



Breakout Workshop: Association Compliance Spotlight – Prior Approval

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Prior Approval

- Under FEC regulations, a trade association PAC must obtain written authorization from a member corporation before soliciting the member corporation's eligible employees.
- Special rules apply to the content and time frame of the prior approvals.
- A trade association PAC may seek approval to solicit from an unlimited number of its corporate members.
- Corporations, however, may only authorize one trade association PAC to solicit its restricted class per year.
- If a parent corporation is a member of a trade association but not the parent's subsidiaries, prior approval may only be granted by the parent corporation. The same rule applies if a subsidiary corporation is a trade association member but not the subsidiary's parent corporation: only the subsidiary may grant prior approval.

Prior Approval, Cont.

- The member corporation must indicate the calendar year for which the solicitations are authorized and may grant approval for multiple years in advance.
 - In order to do so, a separate signature must be provided for each year.
- The form must state the requirement for corporate member approval and indicate that the corporation may not approve solicitation by a trade association PAC if it has previously approved solicitation by any other trade association PAC during the calendar year.
- The prior approval form may limit the scope of the solicitations to specific portions of the member corporation's solicitable class or limit the number of solicitations made in a year. It is not uncommon for there to be negotiations over these parameters.

Prior Approval, Cont.

- A request for prior approval may include a sample PAC solicitation (marked as a sample), but prior approval materials should indicate that contributions may not be solicited until prior approval is granted
- Maintain copies of prior approval authorizations
- Prior approval process applies to trade association PACs only and is not required for members that are partnerships or LLCs electing partnership treatment for tax purposes

Prior Approval Marketing Strategies

- Presentations to trade association corporate members
 - Presentations can include a PowerPoint briefing explaining prior approval and discussing the ways that the trade association's PAC benefits corporate members.
- Booth at trade association annual meeting and other events
 - The booth could be set up strictly to obtain prior approval, or could be set up to obtain prior approval and solicit contributions from individuals who may be solicited.
- Brochure
 - The brochure could be similar to a PAC brochure, but would solicit prior approval instead of contributions.
- Website

Prior Approval Work-Around Options

- Creation of individual membership tiers within the trade association
- Compensating trade association board members

Individual Membership Tiers

- Prior approval is not needed to solicit PAC contributions from individual members of a trade association.
- In order for individuals to qualify as trade association members, specific FEC requirements must be met. Each individual must:
 - Satisfy the trade association's requirements for membership AND
 - Affirmatively accept the trade association's invitation to become a member and EITHER:
 - Have significant financial attachment, such as significant investment or ownership stake; or
 - Pay annual dues of a pre-determined amount; or
 - Have significant organizational attachment
- Members may be solicited at any time on behalf of the trade association's PAC

FEC Requirements for an Individual to be a Member of a Trade Association, Cont.

Significant organizational attachment includes:

- Right to vote directly or indirectly for at least one individual on the trade association's highest governing board;
- Right to vote directly for trade association's officers;
- Right to vote on policy questions where the trade association is obligated to abide by results;
- Right to approve the association's annual budget; or
- Right to participate directly in similar aspects of the trade association's governance

Compensated Trade Association Board Members

- If a trade association board member is compensated by the trade association, the Board member is within the trade association's restricted class
- Board member's compensation must be on a salaried basis
- Board member's salaried compensation can be of any amount.

QUESTIONS?

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