 non-connected PAC.
  - Calculating administrative expenses for non-connected PACs

Soliciting for Corporate PAC

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- 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.

Sample Format for PAC Solicitation Letter

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- 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

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- 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

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- 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
- Payroll deduction – maintain authorizations
  - 10 day deposit rule

PAC Contribution Levels

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- Results of survey of corporate PACs
  - Median participation rate
    - » Senior management: 67%
    - » Board of directors: 79%
    - » Restricted class: 14%
  - Median annual contribution amount
    - » Senior management: $1,309
    - » Board of directors: $3,875
    - » Restricted class: $400
  - Median percent maxing out
    - » Senior management: 6%
    - » Board of directors: 56%
    - » Restricted class: 0%

PAC Incentives

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- 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

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.

Operating a Multi-State PAC

- Some states impose burdensome restrictions on PACs.
  - Michigan used to require annual authorization on payroll deductions – repealed January 2016
  - 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.
- Most states require registration and reporting by the PAC.
  - Some require greater itemization in reports than required under federal law.
- Beware of state and local pay-to-play laws, which may apply to PAC donations.
- Some PAC aggregate limits struck down in wake of *McCutcheon*

Corporate Contributions

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- 22 states generally prohibit corporate contributions:
  - Some states that prohibit corporate contributions to candidate committees permit contributions to PACs and/or political party committees.
  - Ballot measure contributions are permitted, even if corporate contributions are prohibited in that state.
- 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

Rules for Members of Trade Associations

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- May solicit contributions to trade association PAC
  - PAC subject to same limits as a corporate PAC
- Approval required and a corporation may only authorize solicitation by one association per year
- Parent/subsidiary rules – 11 CFR 114.8(f)
- What is a solicitation? Who may be solicited?
  - Issues regarding solicitation of directors
- Soliciting LLCs and partnerships – special rules
- Payment of overhead expenses of trade association PAC is permissible: FEC AO 1982-61
- Don’t believe proposals that sound too good to be true
  - Trade associations getting around the prior approval rules
  - Soliciting beyond the restricted class
  - Trade association PAC-to-PAC solicitation

Reporting Requirements

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- For receipts, PAC must disclose the following for its contributors of more than $200 per year:
  - Name
  - Mailing address (use home or business address)
  - Occupation
  - Employer

Common PAC Errors

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- 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

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- 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

PAC Compliance Issues

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- 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.

Documents and PAC Recordkeeping

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- E-MAILS AND OTHER ELECTRONIC COMMUNICATIONS ARE DOCUMENTS. Virtually indestructible and potentially dangerous.
- Federal PACs must keep records for 3 years from the date that the relevant information is reported for federal activity.
- For contributions used for federal activity, payroll deduction records must be kept for at least 3 years from the date of disclosure of the employee's last deduction.
- Keep in mind states may have longer retention periods.

PAC Recordkeeping

- One must keep records of (1) copies of reports, (2) bank statements, (3) information of receipts and disbursements, (4) if received contribution exceeds $50, a copy of the check, (5) if disbursement exceeds $200, a receipt or cancelled check, and (6) any other records to substantiate information in reports.
- To the extent PAC gives at the state level, must keep records under state law.

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

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- 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

- 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).

Sending Transmittal Letters with Contribution Checks

- Transmittal letters should be sent only with legal disclaimers (*e.g.*, for primary or general election, or debt retirement).
- 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.

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

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

Ban on Corporate Contributions Under FECA Soft Money Rules

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- Federal law prohibits corporations from making monetary contributions, as well as in-kind contributions such as the use of corporate facilities or personnel, for campaign purposes
- *Citizens United* only permits corporate independent expenditures
  - Super PACs – federal contractor ban
- 501(c)(4)s and 501(c)(6)s: corporate independent expenditures
- National Party Committees – Ban on soft money. Republican and Democratic governors' associations are not federal national party committees. Thus, corporate funds are permissible.
- State Party Committees – Federal Account and State Account
- KYC: Know Your Committee

Fundraising at the Office

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- 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

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- 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

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- 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.

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.