



Political Law Alert

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Post-Election Issues

Now that the 2016 elections are over, we must contend with special legal issues that arise from contributions made to, and expenses incurred for, federal, state or local inaugural or transition committees, as well as recounts and special elections.

Inaugural Committee Contributions and Inaugural Events

Presidential Inaugural Committee

The president-elect will designate a Presidential Inaugural Committee to sponsor the official inaugural balls. The Obama administration voluntarily prohibited inaugural contributions from corporations and lobbyists, and restricted other contributions to a maximum of \$50,000 each. The incoming administration has not yet announced any such voluntary restrictions. Please note, however, that there is a legal prohibition on contributions from foreign nationals to a Presidential Inaugural Committee. This restriction does not extend to U.S. subsidiaries of foreign corporations. Contributions to the Trump-Pence inaugural committee also raise issues under the federal pay-to-play rules discussed below.

- **Lobbying (LD-203 Reports):** For entities registered under the Lobbying Disclosure Act of 1995, as amended, (LDA) and the individual lobbyists they list, contributions to the Presidential Inaugural Committee are reportable on Form LD-203.

State and Local Inaugural Committees

For financial institutions subject to a federal pay-to-play rule (MSRB Rule G-37, SEC Rule 206(4)-5 or CFTC Rule 23.451), a contribution to an inaugural committee of a successful state or local candidate could trigger an automatic ban on business or compensation under those rules. See below for more detail on these federal pay-to-play rules.

As for state and local laws, many do not expressly address the permissibility and implications of contributing to an inaugural committee. In such states, permissibility may turn on the nature of the organization that is being used as the inaugural committee (a contribution to a candidate's campaign or PAC may be prohibited or limited under applicable election law, whereas a 501(c)(3) charity may not), and in some cases obtaining informal advice from the elections agency may be advisable. On the other hand, states like Kansas and Ohio expressly address the permissibility of contributing

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to inaugural committees in their campaign finance laws (e.g., in Kansas, contributions to inaugural committees are limited to \$2,000 from any person; in Ohio, contributions to transition funds (which may be used to pay for inaugural celebrations) for the joint offices of governor and lieutenant governor are limited to \$10,000 per donor, and for other statewide offices are limited to \$2,500 per donor). In addition, the ban on contributions from foreign nationals also may apply depending on what type of entity receives the contribution.

Given that the rules vary regarding the permissibility of giving to inaugural committees under state and local campaign finance and pay-to-play laws, preclearance of such contributions is critical.

Federal, State and Local Inaugural Events

Numerous inauguration-related events are expected in connection with the inauguration of the president and other elected officials (such as a governor). These may include inaugural balls as well as breakfasts and luncheons celebrating inaugurations or related to viewing an inauguration and an inaugural parade. Tickets or admission to these inaugural events generally are considered items of value and are subject to applicable gift law to the extent they are provided to public officials. Purchase of such tickets also may qualify as a contribution to an inaugural committee subject to the applicable laws described above.

- **Must Comply With Gift Rules:** To the extent such events involve government officials or employees, a company must ensure compliance with applicable gift and entertainment laws. Given that federal, state and local gift laws vary, if a federal, state or local officer or employee is invited, preclearance is critical.
- **Special Ban on Paying for a Congressional Member's Swearing-In or Inauguration Day Receptions:** House Ethics Committee guidance expressly states that lobbying firms and other private entities are prohibited from paying the costs of a member's swearing-in or inauguration day reception. Private entities also should avoid paying for such events held by U.S. senators. State and local laws vary regarding the permissibility of such payments.

Transition Committee Contributions and Transition-Related Activities

Presidential Transition Committee

Under federal law, monetary contributions in support of a Presidential Transition Committee are limited to \$5,000 from an entity or individual. Contributions to the Trump-Pence transition also raise issues under the federal pay-to-play rules discussed below.

State and Local Transition Teams

For financial institutions subject to a federal pay-to-play rule (MSRB Rule G-37, SEC Rule 206(4)-5 or CFTC Rule 23.451), incurring transition expenses for a successful state or local candidate could trigger the automatic ban on business or compensation under those rules. See below for more detail on these federal pay-to-play rules. They also may be subject to state or local pay-to-play, ethics and election laws.

Given that such state and local laws vary, preclearance of such contributions is critical.

Possible Lobbying Law Implications

If a corporate executive's transition-related activities include communications with covered officials, and the communications are for the purpose of influencing covered decisions on behalf of his or her employer, then there may be registration and/or reporting implications under federal, state or local lobby law.

Unlike the Presidential Inaugural Committee, contributions to the Presidential Transition Committee are not reportable on the Lobbying Disclosure Act's Form LD-203.

Corporate Executives Serving on Transition Teams

Individuals working with presidential transition teams do not become subject to the federal conflicts of interest and ethics laws applicable to government officials. However, other provisions may apply, such as Federal Acquisition Regulations intended to prevent a contractor from obtaining an unfair competitive advantage by assisting in the preparation of specifications of a government contract for which the contractor will be bidding.

To the extent a corporate executive serves on a state or local transition team (such as for a governor-elect), he or she may, depending on the jurisdiction, be treated as a public official and become subject to that state's or locality's conflict of interest laws. Moreover, use of corporate resources, volunteering during working hours, or the executive personally paying for expenses related to his or her volunteer activity may result in an in-kind contribution to the committee. State or local procurement laws also may prohibit a contractor from obtaining an unfair advantage by assisting in the preparation of specifications of a government contract for which the contractor will be bidding.

Given the variety of legal issues that may be raised, transition committee activities should be pre-cleared.

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Contributions to Recount Committees

Corporate contributions to federal recount committees are prohibited. For PACs and individuals, a separate limit applies per election (e.g., \$2,700 for individuals, \$5,000 for federal PACs) to an individual candidate's recount committee. A separate limit (\$100,200 per year for an individual and \$45,000 per year for a federal PAC) applies to a national party committee's recount committee. The contributions are reportable by the recount committee.

Contributions to state or local recount committees are subject to state or local law and possibly federal or state pay-to-play rules.

Contributions for Federal Special and Runoff Elections

Corporate contributions for federal special and runoff elections are prohibited. Such elections are treated as separate elections for limit purposes and a separate limit applies per election (\$2,700 for individuals, \$5,000 for federal PACs). The contributions are reportable by the recipient committee.

Contributions to state or local special and runoff election committees are subject to state or local law, and of course pay-to-play rules.

Pay-to-Play Rules and Post-Election Contributions

There are currently three federal pay-to-play rules (MSRB Rule G-37 for broker-dealers that underwrite municipal securities and municipal advisors, SEC Rule 206(4)-5 for investment advisers and CFTC 23.451 for swap dealers). All three rules cover making or soliciting state or local transition expenses or inaugural donations. Moreover, depending on the jurisdiction, certain state or local pay-to-play rules also may cover such contributions.

Employees Considering Government Service and Post-Employment Restrictions on Those Leaving the Government Sector

There are several federal and state rules that apply to employees leaving the private sector and entering government service. Bonus and separation agreements should be reviewed. In addition, we advise many individuals leaving government service and entering the private sector. Those employees often carry post-employment restrictions that impact their employer. We also advise individuals entering government service who require representation in the vetting process or assistance with personal financial disclosure and related tax issues.

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