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PAC Compliance Overview

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

PART I

Managing Compliant PAC Programs

Presented by Jan Baran and Steve Roberts

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Generally: Regulated by Federal Election Campaign Act (FECA)

- Regulates political contributions & expenditures
- Imposes limits, prohibits certain contributions, requires financial reporting
- Enforced by the FEC and Department of Justice
- IRS (tax); FCC (advertising); SEC (pay-to-play); States (state & local fundraising; registration; voting; ballot access)



What is a Contribution?



- Any gift, subscription, loan, advance, or deposit of money or **anything of value** made by any person for the purpose of influencing any election for Federal office. 52 U.S.C. § 30101(8)(A)(i)
- Includes third-party compensation for personal services to a committee
- Many exceptions

What is an Expenditure?



Any purchase, payment, distribution, loan, advanced, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office, and a written contract, promise, or agreement to make an expenditure. 52 U.S.C. § 30101(9)(A).

“Anything of Value”



- Goods and services without charge or at less than the “usual and normal charge”
- Usual and normal charge is the price of goods or services in the market from which they ordinarily would have been purchased at the time
11 C.F.R. § 100.52(d)

Separate Segregated Fund (SSF)

(Corporate PACs)

- SSF is still the only legal way for a corporation to contribute to candidates, leadership PACs, and national party committees
- Corporation may pay costs to:
 1. Establish SSF
 2. Administer SSF
 - A. Personnel, offices, facilities to run PAC
 - B. Insurance, legal, accounting
 - C. Expenses to attend other fundraising events
 3. Solicit Voluntary Contributions to SSF

Who May Have an SSF?



- Corporation
- Labor Union
- Incorporated association (e.g., trade association)
- LLC taxed as a corporation
- Cooperative
- 501(c)(4) social welfare organization

Who May Not Have an SSF?



- Partnership
- LLC taxed as a partnership
- Individual
- Sole proprietorship (unincorporated)
- Foreign national entity (organized under the laws of or having its principal place of business in a foreign country)

Registering, Reporting



- Within 10 days of establishing, register with the Federal Election Commission, disclosing address, bank holding PAC account, treasurer, custodian of records
- Thereafter, regular reporting to disclose:
 1. Total cash on hand at the close of a reporting period
 2. Contributions from contributors aggregating \$200 or more in the aggregate, along with address, employer, occupation information
 3. Expenditures by the SSF, along with recipient and purpose
 4. Liabilities owed by or to the SSF
- Reports are filed monthly or quarterly, along with special election deadlines, depending on the filing frequency selected

Soliciting for the SSF

*Only members of the
“Restricted Class”
may be solicited*

- Restricted class for corporations:
 - Full-time, salaried executive or administrative personnel
 - Stockholders
 - Families of same
- Restricted class for unions:
 - Members and families
- Restricted class for trade associations:
 - Association full-time, salaried, executive or administrative personnel
 - Restricted class of member companies (after prior written approval, discussed below)
 - Individuals who are members

Who are “Executive or Administrative Personnel”?



- Salaried employees who have policymaking, managerial, professional, or supervisory responsibilities, but are not foremen or line supervisors, or represented by a union
- Executives of affiliated entities are in restricted class
- FLSA may be used as guidance. FEC Advisory Opinion 2011-25
- Members of the Board of Directors are in the restricted class if paid director fees. FEC Advisory Opinion 2010-12. OR if they are stockholders

Who are “Stockholders”?



- Definition of stockholder is a person who has:
 1. Vested beneficial interest
 2. Power to direct voting stock
 3. Right to receive dividends
- Non-executive employees including union members who are stockholders are in the restricted class
- Anyone not in the restricted class – including other PACs – may not be solicited

Solicitation Requirements



- Voluntariness: no threats or job reprisals
- Solicitation notices (disclaimers) must be given in writing or verbally
 1. FEC: voluntary, political purposes, right to refuse to contribute, amount guideline notices
 2. IRS: contributions not deductible as charitable contributions
 - A. Required to be written first or stand alone (offset paragraph)
- Compliance tip: accompany verbal solicitations with written response form containing notices and disclaimers

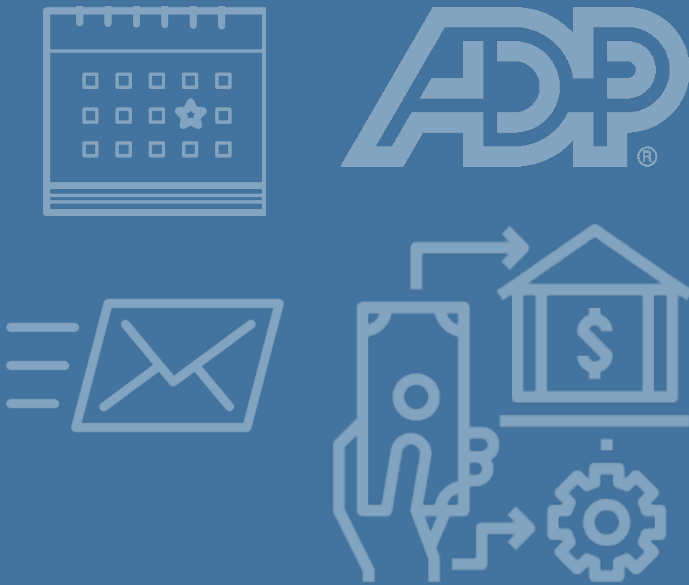
What is a Solicitation?

(VERY broad definition)



- Request for funds, or even a description of how/where to make a donation
- Description of PAC fundraising activity
- Commending those who participate or describing importance of PAC
- Fundraising booth OK, with guardrails
- General, factual PAC info OK
 - Be careful when preparing PAC annual report, PAC FAQ or information for corporate ESG report. Who is the audience? Are two versions required?
- Up to 3% of audience not in the restricted class is incidental solicitation
- PAC pin on Home Depot orange apron is OK. FEC Advisory Opinion 2003-14

How to Solicit: In Person or Written



- Email
- Payroll deduction
 - Signed payroll deduction authorization required; recorded telephone conversation sufficient to authorize payroll deduction (FEC Advisory Opinion 2013-12)
- ACH, account withdrawals, credit card payments
- Dues statements for associations
- Twice-yearly solicitations of non-executive employees (but, reciprocal union rights)

How to Solicit: Websites



- Non-restricted class must not be solicited, including the ability to access a solicitation on a website
- Any solicitation materials on a website must be password-protected such that only restricted class may access
 1. For corporation: can be on password-protected intranet sites
 2. For trade association: must be restricted to only those for whom prior authorization has been granted
- Can be a two-sided website, with a public face of non-solicitations
 1. Including factual, statistical information about the PAC, or who to contact for more information
 2. For trade association, can include a prior authorization form

How to solicit: Gifts and Incentives



- Donor clubs, invite-only events, charitable match, and other incentives are very effective (Covered in the third session)
- Be aware: one-third rule
 1. Sponsoring entity of SSF may not “swap” corporate money for an individual contribution. However, a corporation may provide gifts or prizes if it observes the one-third rule, i.e., value of gifts or prizes does not exceed one-third the amount of the resulting PAC contribution(s)
 2. If ratio exceeded, PAC generally must reimburse corporation
 3. Fundraising costs and charitable matching NOT subject to one-third rule

Who Should Solicit?



- Any non-foreign national in the restricted class may solicit
- Caution advised when a direct superior solicits a subordinate
- Strategically, effective when from:
 1. Senior leadership, demonstrating buy-in and a max-out from the solicitor. Often first PAC solicitation associated with new restricted class employee onboarding
 2. Peer-to-peer

Contributions are Limited



- From individuals or other PACs (when PAC is unsolicited): \$5,000 per calendar year
- No anonymous contributions over \$50
- No cash over \$100
- No “straw donors”
- No foreign nationals

Special Rules for Trade Associations



Solicitation of the restricted class of member corporations is a two-step process:

- First, obtain written approval to solicit
- Second, conduct the solicitation

Prior approval must inform member corporation that:

- Corporate approval is necessary prior to solicitation; and
- The corporation may not approve solicitations by another trade association for the same calendar year

Trade association may include copy of solicitation materials with prior approval request

Special Rules for Trade Associations

Maintain a copy of the prior approval form for at least three years after the year for which approval applies (e.g., could be eight years if a five year forward-looking approval)

TRADE ASSOCIATION AUTHORIZATION FOR SOLICITATION

The Federal Election Commission requires that our PAC obtain prior approval before we can solicit individuals or a company's personnel.

As a qualified representative of a trade association member company, I authorize [PAC NAME] to accept contributions from employees of our company. I understand this permission may be withdrawn at anytime. Please complete and sign for each year you would like to grant permission.

(Company Name)

(Authorized Official Name)

For 2021:

(Signature)

For 2022:

(Signature)

For 2023:

(Signature)

For 2024:

(Signature)

For 2025:

(Signature)

In addition to myself, I authorize PAC NAME to communicate with the following individuals from our company during the calendar year(s) indicated above regarding activities, events and recruitment opportunities related to PAC NAME (please check one):

☐

All eligible employees

☐

No eligible employees

☐

Solicitation materials may only be distributed to certain eligible employees. Their names and email addresses are attached.

Ways to Distribute the Form

1

Paper/magazine/newsletter

2

Public version of website

3

Email

4

Trade show booth

Special Rules for Trade Associations

Maintain a copy of the prior approval form for at least three years after the year for which approval applies (e.g., could be eight years if a five year forward-looking approval)

Any person authorized by the corporation to make such approvals may sign

1. Need **one signature for each year** solicitation prior approval is granted
 - A. Get multiple approvals in a single campaign
 - B. For corporate members who already grant solicitation approval, suggest that they grant every-other-year approval
2. Signature can be “wet ink” or electronic

Questions

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PART II

Corporate Political Support Outline

Presented by Matthew Petersen and Jessica Furst Johnson

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Corporate Political Events Generally/Intro

For any number of reasons, getting your corporation involved with elections, candidates, and officeholders can be of great value. A great way to increase involvement and establish critical relationships with these individuals is, of course, to engage, support, and interact with them on a consistent basis.

Corporations may effectively do this through **candidate and officeholder events**, whether fundraisers, meet and greets, roundtables, or facility tours.

As you've seen, however, the **federal prohibition on corporate contributions** makes corporate political support a bit tricky without proper guidance. We're here to help you navigate the often-murky waters of corporate political events.

Corporate-Hosted Events

Types of Events

1. Candidate/Officeholder Appearances (Campaign and Official)
2. Meet & Greets
3. Roundtables
4. Facility Tours

Types of Attendees

What a corporation may or may not do at a particular event will depend on who is in attendance

1. General Public
2. All Employees
3. Restricted Class

Events with the General Public



- Corporation may have a current officeholder appear in an *official, non-campaign* capacity at an event open to the general public, where the discussion is limited to issues of concern to the corporation
- Corporation may pay for any of the officeholder's related expenses, provided that he or she does not hold a campaign event in the area while there
- May not discuss the campaign at all; issues must be limited to policy

Events with All Employees

Candidates themselves may solicit during the event, *but may not accept contributions before, during or after the appearance*

- Corporation may have a candidate or party representative appear at an event attended by its employees and their families
 - Meeting, convention, teleconference, or other corporate function
- May coordinate with the candidate on timing, structure and format of the appearance, and on the candidate's positions on issues, but may not discuss the campaign's plans, projects, activities or needs, as that may result in a prohibited in-kind contribution to the candidate

Events with All Employees

Corporation may not solicit any contributions

in conjunction with any candidate or committee with employees outside of the restricted class

- May not expressly advocate for the candidate's election or encourage its employees to do so
 - Expressly advocating for a candidate to an audience beyond its restricted class will result in a prohibited in-kind contribution to the candidate or party
 - Note, however, that *candidates themselves* may expressly advocate his or her own election, *but the corporation may not* (nor may it encourage its employees to do so)

Events Limited to the Restricted Class



- Corporation may have a candidate or party representative make an appearance before the restricted class, at which the candidate may solicit and accept contributions before, during or after the appearance
 - Corporate employees are prohibited from collecting funds
- Corporation may also organize voter drives and phone banks urging the restricted class to vote for or against a particular candidate or to register with a particular party

Corporate PAC-Hosted Events

A corporation's PAC may host fundraising events benefitting either the PAC itself or a particular candidate or party committee

Corporate PAC Restricted Class Events

- May solicit contributions from the corporation's restricted class, up to applicable limits
- Solicitation and attendance are limited to the restricted class
 - Corporate PAC solicitation of the general public is prohibited

Candidate Fundraisers

May use corporate facilities, but should make advance payment at the usual and normal rate for the rental of similar space

Attendance is not limited to the restricted class; PAC may invite outside individuals and political committees

All expenses associated with the event (invitations, food and beverage, rentals, etc.) are in-kind contributions to the campaign or committee and, therefore, are subject to limits

Campaign or Party Use of Corporate Space or Facilities

A corporate PAC may pay for a campaign or party committee's meeting space as an in-kind contribution to the recipient committee

A campaign or party committee may rent a corporation's meeting rooms or other facilities for campaign purposes

Committee must:

- Pay the usual and normal rate for the space; and
- Pay in advance to avoid a prohibited in-kind contribution

Campaigns or party committees may use a corporation's meeting rooms for free or at a discount, provided that the corporation:

- Customarily makes its meeting rooms available to civic and community groups;
- Makes the rooms available to other candidates upon request
- Makes the rooms available to candidates on the same terms (i.e., for free or at a particular discount) given to other groups

Employee Activity

Because the provision of services to a campaign or party committee during paid working hours can result in a prohibited in-kind contribution, it is important to understand the guidelines set forth by the FEC

Corporate employees may make incidental use of corporate facilities for his or her own individual volunteer activities in connection with a federal election

- Generally, no more than one hour per week or four hours per month
- If an individual's use exceeds incidental, the individual must, within a reasonable time, reimburse the corporation for the usual and normal rental charge for the facility use. This must also be reported to the benefitting campaign or party committee as an in-kind contribution from the individual.

Employee Activity: Exception for Internet Volunteer Activities

A corporation may permit its employees to use its computer and internet facilities for individual volunteer activity without making a prohibited in-kind contribution.

Employee volunteer must comply with any corporate internal policies for computer and internet use, and must complete the normal amount of work for which the employee is paid or is otherwise expected to perform.

The activity must not increase the overhead or operating cost of the organization.

Any such activity may not be coerced, and the organization may not condition the permitted use of internet and computers for these activities on support or opposition to any particular candidate or political party.

Considerations for Officeholder Events

When hosting events for current officeholders you should be aware of any potential Gift Rules or lobbying implications a particular activity may have

Ethics Rules

House and Senate Ethics Rules strictly prohibit the use of official resources for campaign purposes

May not discuss legislation at fundraising events

May in no way link a contribution to a particular vote, action, or inaction on any matter

Considerations for Officeholder Events

When hosting events for current officeholders you should be aware of any potential Gift Rules or lobbying implications a particular activity may have

Gift Rules

Federal elected officials are prohibited from accepting any gift from a registered lobbyist or private entity that retains or employs lobbyists, unless an exception applies

Federal elected officials may accept from any other source any gift valued below \$50, with a limitation of less than \$100 in gifts from any single source in a calendar year

If a gift falls within one of the 23 enumerated exceptions, it is generally permissible irrespective of its value

Considerations for Officeholder Events

When hosting events for current officeholders you should be aware of any potential Gift Rules or lobbying implications a particular activity may have

Lobbying Implications

Any activity that amounts to lobbying, as defined in the Lobbying Disclosure Act, during the course of a corporate event may subject the individual or corporation to LDA registration and reporting

A corporation and its employees must take care to avoid substantive communications that could amount to lobbying during its events, or otherwise properly account for such activity so that it may be properly reported if needed

Use of Corporate Name or Trademark

Branding is key

Develop a unique logo, graphics, letterhead, and other materials for the corporate PAC

- Corporation may not allow its corporation's name, trademarks or service marks to facilitate the making of contributions to a federal political committee (other than its own SSF). Similarly, a federal political committee may not accept or receive such facilitated contributions.
- What does this mean?
 1. Corporate PACs may not include corporate logos on event publicity or invitations (other than its own SSF)
 2. A corporation's name should not appear on any fundraising solicitation (other than its own SSF)

Bundling: Overview



- The Honest Leadership and Open Government Act (HLOGA) requires that candidate committees, leadership PACs and political party committees report certain contributions that are “bundled” by registered federal lobbyists, or PACs controlled by lobbyists.
- Relevant for entities that employ in-house lobbyists and/or are registered under the Lobbying Disclosure Act.
- While there is no reporting obligation placed on the registrant bundlers, their identities will be publicly disclosed on FEC reports

Bundling: Important Definitions

A “lobbyist/registrant” for purposes of the bundling requirements is any individual or corporation required to register as a federal lobbyist under the Lobbying Disclosure Act

- A “lobbyist/registrant PAC” is a federal political committee that is “established or controlled” by a lobbyist/registrant. A lobbyist/registrant “establishes or controls” a political committee if required to make a disclosure to that effect to the Clerk of the House of Representatives or the Secretary of the Senate.
- “Bundled contributions” are any contributions either 1) forwarded to a recipient committee by a lobbyist/registrant or lobbyist/registrant PAC; or 2) received by the recipient committee *and credited to* a lobbyist/registrant or lobbyist/registrant PAC through “records, designations, or other means of recognizing that a certain amount of money has been raised.”
 - Forwarded contributions are those actually delivered by a lobbyist/registrant, regardless of whether they’re credited to the lobbyist/registrant
 - Credited contributions need not be physically handled by the lobbyist/registrant, but may be attributed to her by records, designations, or other means of recognizing that a certain amount of money has been raised.

Bundling: Procedure and Requirements

*Filings are made
on the FEC Form 3L*

- Filing obligations are triggered for a recipient committee when a lobbyist/registrant or lobbyist/registrant PAC raises two or more bundled contributions for a recipient committee aggregating in excess of \$19,300 during a “covered period.”
 - “Covered periods” include semi-annual and quarterly/monthly periods that coincide with a committee’s regular FEC reports
- Once the threshold has been surpassed, the recipient committee must file a Form 3L with the FEC for a particular covered period if, within that period, it receives two or more bundled contributions forwarded by, or credited to, a lobbyist/registrant or lobbyist/registrant PAC.
- Note that these requirements are only implicated by contributions forwarded by or credited to **registered lobbyists/registrants**. This will only come into play for your corporation if the corporation itself is registered.

Questions

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PART III

Growing the PAC

Presented by Matthew Petersen and Steve Roberts

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Moving Beyond the Basic Solicitation

**Leveraging the Board
and Steering
Committee**

**Candidate
events**

**Charitable
Match**

**Donor
clubs**

**Invite-only
events**

**Trade show
booth**

**Raffles and
auctions**

**PAC
“conscientious
objectors”**

PAC Board and Steering Committee

*Your PAC needs advocates
and
surrogates*

- PAC Board can reflect a diversity of geography, business lines, corporate constituencies
- If the PAC Board is too narrow, add a steering committee or advisory committee
 - Not responsible for PAC governance
 - Responsibility is primarily in fundraising and cheerleading
- Solicitation by these groups moving to video-based; Describe why they support the PAC, why the PAC matters
- Invite donors to participate in “update from Washington” webinars with company/association lobbyists accompanied by a PAC update from one or more PAC surrogates

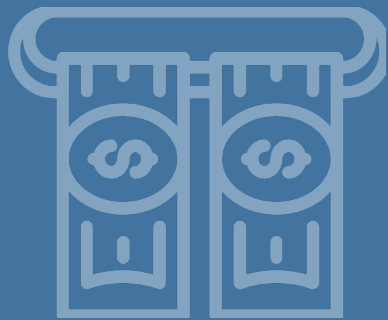
Events with Candidates



- PAC-sponsored events with candidates styled as either fundraisers or company-wide town halls
- Can be in-person or virtual (or hybrid)
- Be aware of considerations described in the second session
 - Differ based on whether a fundraiser for a candidate, the PAC, or not a fundraiser (with current officeholder)

PAC Charitable Match

Corporations may match a PAC donation with a gift to a charity designated by the PAC contributor.



- Contributor must not receive any financial, tax, or other tangible benefit
- FEC: a 2:1 PAC match is permissible (MUR 6873)
- Canadian “registered charity” (501(c)(3) equivalent) can be a recipient of a PAC match, even though a foreign national entity
- Gift to charity not deductible to company
- Charitable donation need not be available to any designated 501(c)(3) – donor can select from a catalog, for instance
- Best practice: cite to the charitable contributions in corporate PAC annual reports or ESG reports

One-Third Rule



- Remember: for all incentives below, one-third rule applies
- Recap: a corporation may provide gifts or prizes if it observes the one-third rule, i.e., value of gifts or prizes does not exceed one-third the amount of the resulting PAC contribution(s)

Donor Clubs

KEY: make sure participants understand who may be solicited, what constitutes a solicitation, and the limits of coercion

Once PAC incentivizes solicitations, the participants are acting as agents of the PAC

- Many corporations use donor club membership as a way to incentivize
- Levels can be a fixed dollar amount, or a percentage of annual salary (up to contribution limits)
- Giveaways need not be expensive to be valuable: lapel pin, desk plaque, branded Zoom background
- Often tied with a valuable giveaway to a single or handful of members of the donor club, for instance, lunch with the CEO, trip to DC for lobbying fly-in
- Displaying membership in the PAC or a particular donor club to those outside the restricted class is OK
- Adding a special category for peer-to-peer recruitment, e.g., surrogate fundraising

Invitation-Only Events



- Reception/dinner/special events for PAC donors, often at sales or executive leadership conferences
 1. Zoom meet-ups
 2. Also tied in with lobby days
- Encourage signups in advance of the event to drive donations
- Boost donor giving levels and drive renewals at the event itself
- Solicitations must be accompanied by notices and disclaimers, so make sure attendees receive a donor response form containing required language

Tradeshow Booth

Particularly relevant for trade associations and membership organizations that hold periodic industry gatherings as part of their annual programming schedule

- PAC trade show booth in a visible location on the main floor
- Can refer even those outside the restricted class at the trade show: “Visit our PAC booth to learn more about ABC Association PAC”
- PAC booth staff must be well-trained:
 1. Only solicit those who are within the restricted class
 2. If not within the restricted class, still OK to provide an informational overview about the PAC (e.g., a one-pager) not containing a solicitation
 3. If a member corporation that has not provided prior approval, ask for prior approval from an individual authorized to provide it
 4. Cannot accept cash contributions of more than \$100, cannot accept anonymous contributions of more than \$50

Raffles and Auctions



- When held to support the PAC, the full price paid for every raffle ticket purchase or auction sale is a contribution to the PAC
- Like any other contribution: only restricted class
- Every ticket buyer or auction winner should fill out a donor response form
 - Also applicable to online auctions conducted via password-protected PAC website
- Special note for raffles: No contribution or purchase may be required in order to enter a drawing or raffle. This complies with every state gaming law except MN, GA, TX and FL. Contest rules should be written and available to participants.

Be Aware: PAC “Conscientious Objectors”



- Outreach to new potential donors may come with downsides
- Anti-“money in politics” messaging isn’t nuanced
- Your restricted class – and your executives – likely contain many who will question the purpose and activities of your PAC
- Always good to have PAC FAQ messaging ready
- PAC Board should consider “Guidelines” on contributions

Questions

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THANK YOU!



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