

April 28, 2021

Skadden



Fundamentals Session One: PAC Compliance and Corporate Political Contributions

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

PAC Operations in Light of Recent Events



- Recent trend: Pressure on corporate PACs to focus on social issues, starting with 2016 LGBTQ rights and “bathroom bills”
- Expanded to include interest in diversity, equity and inclusion as a result of Black Lives Matter movement and responding to events of January 6, 2021
- Challenging environment for PACs after January 6
 - Donors
 - Media
 - Shareholders
 - Impact on maintaining Democratic-Republican balance

PAC Operations in Light of Recent Events



- Corporate reaction to January 6 (based on Center for Responsive Politics' survey of 102 major companies in late January):
 - 52 temporarily suspended all federal PAC contributions
 - 22 temporarily or permanently suspended contributions to the 147 members of Congress who voted against certifying the 2020 election results
 - Seven do not have a formal plan to suspend contributions, but will consider recent events when making future contribution decisions
 - One has asked that their contributions to certain members be refunded
 - 19 are continuing to review their political contribution policies
 - One terminated its PAC

PAC Operations in Light of Recent Events



- Options for resuming PAC operations
 - Permit donors to restrict contributions
 - » No earmarking
 - Consider revisions to 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
- Ensure any option taken is in compliance with governance provisions under PAC's Bylaws

What is a PAC?



- It is essentially an unincorporated bank account
- A separate legal entity and should have its own EIN number
 - But also a separate segregated fund 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
- PAC name/PACronym and nicknames. The full name of the connected corporation or association must be in the formal name of the PAC
- 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
- Issues related to incorporation

Establishing and Operating a Corporate or Trade Association PAC



- Steps to Establish a PAC
 - Best Practices:
 - » Corporate resolution to authorize the formation of a PAC
 - » Bylaws 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 the PAC or corporate resolutions.
 - > Indemnification
 - Requirements:
 - » Internal Revenue Service SS-4 Application for Employer Identification Number (EIN)
 - > A PAC must have its own EIN. It 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

Disbursements: Federal Hard Money Rules



• Contribution Limits for Individuals and Non-Multicandidate PACs

2021 – 2022 Limits

To Candidates: \$2,900* per election

To State Party Committees: \$10,000 per year

To PACs: \$5,000 per year

To National Party Committees: \$36,500* per year, plus:

- An additional \$109,500* per year for buildings
 - An additional \$109,500* per year for recounts and legal fees
 - An additional \$109,500* 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): \$876,000* per year

*These limits are indexed for inflation per election cycle

Soliciting for PAC: Rules for Corporations and LLCs



- 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, also are 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



- 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.

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 verbal 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.



- 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.

How to Increase PAC Participation



- 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 (27%)
 - » Live events with politician or guest speaker (19%)
 - » Event with CEO and/or senior executives (15%)
 - » Special communications, such as newsletters (14%)
 - » Annual gift (11%)
 - » Raffles (2%)

How to Increase PAC Participation



- 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

How to Increase PAC Participation & Contribution Limit



- 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



- 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 partnerships – special rules
- Corporate members may pay overhead expenses of trade association PAC and donate gifts for PAC fundraising: 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



- Methods of collecting funds
 - A trade association may use a payroll deduction or checkoff system to collect contributions from executives of member corporations, and member corporations may bear the cost of such program
- Donations by a trade association
- Other political activity by trade associations
- Participation by members in trade association PAC activities under HLOGA
 - LD-203

Disbursements: Federal Hard Money Rules



• Contribution Limits for Multicandidate PACs

2021 – 2022 Limits

- | | |
|-------------------------------|-------------------------|
| To Candidates: | \$5,000 per election |
| To State Party Committees: | \$5,000 per year |
| To PACs: | \$5,000 per year |
| To National Party Committees: | \$15,000 per year plus: |
- An additional \$45,000 per year for buildings
 - An additional \$45,000 per year for recounts and legal fees
 - An 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



- Knowing to whom one is making a contribution and necessity of making designations on the contribution check
 - DGA and RGA representations
 - » Operating accounts
- Joint fundraising committees
- 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."



- 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



- Form 3X
 - PAC filing options
 - » Quarterly requires pre- and post-general reports in even years and files semi-annually in odd years.
 - > May trigger additional reporting for making contributions to candidates in FEC-specified periods before and after special and primary elections.
 - > This is the default schedule when first registering
 - » Monthly requires pre- and post-general election reports in even years.
 - > Do not have to file pre-primary or special election reports.
 - » Recommended option: semi-annual in non-election years and monthly in election years.



- Form 3X
 - Receipts and Schedule A
 - » 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
 - Disbursements and Schedule B
 - » Confirm candidate/committee name, address, office sought, election and election year
 - > Disburse contribution checks on a timely basis
 - » Outstanding checks affect both the FEC reconciliation and reported limits to a committee
 - » Bank fees and operating expenditures are reported on Line 21(b), not Line 29



- 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 report against bank statement
 - » Outstanding checks
 - » Deposits in transit
 - » Keeping a record of Column B figures; maintain bank reconciliations in same place for reference
 - Bank reconciliations should be done by someone other than a check signer
 - Live and online access to bank activity helps to identify problems before the reporting periods end, whereas solely relying on a paper statement will delay review

Periodic Reporting — Bank Reconciliation



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

Notification of Multicandidate Status



- Federal Election Commission Form 1M (Notification of Multicandidate Status)
 - Must be filed within 10 days of meeting the criteria for multicandidate status
 - Two ways to qualify
 - » Through Affiliation
 - > Affiliated with another committee that has already reached multicandidate status
 - » By meeting all three of the below
 - > PAC has been registered with the FEC for at least six months
 - > Has received contributions from at least 51 individuals
 - > Has made contributions to at least 5 federal candidates
 - After notifying the FEC
 - » On Form 3x, PAC must check box stating the committee has reached multicandidate status
 - » Must include “Multicandidate Committee” on outgoing checks

Terminating a PAC



- Federal Election Commission Form 3x Termination Report
 - Covers first day after close of last report through the date of termination
 - \$0 cash on hand balance needed to terminate
 - File any other reports due before the FEC accepts termination
- Close Bank Account
- Notify the IRS
 - File the final 1120-POL marked “final return” or notify the IRS through a letter

Common PAC Reporting 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.
 - Forgetting to check the multi-candidate committee box on filed reports
 - Not including status on checks
- 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.

Common PAC Reporting 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 confirming that the annual amounts reported in Column B are adding correctly; Especially a problem when reporting overall 11ai and 11aii numbers because not all reporting software automatically calculate these figures.
- Listing the 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
- Not having a reliable record of all outstanding checks
- Leaving checks as outstanding for a period of more than three months without issuing a stop payment and voiding the record



- 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.



- 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 PAC bank accounts are opened using the committee's name and EIN, not a Tax ID for an individual or connected corporation
 - Bank reconciliations are done by someone other than a check signer or person responsible for PAC accounting

Ban on Corporate Contributions Under FECA Soft Money Rules



- 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
 - *CREW v. FEC* struck down a longstanding FEC rule that limited the duty of 501(c)(4) and 501(c)(6) non-profits that make federal independent expenditures to publicly disclose donors. The D.C. Circuit upheld the decision on August 21, 2020, so currently 501(c)(4)s and 501(c)(6)s must disclose the identity of donors whose donations are for the purpose of furthering independent expenditures.

Ban on Corporate Contributions Under FECA Soft Money Rules



- 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
 - Campaign committees
 - Joint fundraising committees
 - IE committees
 - PACs
 - 501(c)(4)s
 - 501(c)(6)s
- Purpose of corporate PAC
 - Promote interests of corporation, shareholders, employees, customers
 - Not personal views of PAC contributors
 - Shareholder derivative suit



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



- 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
 - Virtual event costs to be calculated
 - » Cost of Zoom or other service
 - » Value of time of equipment operators
 - » Gifts sent to donor's homes



- Live event costs to be calculated
 - » Food
 - » Value of the use of the room
 - » Use of any corporate facilities (e.g., for printing invitations)
 - » Use of corporate personnel in handling RSVPs or organizing the event, including directed time
- Certain LLCs and partnerships cannot take advantage of these exemptions

Bundling: Prohibited Activity



- 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
 - Attestations required in a bundling letter
 - » Authorized fundraiser
 - » Special position with campaign
- Best to have checks sent directly to campaign or credit card with a designation noting solicitor



- 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
- Can this be done as a virtual event?

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
- Providing registration information and absentee ballots if state law permits
- Registration and get-out-the-vote drives
- Voter guides



- 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

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

Roadmap for State and Local Giving — Corporate vs. PAC



- Corporate Contributions: Make corporate contributions where permissible
 - Consider corporate budgetary concerns
 - Administrative burden of processing corporate check vs PAC registration/reporting
 - Possible disclosure of corporate contributions on company website; corporate reporting requirements
 - Pay-to-play law implications
- PAC contributions: Make PAC contributions where corporate contributions are prohibited or otherwise impractical
 - May also choose to give both corporate and PAC in states where there is no aggregation
 - Pay-to-play laws also may apply to PACs
- Using Both Corporate and PAC:
 - In states where there is no aggregation, can maximize contributions by giving both corporate and PAC. Otherwise, no benefit since they will share the same limits

Considerations for State and Local Giving



- When making corporate or PAC contributions to state or local candidates, party committees or PACs, applicable state, and/or local laws may come into play
 - **Campaign finance considerations:**
 - » Permissibility of contributions by corporation or federal/out-of-state PAC
 - > Potential cumbersome or impractical requirements for federal or out-of-state PAC
 - » Applicable limits
 - » Sessional bans
 - » Lobbyist/employer restrictions
 - » Specific industry bans/restrictions (e.g., gaming or insurance companies/regulated entities)
 - » Corporate or PAC registration and/or reporting requirements
 - **Pay-to-play considerations:**
 - » Strict liability pay-to-play bans and reporting requirements
 - > Is the company a government contractor?
 - > If so, determine if the company has covered business; the recipient is a covered recipient; and if the prohibited period applies
 - » Avoid Linkage
 - **Importance of compliance system for political contributions**



- 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



- 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.
- Partnerships: Each state has different rules on pass-through



- Reporting Requirements

- 17 states require corporations to file reports if they make contributions.

Alaska

Maryland

North Dakota

California

Massachusetts

Ohio

Georgia

Minnesota

Pennsylvania

Hawaii

Montana

Rhode Island

Iowa

Nebraska

Tennessee

New Hampshire

Washington

- Some of these states are corporate ban states, where the reporting requirement is triggered by ballot measure contributions (e.g., Ohio and Massachusetts)



- Aggregation among affiliate companies
 - Most states aggregate among affiliates, *e.g.*, Georgia and Maryland.
 - New York does not aggregate among corporate affiliates for purposes of the \$5,000 per corporation limit.
 - » As of January 31, 2019, LLC contributions also are subject to the \$5,000 per entity limit, and LLC contributions are attributed to its corporate members.
 - California aggregates only if companies do not act independently.
- Aggregation among affiliated PACs
 - Most states aggregate affiliated PACs, *e.g.*, Kentucky and Maine.
- Aggregation among company and its PACs
 - Washington aggregates between company and its PAC.
 - California aggregates if decisions regarding company and PAC contributions are made by the same people.
 - Kansas is an example of a state that does not aggregate between a PAC and a corporation donation made by a connected corporation to the same candidate.



- 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.

Special Restrictions on Certain Industries



- New Jersey – Prohibits insurance companies, banks, utilities and their affiliates, doing business in the state from making contributions "for any political purpose whatsoever."
- New York state limits political contributions by owners of premises contracted for or used as a place of registration or as a polling place.
- Delaware has a ban on insurers, or banks acting as an insurer, contributing to an Insurance Commissioner candidate.
- Several states impose restrictions on lottery or gaming contractors.

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 (e.g., Ohio and Texas).
- Some states make it difficult or illegal to use a federal PAC (e.g., Alaska, Connecticut, Massachusetts, Minnesota, New York, and Rhode Island).
- Payroll deduction restrictions
 - New York and New Jersey
- Many states do not exempt administrative expenses or certain solicitation expenses. This can, for example, make PAC match impermissible.
 - For example, New Hampshire and New York treat administrative expenses as contributions subject to the applicable corporate limit.

Operating a Multi-State PAC



- Some states impose burdensome restrictions on PACs.
 - New York requires in-state bank account and treasurer. Transfers exceeding \$1,000 from out-of-state accounts are not permitted.
 - Vermont requires compliance with state limit on what a PAC can receive to \$4,210 per two-year cycle.
 - Washington state requires a federal PAC receive contributions of \$10 or more from at least 10 persons registered to vote in the state in the 180 days prior to the time a contribution to a state candidate or PAC is made.
- 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.

Establish Compliance Procedures for State Giving



- Political Activity Policy
 - Ensure pre-clearance is required for corporate and PAC contributions (direct and in-kind)
 - Ensure pre-clearance is required for covered executives' contributions in pay-to-play jurisdictions
- Compliance System
 - Approve and track all corporate and PAC contributions for compliance with campaign finance and pay-to-play laws
 - » Consider using software such as prior authorization and screening software
 - » Centralized vs. regional pre-clearance
 - Pay-to-play laws may cover subsidiaries and affiliates of contracting entity
 - Require covered employee donors to submit pre-clearance requests for personal political contributions in pay-to-play jurisdictions
 - Scope of pre-clearance should cover contributions not only to candidates, parties and PACs, but also c4s, 527s (such as RGA/DGA) and Super PACs
 - » Obtain representation letters to protect liability
 - Appearance concerns /linkage
- Training of Employees