

October 6, 2015
2015 Edition, Issue XXIII

If you have any questions regarding the matters discussed in this memorandum, please call one of the following representatives in the Political Law Group (Washington, D.C. office) or your regular Skadden contact.

Kenneth A. Gross

Partner | 202.371.7007
kenneth.gross@skadden.com

Ki P. Hong

Partner | 202.371.7017
ki.hong@skadden.com

Matthew Bobys

Counsel | 202.371.7739
matthew.bobys@skadden.com

Melissa Miles

Counsel | 202.371.7836
melissa.miles@skadden.com

Patricia Zweibel

Counsel | 202.371.7089
patricia.zweibel@skadden.com

Shayla Parker

Associate | 202.371.7534
shayla.parker@skadden.com

Charles Ricciardelli

Associate | 202.371.7573
charles.ricciardelli@skadden.com

Tyler Rosen

Associate | 202.371.7035
tyler.rosen@skadden.com

Kelvin Reese

Head Political Reports Analyst
202.371.7498
kelvin.reese@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

Maryland Proposes Regulations Regarding Its Pay-to-Play Reporting Law

The Maryland Board of Elections recently proposed regulations regarding its pay-to-play reporting law, which was amended earlier this year and now requires companies that have one or more Maryland state or local government contracts worth at least \$200,000 to register and file semi-annual reports regardless of whether they have reportable contributions. The proposed regulations are scheduled to be published in the October 16, 2015, issue of the Maryland Register. The public comment period will open on October 16, 2015, and is expected to close on November 16, 2015.

Below is a summary of the key provisions contained in the proposed regulations as well as other issues of note that could be the subject of comment letters.

Same-Day Registration

Under current regulations, businesses that enter into a qualifying government contract are required to register and file a statement of reportable contributions covering the prior 24 months within one business day of the award of the contract. The proposed regulations would reduce this timeframe and require such businesses to register and file on the same day the contract is awarded.

Registration and Disclosure by Parent Companies

The pay-to-play reporting statute requires that parent companies owning or controlling 30 percent or more of a subsidiary with a qualifying government contract register and report as if the parent itself had such a contract. The proposed regulations would clarify that only the immediate parent of a subsidiary with a qualifying contract needs to register and report, rather than attributing the contract all the way up to the ultimate parent company.

For the purposes of the 30 percent test, the proposed regulations define ownership interests to include equity interests, voting rights, control rights, and other governance or rights authority held directly or indirectly. Furthermore, control is broadly defined to mean having the authority to make decisions regarding "(1) [d]irection and amount of contributions, political spending, or any other political activity on behalf of the business entities; or (2) [r]esponsibility for day-to-day operation of the business entity or entities." Please note that these definitions may present unique issues for certain companies, including general partners and managers of private investment vehicles.

Attribution of Contributions by Subsidiaries

The current FAQs state that reportable contributions made by officers, directors and partners of each subsidiary of a filer, regardless of whether a subsidiary has a qualifying contract, must be disclosed by the filer — the filer being the immediate parent of a subsidiary that has a qualifying contract. Such parent companies would be required to survey all of their subsidiaries to obtain contribution information for their officers, directors and partners. The FAQs appear inconsistent with the plain language of the statute.

Limited Statement Affidavit

The proposed regulations formalize the process by which a business with qualifying contracts but no reportable contributions may file an affidavit that satisfies the reporting requirement. This electronic form will require the disclosure of the names of the government entities with which the business maintained qualifying contracts during the reporting period and a representation that it did not make applicable contributions in the cumulative amount of \$500 or more during a reporting period.

Please note that, unlike the approach under the law prior to its amendment, all contributions to a particular candidate made by covered donors are aggregated for purposes of the \$500 threshold. For example, if two officers each make their own \$250 contribution to a particular candidate, a filer would not qualify to file a limited statement affidavit and would need to disclose additional details regarding each qualifying contract, unless it applies for and receives a waiver.

Reports to the Chief Executive Officer

Under the pay-to-play statute, officers, directors and partners of a company with a qualifying government contract must report their applicable political contributions to the CEO. The proposed regulations would allow such reports to be made to a designee of the CEO and require that they be made no later than the last day of the applicable reporting period.

The proposed regulations include various other technical changes, including detailed requirements for submitting waiver requests. A copy of the proposed regulations is [here](#).