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FEC Practice Guide for Corporations and their PACs

2d Edition (2020)

How to use this guide

This Guide is organized into discrete modules intended to allow the reader, such as corporate legal and compliance personnel and in-house government relations teams, to focus on the issues most relevant to his or her practice at a given point in time.

The Federal Election Commission (**FEC**) has many complex procedures that are memorialized in a mix of statutes, regulations, Commission policies, and directives, as well as norms that have developed in practice.

This Guide provides:

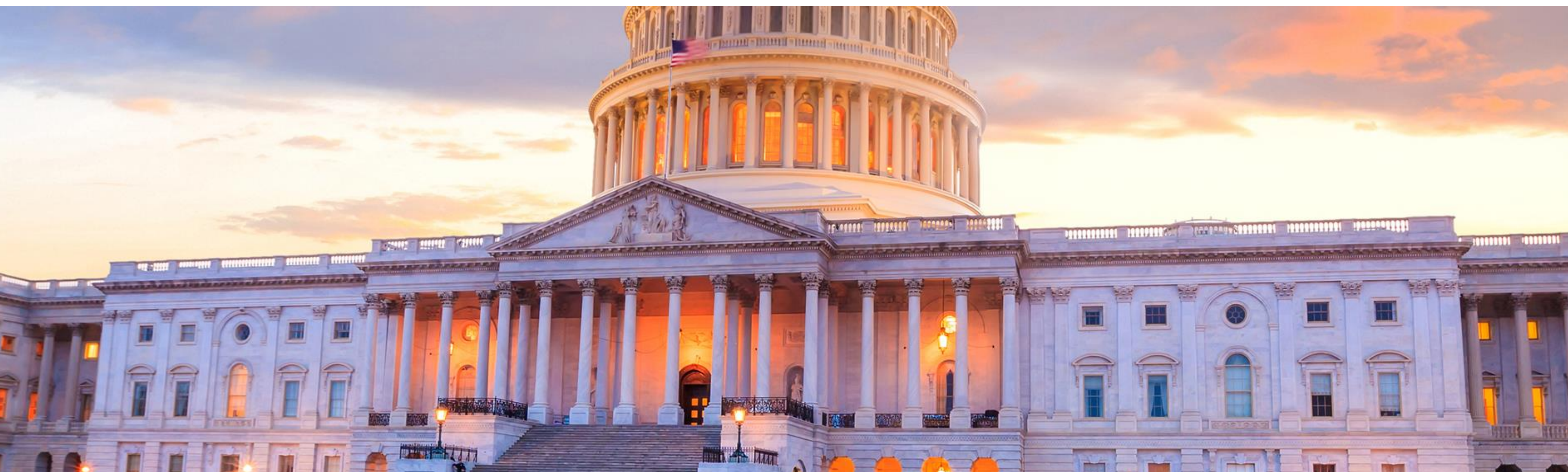
(1) overviews of the legal obligations;

(2) explanations of how the various FEC offices and audit and enforcement processes operate, focused on those with which a corporation or its political action committee (**PAC**) may interact;

(3) guidance on how to mitigate legal and reputational campaign finance law risk and how to respond if a potential violation is discovered; and

(4) numerous Practice Tips and Key Takeaways for quick reference.

This Guide is a high-level overview of federal campaign finance law as it applies to corporations and their PACs. For additional guidance with respect to your specific corporate political activities, please contact the A&O Political Law Team.



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Introduction[1]

U.S. and multinational corporations increasingly recognize the importance and value of engaging with government actors and the U.S. political process. Regulatory developments, congressional investigations, and public scrutiny, directed from Washington or the campaign trail can have a significant impact on a corporation's or sector's ability to conduct its business or on the public's perception of the corporation, both of which may negatively affect corporate revenue and profitability. Government decision-making, such as regulatory approvals or public procurement, often has an existential impact on business. As one McKinsey & Company study found, 42 percent of executives surveyed from across the globe cited regulators as an important stakeholder, up from 30 percent in the previous survey.[2] As a result, corporations need to incorporate a comprehensive and proactive government relations program into their overall corporate strategy.

One important component of a successful government relations program is a strategy for engaging in the electoral process. For most companies that are electorally active, the principal form of engagement is through PACs. Direct corporate contributions are prohibited at the federal level and there are important legal limits to directing employees' political giving. However, a corporation may establish and maintain a PAC and direct the PAC's contributions, as long as the PAC is funded by voluntary contributions from executives and senior employees. Corporate PACs may also hold events and many of its administrative expenses may be paid directly by the corporation. The importance of corporate PACs is evidenced by their collective fundraising: Corporate PACs raised more than $417 million in contributions from 2017-2018 and $405 million from 2015-2016.[3]

Corporate political activities are highly regulated as they are subject to a complex web of federal, state, and local laws and regulations that are seldom intuitive.[4] Moreover, a violation of political laws – even an inadvertent error – can potentially have significant reputational and business consequences.

Broadly speaking, federal campaign finance laws regulate the role of money in federal elections, in large part by imposing *prohibitions* on who can make political contributions and *limits* on the amount of contributions others may give. Federal campaign finance laws also comprehensively regulate the financing of political entities, such as campaigns and political parties.

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1 This Guide is for general guidance only and does not constitute legal advice. This Guide is not intended to address every permutation of federal campaign finance law or other related laws that may apply to corporate political activity. For legal advice regarding your specific circumstances, please contact the Allen & Overy Political Law Team.

2 *See* Alberto Marchi, Robin Nuttall, and Ellora-Julie Parekh, "How to Reinvent the External-Affairs Function" (July 2016).

3 FEC, Summary of PAC Activity January 1, 2017 through December 31, 2018 (Mar. 7, 2019), https://transition.fec.gov/press/summaries/2018/tables/pac/PAC1_2018_24m.pdf; FEC, Summary of PAC Activity January 1, 2015 through December 31, 2016 (April. 7, 2017), https://transition.fec.gov/press/summaries/2016/tables/pac/PAC1_2016_24m.pdf.

4 This Guide does not address other legal regimes that may also affect corporate political activity, including tax law, employment law, and state and municipal laws. In particular, this Guide does not address other federal restrictions that might apply to corporate political activity and individual employee contributions, known as pay-to-play laws. The Municipal Securities Rulemaking Board (**MSRB**), Securities and Exchange Commission (**SEC**), Financial Industry Regulatory Authority (**FINRA**), and Commodity Futures Trading Commission (**CFTC**) each have pay-to-play laws that restrict covered companies and employees from making contributions to certain state or local officeholders, even when those officeholders are running for federal office. If you have questions about any of those issues, please contact the Allen & Overy Political Law Team.

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The FEC is the federal agency with primary civil authority over the federal campaign finance laws. In this role, the FEC is responsible for adopting regulations, interpreting statutes, and providing regulatory guidance. The FEC is also responsible for civil enforcement of the laws. The FEC can seek monetary fines and other remedial measures, conduct audits of PACs, and sue to enforce the laws. The FEC has a particular enforcement process and an in-depth knowledge of the Commission's practices can be essential when navigating an enforcement matter. Although at the time of publication, the FEC does not have a quorum to vote on enforcement matters, it has in recent years brought some high profile and big ticket enforcement actions.

Responsibility for criminal enforcement of the federal campaign finance laws rests with the U.S. Department of Justice (**DOJ**). The DOJ has been actively pursuing criminal cases of federal campaign finance laws in recent years, particularly straw donor and foreign national contribution ban cases. The DOJ may pursue a criminal case without any action from the FEC and even where the FEC has elected not to pursue enforcement. In addition, providing false information to the FEC can create a separate avenue for criminal enforcement.

What are the risks associated with non-compliance?

The most obvious risk associated with non-compliance is being subject to an FEC enforcement matter or DOJ investigation. With respect to FEC enforcement, any individual can file a complaint – including whistleblowers, former employees, reform organizations, or even political opponents of a candidate or party that the corporation's PAC supported. Understanding your rights in responding to a complaint and how the FEC's process will proceed is crucial. Even if the enforcement matter is resolved in your favor, the process can create reputational risk. And once the matter is resolved, documents created during the enforcement process, including the corporation's and its PAC's responses to the allegations, will become public.

Outside the enforcement context, significant reputational and brand risk may result from the fact that so much information about corporate political activities is readily available in the public sphere. Every candidate, political party, and PAC must file reports with the FEC that contain information about all contributions made by the PAC, contributors to the PAC, and expenses incurred by the PAC. These reports become public almost immediately upon filing and the data is consolidated to make it more easily searchable and usable by the public.

Moreover, there is an increasing media focus on the intersectionality of corporate electoral engagement and campaign finance issues. These issues are covered by newer media entities with a specialized focus on the "business" of politics, as well as new dedicated teams with a focus on campaign finance at more traditional publications. There are also a number of active non-profit entities and advocacy groups dedicated to campaign finance reform that regularly comment on corporate political activities and seek to increase public attention to those activities, often by filing complaints with the FEC.

Module 1:

AN OVERVIEW OF FEDERAL CORPORATE CAMPAIGN FINANCE LAWS

This module addresses the obligations and restrictions on corporations and provides an overview of the more common ways corporations participate in federal elections other than through a corporate PAC.

1.1 Corporate Electoral Activity

Common ways corporations engage in political activities include: (1) funding independent expenditures and contributing to Super PACs; (2) creating a corporate PAC; and (3) hosting candidate events. Corporations are prohibited from contributing directly to federal candidates and political parties.

1.2 Restrictions on Corporate Political Activity

Federal campaign finance laws include the following prohibitions:

1. Corporations are prohibited from making contributions to federal candidates, parties, and PACs.
2. Foreign nationals, both companies and individuals, are prohibited from contributing, soliciting, or directing contributions to federal, state, or local candidates and PACs.
3. Straw donor contributions, or contributions made in the name of another, are prohibited.
4. National banks are prohibited from making contributons to federal, state, or local candidates and PACs.
5. Federal contractors are prohibited from making contributions to federal candidates and parties.

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Summary of Federal Corporate Political Activity Restrictions:[5]

Source	Contributions to federal candidates	Contributions to state or local candidates	Independent expenditures /contributions to Super PACs
U.S. corporation	Prohibited	Depends on local law	Permitted
U.S. national bank	Prohibited	Prohibited	Prohibited
Foreign corporation/person	Prohibited	Prohibited	Prohibited
U.S. corporate subsidiary of a foreign parent	Prohibited	Depends on local law*	Permitted*
Federal government contractors	Prohibited	Permitted[6]	Prohibited[7]

* These activities are only permitted to the extent that the activity does not include any direction or funds from the foreign parent or any other foreign person.

(A) Corporate contributions to federal candidates are prohibited.

A corporation may not use corporate funds to make contributions in connection with federal elections, which also means that corporate resources cannot be used to support a candidate's campaign. A "contribution" is defined as: "(i) 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; or (ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose."[8] In short:

- A corporation cannot make direct contributions to federal candidates, traditional PACs, or political party committees from corporate funds, including in-kind or non-monetary contributions.[9] In contrast, some states and localities permit corporate contributions.
- Employees cannot use corporate resources to support a candidate. Employees who use their office email, phones, letterhead, stamps, office space, or staff time to assist with fundraising or other efforts on behalf of a federal candidate's campaign may cause the corporation to make a prohibited contribution, even if the corporation is unaware that the employee is engaging in this activity. There is a narrow exception that permits a limited amount of volunteer activity without triggering the prohibition. Employees' use of corporate resources may also create issues under federal pay-to-play laws.

5 This summary is focused on restrictions imposed by the Federal Election Campaign Act (**FECA**), and does not address restrictions imposed under federal pay-to-play laws other than the federal contractor ban, including MSRB Rule G-37, SEC Rule 206(4)-5, SEC Rule 15Fh-6, FINRA Rule 2030, and CFTC Rule 23.451.

6 Federal contractors' state and local contributions may be prohibited under state and local law for reasons unrelated to the donor's status as a federal contractor.

7 *See* FEC MUR 7099 (Suffolk Construction Company, Inc.) (2017); MUR 7451 (Ring Power Corporation) (2019).

8 52 U.S.C. § 30101(8); 11 C.F.R. §§ 100.51-100.56.

9 *See generally* 11 C.F.R. §§ 100.52(d), 100.111(e)(1).

- A corporation cannot use corporate resources or facilities to engage in fundraising activities on behalf of a candidate or PAC other than the corporation's PAC. Use of corporate resources would violate the prohibition on "facilitating" the making of contributions by third parties.

The corporate contribution ban does not restrict a corporation's ability to make independent expenditures[10] or contribute to "Super PACs," as addressed in Section 1.2(G) below.

Practice Tip:

To ensure an employee does not unwittingly make a prohibited corporate contribution on the corporation's behalf, adopt a Political Activities Policy to guide employees on how they may lawfully engage in political activity in the workplace.

(B) Foreign nationals are prohibited from spending money or directing political activities in connection with federal, state, or local elections.

Foreign nationals—including foreign corporations, individuals, or other entities—are prohibited from making contributions or spending money in connection with a federal, state, or local election.[11] This prohibition is quite broad. Even in those states and localities that generally allow corporate contributions, contributions from foreign corporations are prohibited as a matter of federal law. As with other restrictions on contributions, this prohibition restricts foreign nationals' ability to make in-kind or non-monetary contributions.

A foreign national may not directly or indirectly fund or promise to make a contribution or donation to a candidate or party.

Foreign nationals also cannot direct, control, or directly or indirectly participate in the decision-making of any other entity, including a corporation, with respect to making contributions, donations, or spending money in connection with a federal, state, or local election.[12] For example, a corporation recently paid a $900,000 penalty where foreign parent executives were aware of suggested legal advice obtained in connection with a U.S. foreign subsidiary making a legal contribution to a Super PAC.[13]

As a consequence, it is particularly important that foreign affiliate entities do not directly or indirectly fund or subsidize a U.S. entity's corporate political activity. In addition, information barriers and other steps should be considered to limit the ability of a foreign executive or entity to be involved in decisions regarding U.S. corporate electoral engagement.

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10 An "independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents. 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16.

11 U.S. citizens and U.S. permanent residents (green card holders) are not subject to the prohibition.

12 11 C.F.R. § 110.20(i).

13 Allen & Overy, "Federal Election Commission Obtains $940,000 in Fines for Foreign Involvement in a U.S. Corporate Contribution to a Super PAC Supporting a 2016 Presidential Candidate" (March 2019).

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Practice Tips:

- Review the corporate structure and corporate governance policies to restrict involvement of foreign nationals in any corporate political activities of U.S. entities.
- Ensure that no foreign entity directly or indirectly subsidizes the corporate PAC expenses or state and local political contributions.

(C) Contributions "in the name of another" that are intended to hide the identity of the source of funds are strictly prohibited.

Companies and individuals cannot provide funds to another person to make a contribution.[14] Civil and criminal enforcement cases have been brought where senior executives ask an employee to make political contributions, but reimburse the employee with corporate funds by, for example, adding compensation to the employee's bonus or falsifying expense reimbursements.

This circumvention of the federal campaign finance laws is a serious violation and, where corporate or foreign funds are used to make the reimbursement, could result in multiple violations arising from the same conduct. The FEC takes these violations seriously and they are regularly pursued criminally by the DOJ.

Reimbursement schemes that involve state and local contributions can also lead to civil and criminal liability within the relevant jursidictions.

If a corporation uncovers a reimbursement scheme, it may choose to conduct an internal investigation and self-report its findings to the FEC in an effort to obtain leniency in the potential penalty. See Section 8.2 for further information about reporting potential violations to the FEC.

Practice Tips:

- Ensure supervisors are aware that bonus and compensation packages should not take into account an employee's contributions to or participation in the PAC.
- Leverage the compliance program's existing internal controls structure. A rogue employee might ask subordinates to make contributions and then reimburse them as part of a bonus or a false expense reimbursement. If compliance personnel are aware of the risk, they can be on the lookout for red flags.

(D) National banks are prohibited from making contributions to federal, state, or local candidates.

National banks are prohibited from making any contribution or providing anything of value to any federal, state, or local candidate or committee in connection with any election to political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.[15] This

[14] 52 U.S.C. § 30122.
[15] 52 U.S.C. § 30118(a).

prohibition applies to all federal, state, and local elections, political conventions, and caucuses.[16] At present, the FEC has not expressly extended the holding in *Citizens United*[17] to national banks.[18] Unlike other corporations, therefore, national banks may not make independent expenditures or contribute national bank funds to Super PACs.[19]

This prohibition only applies to the national bank entity itself and not to other corporate affiliates of the national bank. The national bank may form a corporate PAC and its employees may make contributions from their own funds to the PAC in their personal capacity.

This prohibition also does not affect the bank's ability to open bank accounts, pay interest on dividends, waive account fees, or provide loans in connection with a political campaign customer—as long as these services or concessions are consistent with the bank's usual business practices for other customers.[20] Demonstrating that services are consistent with the bank's usual practices may be more challenging for bespoke products or services.

The Office of the Comptroller of the Currency (**OCC**) has stated that if a bank examiner discovers that a direct or indirect political contribution was made by a national bank, the OCC will require that the bank stop the practice, take measures to prevent its recurrence, and make appropriate referrals to the FEC. If the FEC does not pursue the matter, the OCC may consider taking appropriate action, including supervisory and enforcement actions.[21]

(E) Federal government contractors are not permitted to make contributions pursuant to federal pay-to-play laws.

A person that holds a contract with the federal government may not make contributions to a federal candidate or party.[22] Federal government contractors are also prohibited from making independent expenditures and contributing to Super PACs.[23] This prohibition only applies to the contract holder and does not affect any other entity or person in the corporate family. The ban applies from the commencement of negotiation to completion of performance. In light of the prohibition on corporate contributions, this particular rule is most relevant to individuals who contract directly with the federal government.

The ban does not affect the ability of a corporation that is a federal contractor to form a corporate PAC and does not restrict personal contributions from employees, partners, shareholders, or officers of businesses with government contracts.

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16 *Id.*; 11 C.F.R. § 114.2.

17 *Citizens United v. FEC*, 558 U.S. 310 (2010).

18 In 2014, the FEC made some changes to the relevant regulations, but maintained certain prohibitions on national banks, including the ban on national banks making independent expenditures. Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 Fed. Reg. 62797, 62801 (Oct. 2014).

19 Super PACs are discussed in Section 1.2(G) of this Guide.

20 52 U.S.C. § 30101(8)(B)(vii); 11 C.F.R. §§ 100.7(b)(11), 100.142; OCC Bulletin 2007-31.

21 OCC Bulletin 2007-31.

22 52 U.S.C. § 30119(a).

23 *See, e.g.*, FEC MUR 7099 (Suffolk Construction Company, Inc.) (2017); MUR 7451 (Ring Power Corporation) (2019).

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(F) Federal pay-to-play laws may further restrict corporate and individual political action in federal elections.

Although not administered by the FEC, other federal laws may restrict contributions and solicitations by corporations, PACs, and certain employees. The MSRB, SEC, FINRA, and CFTC each have pay-to-play laws that restrict covered companies and employees from making contributions to certain state or local candidates who have direct or indirect authority over certain types of contracts.[24] These restrictions include contributions to federal candidates who are also covered state or local officeholders. Contributions to sitting Governors, State Treasurers, and Mayors—including federal contributions to incumbents seeking federal office—generally are covered by these pay-to-play laws, and can potentially bar the contributor's employer from doing business with various public entities in the state or local officeholder's home jurisdiction.

Companies that are subject to federal pay-to-play laws typically have robust policies and procedures designed to minimize the risk of running afoul of these laws.

(G) Independent spending

Corporations other than U.S. national banks, foreign corporations, and federal government contractors may make independent expenditures and contributions to Super PACs as long as the activity is not coordinated with a candidate or political party. Such activity is subject to reporting obligations.

As a result of the Supreme Court's decision in *Citizens United*, corporations are now permitted to engage directly in political advertising, such as by running ads for or against a candidate using corporate funds (commonly known as "independent expenditures" and electioneering communications), as long as those expenses are made wholly independently of any candidate or political party.[25] This means that independent spending must not be made in cooperation, in consultation, in concert, or at the request or suggestion of a candidate or political party.[26]

Corporations are also permitted to make unlimited contributions to "Super PACs," which are PACs that are established to make independent expenditures only.[27] Super PACs cannot coordinate expenditures with candidates or political parties and may not be established, maintained, or controlled by a candidate.

Independent expenditures and electioneering communications must be reported by the spender, and depending on the amount and proximity to the election, "real time" reports may be required. Similarly, contributions made to Super PACs will be reported to the FEC by the recipient PAC, similar to contributions made to traditional PACs.

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[24] *See* MSRB Rule G-37; SEC Rule 206(4)-5; SEC Rule 15Fh-6; FINRA Rule 2030; CFTC Rule 23.451.

[25] *Citizens United,* 558 U.S. at 310 (holding that corporations may make unlimited independent expenditures using corporate treasury funds).

[26] 52 U.S.C. § 30101(17).

[27] *See SpeechNow v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); *see also* FEC Advisory Opinion 2010-11 (Commonsense Ten).

1.3 Candidate Events

A corporation may host federal candidates in its offices for a "meet and greet" (*i.e.*, a non-campaign event), candidate appearances, or a fundraising event. The rules that apply to such events depend largely on whether the event is open only to the "restricted class" (*i.e.*, those employees who are eligible to be solicited for the PAC),[28] or is open to a broader audience, such as all employees or members of the public.

Meet and Greet (Non-Campaign Event)

A corporation may host a "meet and greet," which is a non-campaign-related event involving a candidate or officeholder. Such events should not be connected to the candidate or officeholder's campaign, and generally will not implicate campaign finance laws provided that this requirement is followed.

At a meet and greet, the candidate may speak generally about issues of interest to the corporation and the general public, such as pending legislation or other public policy issues. The candidate may not solicit campaign contributions or engage in election-related advocacy (*i.e.*, the individual appearing at the event should not encourage attendees to support or contribute to his or her candidacy). Accordingly, a reference to the candidate's campaign, an opponent's campaign, or the qualifications of other candidates could change the character of the meet and greet to one that is for the purpose of influencing a federal election.[29]

Corporations are not limited to who they can invite to a meet and greet—all employees of the corporation and the general public may attend. And because meet and greets are not considered to be related to a federal campaign or election, corporations are permitted to pay for expenses associated with such events, regardless of who is in the audience.[30] Corporations should be mindful of the potential application of gift and lobbying laws when hosting candidates and officeholders on corporate premises.

Candidate Appearance

Corporations may host a candidate on corporate premises to give a campaign speech or to solicit contributions, but restrictions may apply depending on the audience invited.

(A) Restricted Class Events

Restricted Class Events are events where only members of the restricted class are invited to attend a candidate appearance. For these events, corporations have some flexibility in planning for the event and paying the associated costs, such as the meeting space overhead and catering. However, the corporation may not pay a candidate's travel-related expenses associated with the event. Additionally, campaign-prepared materials (such as campaign brochures) may not be distributed. The corporation and its personnel also cannot assist in collecting contributions for the candidate as a result of the appearance or otherwise act as agents for the campaign in forwarding or handling contributions.

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28 See Module 3 for more information on the restricted class.

29 FEC Advisory Opinion 1992-6 (Duke), at 4.

30 The corporation may not pay for travel if the candidate holds a collateral campaign event before or after the corporate event. *See* FEC Advisory Opinion 1996-11 (National Right to Life Conventions, Inc.), at 6.

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Candidate appearances can also involve the solicitation of contributions to the candidate in question, provided that the solicitations are limited to the restricted class. However, there are still limits on corporate facilitation, and the corporation and corporate personnel cannot assist in collecting contributions for the candidate.[31]

The corporation may discuss the event in internal publications and may endorse the candidate as long as all election-related communications are limited to the restricted class.[32] Communication expenses in excess of $2,000 that expressly advocate for the election or defeat of a specific candidate must nevertheless be reported by the corporation.[33]

(B) Non-Restricted Class Events

A corporation may also host a candidate on corporate premises for the candidate to give a campaign speech where an audience beyond the restricted class is invited to attend.[34] The corporation can coordinate with the party or candidate on the structure, format, and timing of the appearance, but the corporation cannot discuss the candidate's campaign plans, projects, or needs.[35] The corporation also cannot expressly advocate for or against a candidate or promote or encourage express advocacy by employees in connection with a candidate appearance.[36] Moreover, the corporation must give equal opportunity to other candidates running for the same office or other parties to speak, if those candidates so request.

The corporation and its PAC cannot use these events to solicit contributions for a candidate. Instead, the candidate, a representative of the candidate, or a party representative may ask for contributions to be made to the campaign or party, or ask that contributions made to the corporate PAC be designated for the campaign or party, as long as the contributions are not directly accepted while on corporate premises (including before, during, and after the appearance).[37] The candidate also may leave campaign materials or envelopes for attendees.[38]

A corporation may pay the expenses in connection with a candidate appearance without the payment being considered a contribution or expenditure; however, such expenses cannot include travel or lodging.[39]

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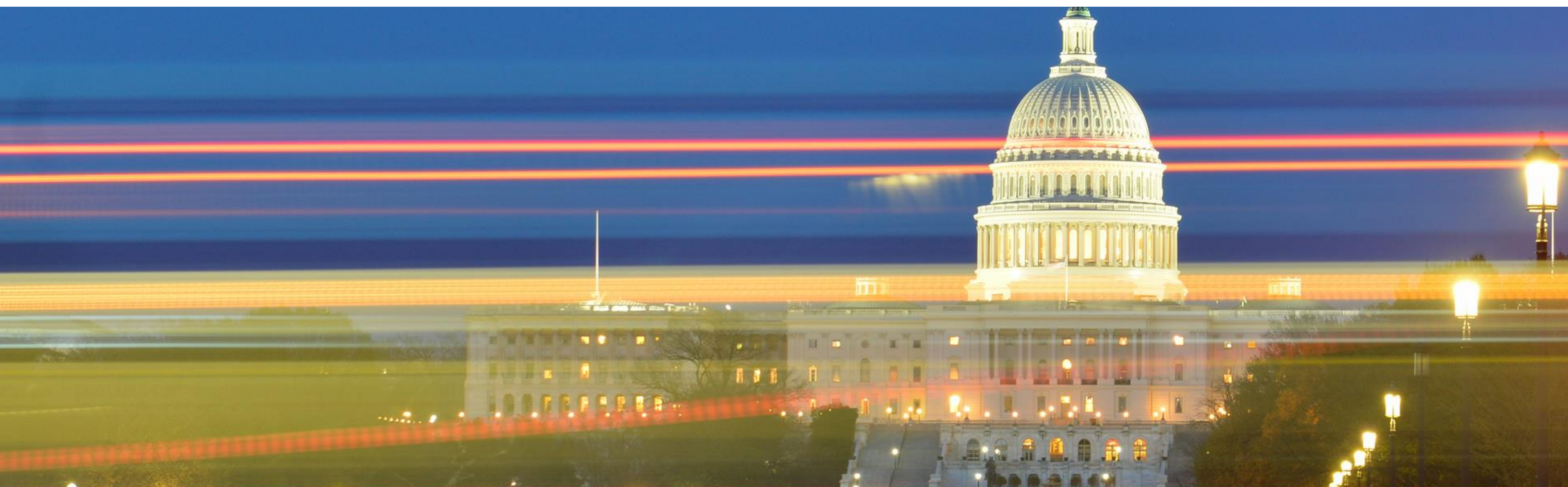
31 11 C.F.R. § 114.3(c)(2).
32 *See generally* 11 C.F.R. § 114.2(c).
33 11 C.F.R. § 100.8(b)(4).
34 11 C.F.R. § 114.4(b)(2)(i).
35 11 C.F.R. § 114.4(b)(1)(vii).
36 11 C.F.R. § 114.4(b)(1)(v).
37 11 C.F.R. § 114.4(b)(1).
38 11 C.F.R. § 114.4(b)(1)(iv).
39 *See* 11 C.F.R. § 114.4(b); FEC Advisory Opinion 1986-26 (National Conservative Foundation).

(C) Fundraising Events

A corporation can allow candidates or third parties to hold fundraising events on corporate premises. Because these events are typically not limited to the restricted class, there are a number of restrictions. The expenses for fundraising events cannot be paid by the corporation, but may be paid by the candidate's campaign, the corporate PAC, or individuals. If paid by the corporate PAC or individuals, the expenses are treated as an in-kind contribution and will count toward the PAC's or individuals' contribution limits.[40] To ensure that the corporation does not make a prohibited contribution by effectively "loaning" certain expenses, such as catering costs, employee time, and use of client lists, all expenses must be reimbursed prior to the event.[41] However, the use of corporate space may be reimbursed within a commercially reasonable time (at the usual and normal rental charge).[42]



40 11 C.F.R. §§ 100.52(d)(1), 114.2(a).

41 11 C.F.R. § 114.2(f)(2)(i).

42 11 C.F.R. § 114.9(d). However, if the corporation's PAC makes use of the organization's facilities in connection with a federal campaign, the PAC must pay for the use of the facilities in advance. FEC Advisory Opinion 1984-24 (Sierra Club), at 3.

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Module 2:

OPERATING AND MAINTAINING A PAC AND MAKING CONTRIBUTIONS

Although corporations may not make contributions to federal candidates using corporate funds, corporations may establish and operate a PAC, which is permitted to make contributions to and expenditures on behalf of federal candidates and other PACs.[43] The corporation may use its general treasury funds to pay for the costs of operating and raising money for the PAC, and the corporation may exercise control over its PAC. There are numerous requirements for establishing and operating a corporate PAC, detailed below.

2.1 Establishing and Registering the Corporate PAC

The Board of Directors of a corporation may vote to establish a corporate PAC. Obligations will commence almost immediately, so it is important to have already considered the compliance questions and dedicated resources prior to establishing a PAC.

Within ten days of establishing a PAC, a treasurer must be appointed and registration with the FEC must be filed using a Statement of Organization.[44] If information disclosed on the Statement of Organization changes, the PAC must report the change on an amended Statement.[45] Corporate PACs may also incorporate for liability purposes.[46]

2.2 Overview of Key Prohibitions for PACs

Corporations may not use general treasury funds to make contributions to their corporate PACs or to other types of political committees or candidates. Corporations may not commingle their treasury funds with the funds of their corporate PAC. Similarly, corporations cannot reimburse employees for their contributions to the PAC (or any other political contribution).[47] For example, a bonus or other discretionary compensation should not be designed to offset an employee's political contributions.

The corporation may, however, pay for operating expenses of the PAC, discussed in Section 2.5 below. The corporation may also provide the PAC with legal and accounting services if the individual providing the services is a regular employee of the corporation.

The prohibition on foreign national involvement in U.S. elections results in additional restrictions on foreign national activity in connection with PACs. These issues are addressed more fully in Module 4.

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[43] Corporations may also establish a PAC that exclusively engages at the state and local level (often referred to as a non-federal PAC). These PACs are not required to register with the FEC, but may be required to register in states in which the PAC is active.

[44] 11 C.F.R. §§ 102.1(c), 102.7.

[45] 11 C.F.R. § 102.2(a)(2).

[46] 11 C.F.R. § 114.12. Corporate PACs may be required to make certain filings with the Internal Revenue Service.

[47] FEC MUR 7247 (Bell Nursery USA, LLC) (2017); FEC MUR 7248 (Cancer Treatment Centers of America Global, Inc.) (2017).

2.3 Basic Organizational Requirements

PACs have flexibility to structure their organizational documents as best fits the organization and intended activity. Corporations often adopt By-Laws to govern their PACs and a PAC Manual to guide the individuals responsible for the management of the PAC.

The PAC must maintain at least one checking or transaction account[48] to be used for the PAC's funds.[49]

PACs are subject to federal and state tax law obligations.

Practice Tips:

- Drafting a complete set of organizational documents and policies before the PAC is formally established helps ensure compliance.
- Common operational documents for a corporate PAC include: By-Laws, PAC Manual, and policies to guide the PAC's decisions regarding which candidates to support with contributions.

2.4 PAC Personnel

The treasurer is a key player for the ongoing management of the PAC. The treasurer may be subject to liability in his or her official capacity for failing to comply with the obligations of the position and, in certain circumstances, may be personally liable.[50] The treasurer's unique responsibilities do not absolve the PAC from its responsibilities to accurately report its activities.[51] The treasurer (or registered assistant treasurer) is responsible for:

- filing complete and accurate reports and statements on time;
- signing and attesting to the accuracy of those reports and statements;
- depositing receipts in the committee's designated bank within ten days;[52]
- authorizing expenditures or appointing an agent (either orally or in writing) to authorize expenditures;
- monitoring contributions to ensure compliance with applicable limits and prohibitions; and
- keeping the required records of receipts and disbursements for three years after the transaction is last reported in FEC reports.[53]

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48 The PAC's bank account must be at a state bank, federally chartered depository institution (including a national bank), or a depository institution the depositor accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration. 52 U.S.C. § 30102(h)(1); 11 C.F.R. § 103.2.

49 Note that *affiliated* PACs may not share the same bank account, though they may establish separate bank accounts at the same financial institution. See FEC Advisory Opinion 1986-33 (Metropolitan Mortgage); FEC Advisory Opinion 1979-53 (Ownership Campaign).

50 *See, e.g.*, *FEC Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (Jan. 3, 2005).

51 *Combat Veterans for Congress PAC v. FEC*, 795 F.3d 151 (D.C. Cir. 2015) (affirming that although the FEC may pursue remedies against a treasurer in his or her official or personal capacity in connection with reporting failures, the PAC is separately and simultaneously responsible for reporting obligations).

52 Contributions not deposited within ten days must be returned to their donors.

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A PAC may not raise or spend any funds when there is a vacancy in the office of treasurer.[54] It is advisable for a PAC to appoint and register an assistant treasurer who may assume the treasurer's office if the treasurer is unavailable and to fill vacancies in either position as soon as possible. If a new treasurer is appointed or the treasurer's contact information changes, the Statement of Organization must be amended within ten days.[55]

The PAC's treasurer bears responsibility to ensure that the appropriate books and records are created and maintained.[56] The PAC must designate a custodian of records on its Statement of Organization, which could be the treasurer, assistant treasurer, or another person.

Most PACs are also operated and managed by a PAC Board. The Board typically adopts the By-Laws that apply to the PAC and other policies.

2.5 PAC Expenses

The corporation may pay most of the costs associated with running the PAC and soliciting contributions (*i.e.*, from funds derived from the corporation's commercial activities). Permissible expenses include office expenses (phones, computers, and office space), personnel costs (salaries), fundraising expenses (mail costs or expenses related to a PAC fundraising event), and compliance costs (such as legal and accounting fees).[57] Generally, if the corporation pays directly for a PAC-related expense, it need not be reported on an FEC report; but if the PAC pays for its own administrative expenses, it must be reported on its FEC reports.

Corporations can pay operating costs of the PAC either directly or by establishing a separate administrative account to be used solely for the PAC's administrative expenses. However, a corporation's funds, including the funds contained in any administrative account established to pay for PAC operating costs, may never be commingled with the PAC's own funds.[58] One exception is when the corporation acts as a collection agent for the PAC (*e.g.*, when collecting contributions via payroll deduction). In such case, the corporation may temporarily deposit contributions in a general account before transmitting them to the PAC.[59]

2.6 Making Contributions

Corporate PACs may make contributions to federal candidates, political parties, and other PACs. Contribution limits include in-kind (non-monetary) contributions, which most frequently become an issue when the PAC sponsors a fundraising event for a candidate. As discussed in Module 1, specific restrictions apply to fundraising events that occur on corporate facilities, whether the candidate, PAC, or an individual pays for the costs associated with the event.[60]

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53 11 C.F.R. §§ 104.14(a), (b), and (d), 102.2(a), 102.7(c), 102.9(c), 103.3(a)-(b); 110.1(k)(3).
54 11 C.F.R. §§ 104.14, 102.7.
55 11 C.F.R. § 102.2(a)(2).
56 11 C.F.R. § 102.9.
57 11 C.F.R. § 114.1(b).
58 *See* 11 C.F.R. §§ 114.1(b), 114.5(b); FEC Advisory Opinion No. 1981-19 (Louisiana State Medical Society PAC).
59 11 C.F.R. § 102.6(c)(4), (5).
60 The more detailed fundraising restrictions regarding hosting fundraisers are not addressed in this Guide.

Corporate PACs often adopt a policy that outlines the factors the PAC will use to determine to whom to make a contribution. Many PACs focus their efforts on incumbents and may consider whether the officeholder represents a district in which the corporation has offices or conducts business, whether the officeholder sits on committees that are relevant to the corporation, whether the officeholder supports or opposes legislation or issues of import to the corporation, or the officeholder's voting record, public positions, or legislative proposals. The adoption of such a policy is not required by federal campaign finance laws.

In addition to policies about to whom to make contributions, corporations should consider whether there are types of entities to which its PAC will not make contributions. Many corporations subject to federal pay-to-play laws do not allow their PACs to make contributions to state and local political party committees or to state and local incumbents running for federal office to minimize the legal risk in that area.

A corporation may also make high-level decisions about whether its PAC (or the corporation itself, if permitted) will give money to Super PACs, leadership PACs, joint-fundraising committees, and other vehicles used to fund electoral activity. These decisions go beyond PAC-specific policies and extend more broadly to corporate political activity, including at the state and local level.

2.7 Multi-Candidate Committee Status

There are two types of PACs: multi-candidate PACs and non-multi-candidate PACs. Once established, a PAC will be considered a multi-candidate PAC if it has:

- received contributions for federal elections from at least 51 persons;
- been registered with the FEC for at least six months; *and*
- made contributions to at least five federal candidates.[61]

A PAC must file a Notification of Multicandidate Status Form, within ten days of meeting the certification requirements or becoming affiliated with an existing multi-candidate committee. This filing is important because multi-candidate PACs have higher contribution limits than PACs that are not qualified as such.[62]

Multi-candidate corporate PACs may contribute $5,000 per election to federal candidates ($10,000 total for the primary and general elections) and $5,000 per year to another PAC.

PACs that have not yet qualified as multi-candidate PACs are subject to the same contribution limits as individuals.

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[61] 11 C.F.R. § 100.5(e)(3).

[62] The lower limits for non-multi-candidate committees have been upheld. *See Stop Reckless Economic Instability Caused by Democrats, et al. v. FEC*, 93 F. Supp. 466 (E.D. Va. Feb. 27, 2015), *vacated*, 814 F.3d 221 (4th Cir. 2016), *cert. denied,* 137 S. Ct. 374 (2016).

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2.8 Limits on Contributions Made by Corporate PACs

Some contribution limits are indexed for inflation and may change each election cycle. Others have remained at the same levels since the statute was adopted in the 1970's. The following chart provides the current limits for multi-candidate PACs and those that have not yet reached multi-candidate status.

2019-2020 contribution limits for corporate PACs:[63]

Contributor	Recipient: Candidate Committee	PAC (SSF and non-connected)	State/District/Local Party Committee	National Party Committee*	Additional National Party Committee Accounts**
Multi-candidate PAC	$5,000 per election	$5,000 per year	$5,000 per year (combined)	$15,000 per year, per committee	$45,000 per account, per year
Non-multi-candidate PAC	$2,800 per election	$5,000 per year	$10,000 per year (combined)	$35,500 per year (indexed for inflation)	$106,500 per account, per year

* National party committees include the three national committees for each major party (DNC, DSCC, DCCC, RNC, NRSC, and NRCC).

** Additional National Party Committee Accounts are for: (i) the presidential nominating convention; (ii) election recounts and contests and other legal proceedings; and (iii) national party headquarters buildings.

2.9 Filing Reports with the FEC and Record-Keeping Obligations

Filing FEC Reports

Once the PAC has registered, the PAC must begin to file periodic reports of receipts and disbursements. From a compliance perspective, filing complete and accurate reports with the FEC is the most important task for a PAC. Reports are made public almost immediately upon filing and may be pored over by journalists, reform organizations, and political opponents. In addition, the FEC's Reports Analysis Division (**RAD**), discussed in greater detail below, will review every report filed and may follow up with questions. RAD will decide whether to refer apparent reporting violations for enforcement or an audit.

Even if the PAC has no activity, it must file reports until the PAC terminates. PACs are required to file electronically if total contributions received or total expenditures made exceed, or are expected to exceed, $50,000 in any calendar year. PACs that are not required to file electronically, but choose to do so, must continue to file electronically for that calendar year.

[63] FEC, Contribution limits for 2019-2020 (Feb. 7, 2019), https://www.fec.gov/updates/contribution-limits-2019-2020/.

When are FEC Reports Due?

The filing schedule differs depending on whether the year is an election year. In election years, a PAC can choose to file on either a quarterly or monthly filing schedule. A PAC may change its selected filing schedule during the year.

In non-election years, quarterly filers automatically switch to a semi-annual reporting schedule. Monthly filers continue to submit monthly reports. A PAC may change its filing frequency by notifying the FEC in writing before making such a change, but may only do so once per year.[64]

Practice Tip:

Plan ahead for FEC filings. Late filings are subject to penalties and, by law, very few excuses will be considered. Having the information ready and maintained as it occurs will help the reporting process run smoothly.

What must be disclosed on an FEC Report?

Regardless of the filing schedule, the content required to be disclosed in the FEC report is the same. Generally, a PAC must provide information about its receipts and disbursements.

The following information must be disclosed:

- Contributions received by the PAC (including in-kind contributions), including:
  - the contributor's name, address, occupation, employer; and
  - the amount of the contribution.[65]

- Expenditures made by the PAC, including:
  - contributions made to candidates and party committees (including in-kind contributions) and related information, such as the candidate, amount, and date, as well as the recipient candidate or PAC, the office sought, and election for which the contribution was made;
  - independent expenditures;
  - coordinated expenditures; and
  - operating expenditures, including the amount, payee information, and purpose of the expenditure.

[64] 11 C.F.R. § 104.5(c).
[65] 11 C.F.R §§ 100.12, 104.3(a)(4).

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- Other transactions constituting a receipt or disbursement, including:
  - refunded contributions received by the PAC;
  - transfers between affiliated PACs and accounts;
  - charitable donations; and
  - loans.

As discussed in further detail below, the PAC is required to maintain records to support the disclosures made in its FEC filings pursuant to the FEC's record-keeping requirements for corporate PACs.

Safe Harbor

PACs and their treasurers are responsible for obtaining and reporting the necessary information to file complete and accurate reports. When certain reporting information related to the contributor is incomplete, the PAC and the treasurer may nevertheless be compliant if they can demonstrate that they used "best efforts" to obtain the required information. "Best efforts" generally involves requesting the required information about the contributor and submitting a follow-up with the request.[66] Such solicitations should specifically include the request for the required information and explain that the PAC is required to make its best efforts to obtain and report such information.[67]

Practice Tip:

Include a donor card or response form in written solicitations to accompany the contribution. The form can request that all necessary contributor information be sent to the PAC.

Record-Keeping

The FEC requires that PACs maintain records sufficient to substantiate the information contained in reports filed with the FEC. Some record-keeping requirements are required by law or regulation, whereas others should be maintained as a matter of best practice. The PAC must maintain its records in a manner that allows them to be available to the FEC for inspection upon request.

The PAC must retain a copy of every report filed with the FEC, along with original back-up records relevant to the report or notice (such as bank statements, paid invoices, etc.), for three years after the report is filed.

For contributions made to the PAC, the PAC must retain a copy or digital record of each check or written instrument by which contributions of $50 or more are made. The PAC must also maintain certain information about its contributors. Generally speaking, the PAC should maintain a record of each contributor's name and address, amount of the contribution, date of receipt, and the contributor's occupation and employer.

[66] 11 C.F.R. §§ 102.9(d), 104.7(a).
[67] 11 C.F.R. § 104.7.7.

For all disbursements made by the PAC, the PAC must record the date, amount of the payment, name, and address of the payee, and purpose of the disbursement.[68] For disbursements exceeding $200, the PAC must also keep a receipt, invoice, or canceled check.[69]

For contributions to federal candidates, the PAC must record the date, amount, office sought by the candidate (including state and congressional district), and the election for which the disbursement was made (primary, general, or special election).[70]

In addition, the FEC recommends that PACs keep records on transfers from affiliated PACs, bank loans, interest and dividends received, and repayments on loans made by the PAC. PAC records should contain the name of the source and the date and amount of each receipt.

Practice Tip:

Creating a procedures document or PAC Manual that describes these obligations and tailors the procedures to the corporation's structure and operations will help ensure that inadvertent reporting or record-keeping violations do not occur.

2.10 Operation of PACs within the Corporate Family and in Member Organizations and Trade Associations

An important question when establishing a PAC, and as the corporate structure evolves over time is the extent to which the PAC will engage with other entities in the corporate family. The corporate PAC may solicit personnel of a parent, subsidiary, branch, division, or affiliate of the connected organization.[71] While this broadens the number of people who can contribute to the PAC, all affiliated PACs are subject to a single limit when making and receiving contributions.

Complex criteria are used for determining whether a related PAC will be considered to be affiliated with the corporate PACs, so it is helpful for corporations to have considered these factors at the outset. In addition, corporate restructurings, mergers, and acquisitions could result in changes to the entities that are considered affiliated. If newly acquired entities also have their own PAC, steps should be taken to address the new affiliation. In the case of a divestment or spin-off, it may be advisable to seek an Advisory Opinion to confirm that the PACs are no longer affiliated and the timing of the disaffiliation.

[68] 11 C.F.R. § 102.9(b)(1).
[69] 11 C.F.R. § 102.9(b)(2).
[70] 11 C.F.R. § 102.9(b)(1)(iii).
[71] 11 C.F.R. § 114.5(g)(1).

Module 3:

FUNDRAISING FOR THE PAC

The success of a corporate PAC will depend largely on its ability to raise funds from eligible employees. The manner in which these solicitations are made and the tools available for fundraising are closely regulated. If employees are members of a union, the corporation must also provide the union with the same methods of soliciting for the union-affiliated PAC that the corporation relies upon to solicit for its PAC.[72] This Module will discuss these topics in detail.

3.1 Who May Be Solicited and When

Corporate PACs may solicit employees of the corporation, subject to certain guidelines and limits, but may not solicit non-employees or foreign nationals. Corporate PACs may solicit the "restricted class" or the "expanded class" periodically.

Restricted Class: A corporate PAC may solicit its "restricted class" at any time. The restricted class consists of the corporation's executive and administrative personnel (*i.e.*, employees who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities), the stockholders, and their families.[73] The corporate PAC may also solicit executive and administrative personnel of any parent, subsidiary, branch, division, or affiliate of the connected organization.[74] This may extend to certain franchisees and licensees.[75]

Determining the employees who are members of the restricted class can be nuanced and is unique to each corporate structure. It is important to identify the individuals who are within the restricted class, to document those efforts, and to periodically update the list as restructuring or other personnel changes are made. Importantly, the restricted class should be limited to U.S. citizens (including U.S. citizens living and working abroad) or permanent residents residing in the United States.

Whether employees of other members of the corporate family may be solicited and the determination of employees who may be solicited as part of the "restricted class" are questions for which corporations and their PACs often seek an Advisory Opinion from the FEC.

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72 11 C.F.R. § 114.5(k). *See* FEC MUR 7410 (Wine and Spirits Wholesalers of America, Inc. PAC) (2018).

73 11 C.F.R. §§ 114.1(c), (h).

74 11 C.F.R. § 114.5(g)(1). The FEC has set out factors to identify whether a corporate entity is *per se* affiliated. 11 C.F.R. § 100.5(g)(4). Alternatively, entities might be treated as affiliated based on consideration of ten circumstantial factors to determine the relationship between the entities. 11 C.F.R. §§ 100.5(g)(4)(i)-(ii).

75 11 C.F.R. § 100.5(g)(2); *see also, e.g.*, FEC Advisory Opinion 2012-12 (Dunkin' Brands). *But see* FEC Advisory Opinion 2013-19 (Yamaha Motor Corporation) (Commission could not reach agreement that U.S. subsidiary of Yamaha Motor Company could establish a PAC and solicit employees of its dealers and service centers).

Practice Tips:

- Coordinate with the Human Resources Department to identify individuals who should be included in the restricted class based on their responsibilities.
- Make efforts to exclude foreign nationals from the restricted class.
- Ensure the restricted class list is updated on a regular basis (such as prior to each solicitation) to reflect personnel changes.

Twice-Yearly Solicitations to the Expanded Class: A corporation or its corporate PAC may solicit employees beyond the restricted class and their families in writing twice per year.

Prior to engaging in these solicitations, PACs must appoint a custodian to receive contributions to preserve anonymity for employees whose response will not be disclosed on FEC reports.[76] The treasurer may serve as the custodian, provided that he preserves the anonymity of contributors, does not make decisions regarding the PAC's contributions and expenditures, and continues to fulfill his duties as treasurer.[77] The custodian must deposit all contributions within ten days of receipt and provide the PAC with record-keeping information for reporting purposes, as discussed below. The custodian may not reveal information of employees who do not contribute or contribute $50 or less, although the custodian should maintain these records for aggregating purposes.

Employees in affiliate entities may also be solicited in a twice-yearly solicitation.[78] However, employees whose wages are not subject to income tax withholding may not be solicited.[79]

A payroll deduction program may not be used to collect contributions as part of a twice-yearly solicitation. See Module for additional information.

The solicitation must be made in writing and mailed to the employee's home address. In addition to the disclaimers required on all solicitations, twice-yearly solicitations must also notify the recipient of the custodian arrangement and that the custodian will maintain the anonymity of employees who elect not to make a contribution, make a single contribution of less than $50, or whose aggregate contributions are less than $200.[80]

Member Associations and Trade Associations: These associations may also establish a PAC and solicit certain employees of their members.[81] A trade association may only solicit eligible employees after receiving approval from the member company.[82] The trade association's PAC may only solicit employees of a member

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[76] 11 C.F.R. § 114.6(d).
[77] If the custodian is not the treasurer, the custodian may not be a stockholder, officer, or employee of the corporation or the PAC.
[78] FEC Advisory Opinion 2004-32 (Spirit Airlines); FEC Advisory Opinion 1990-25 (Community Psychiatric Centers Federal PAC).
[79] 11 C.F.R. § 114.6.
[80] 11 C.F.R. §§ 114.5(a)(5), 114.6(c).
[81] 11 C.F.R. §§ 114.7, 114.8.
[82] 11 C.F.R. § 114.8(c).

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entity; for example, if a parent is a member of the trade association, but its subsidiary is not, the trade association (or its PAC) may not solicit the subsidiary's employees.[83]

3.2 Contribution Limits and Restrictions

Broadly speaking, PACs may accept contributions from its employees, subject to dollar-limits, as long as those contributions are made voluntarily. PACs may not accept corporate funds or funds from foreign nationals.

PACs may receive up to $5,000 per year from any one contributor.[84] Affiliated PACs share a single $5,000 contribution limit.[85]

To be voluntary, contributions cannot be secured by coercion such as the use or threat of physical force, job discrimination, or financial reprisal.[86] At the time of solicitation, the PAC must inform solicitees of the PAC's political purpose and the right to refuse to contribute without reprisal. If the PAC wishes to suggest a contribution amount, it must be careful to explicitly say that the amount is only a suggestion, that more or less than that amount may be given (*i.e.*, there is not a minimum contribution), and the amount given will not benefit the solicitee, just as the refusal to give will not disadvantage the solicitee.

Whether a particular solicitation or method of soliciting is sufficiently voluntary can be a challenging determination and is highly dependent on the circumstances. Simply including a disclaimer that the contribution is voluntary may not be sufficient to overcome other factors. For example, a "reverse check-off system" in which the contributor must opt out of making contributions is not permitted as it violates the voluntariness requirement.[87]

For these reasons, legal and compliance personnel should consider the timing, frequency, relationship between the solicitor, and the solicited party among other factors when evaluating the text and context of a solicitation. Even though there is no restriction on the number of times the restricted class may be solicited, corporate PACs should be careful to avoid situations in which employees feel compelled to contribute based on the frequency or timing of solicitations, such as whether the request coincides with a review period or a discretionary compensation determination.

3.3 Content of a Solicitation

Every solicitation must include certain disclaimers, including a statement informing employees of the PAC's political purpose and the employees' right to refuse to contribute without reprisal.

To establish that a contribution was made voluntarily, PACs typically include a robust disclaimer, such as:

[83] 11 C.F.R. § 114.8(f).
[84] 11 C.F.R. § 110.1(d).
[85] Note that each individual in a married couple has a separate $5,000 limit, even if only one spouse has an income. 11 C.F.R. § 110.1(i); FEC Advisory Opinion 2013-07 (Winslow II).
[86] 11 C.F.R. § 114.5(a).
[87] FEC Advisory Opinion 2001-04 (Morgan Stanley Dean Witter & Co. PAC).

> *Your participation in the PAC is completely voluntary. The Company will not favor or disadvantage anyone's employment because of a decision to participate, the amount of the contribution to the PAC, or a decision not to contribute at all.*

If the solicitation includes a guideline for contribution amounts or a suggested amount, an additional disclaimer is required that clearly states that the guidelines are merely suggestions, an individual may contribute more or less than suggested, and they will not be favored or disadvantaged based on the amount of their contribution or decision not to contribute.[88]

In addition to the disclaimer, it is important to carefully review the entire solitication and remove language that is improper or could be misunderstood as coercive.

Best practice is to include additional language to prompt compliance with contribution limits and reporting obligations. For example, solicitations typically include language to assist with reporting obligations:

> *Federal law requires the PAC to use its best efforts to collect and report the name, mailing address, occupation, and employer for each individual whose aggregate contributions are in excess of $200 in a calendar year.*

Solicitations may also include notice that federal law prohibits the receipt of contributions from foreign nationals, corporations, and individuals where the contribution exceeds $5,000. PACs also often include a notice that federal law prohibits the reimbursement of contributions made to the PAC.

In addition, the IRS Code requires that certain PACs include in solicitations directed to more than ten people an express statement that contributions to the PAC are not deductible as charitable contributions for federal income tax purposes.[89]

One common issue that arises for a PAC is the fact that the FEC has interpreted "solicitation" broadly. This means that communications that discuss the PAC might be required to have the requisite disclaimers, even if the communication was not intended to be a solicitation.

A communication need not contain a specific request for a contribution to be treated as a solicitation. A communication would be considered a solicitation if it encourages readers to support the PAC's activities or facilitates making contributions to the PAC.[90] For example, an article in an internal newsletter that states the amount of money raised by the PAC, the number of employees who participated in the PAC's activities, and includes a quote from the PAC's chairman encouraging donations, is considered a solicitation.[91]

By contrast, the FEC has found that information on a corporation's government relations site may not be considered a solicitation. Where such information is accessible to employees of that corporation but only refers to the fact that the corporation supports its PAC and describes generally the functions of the PAC, it would not be considered a solicitation if it does not encourage contributions. This is true even if the website

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88 11 C.F.R. §§ 114.5(a)(2), (5).
89 26 U.S.C. § 6113.
90 FEC Advisory Opinion 2000-07 (Alcatel USA), at 4.
91 *See* FEC Advisory Opinion 1979-13 (Raymond International Inc. Employees' PAC), at 2 ("The legislative history of the Act indicates that informing persons of a fundraising activity is considered a solicitation.").

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also states that employees desiring additional information on their eligibility or about the PAC's activities may contact the PAC.[92]

These are fine lines and in practice the distinctions can be difficult to execute. Best practice is to review communications that discuss PAC activities, such as employee newsletters, annual reports, and intranet content, and determine whether the communication could be viewed as a solicitation, whether disclaimers are required, or whether the language can be altered to ensure it is not a solicitation.

Practice Tips:

- All written solicitations should be pre-approved by Legal or Compliance personnel to ensure necessary disclaimers are included and to ensure the language could not be construed as being coercive.
- In addition, internal communications that discuss the PAC or its activities should be cleared through Legal or Compliance personnel to ensure they do not contain an inadvertent solicitation.
- Consider using pre-approved scripts for verbal solicitations.
- Consider limiting one-on-one in-person solicitations.
- During the pre-approval process for solicitations, consider whether factors other than the solicitation's content may create the appearance of coercion, such as the solicitor and solicitee relationship and the timing of the solicitation.

3.4 Methods That May Be Used to Obtain and Encourage Contributions

Payroll Deduction Programs

The PAC may institute a payroll deduction program, in which members of the restricted class are allowed to select an amount of contribution withdrawn directly from his or her paycheck. Under such a progam, each employee must demonstrate specific and voluntary donor intent.[93] PACs commonly use a signed authorization form to obtain a record of voluntary donor intent. The PAC must retain a copy of the record for three years from the date of the last reported contribution from the employee.[94]

Multinational corporations may implement a payroll deduction program at foreign affiliate entities and, in some cases foreign franchisees, to allow U.S. citizens living and working abroad to more easily contribute to the corporate PAC.[95] The foreign entity may pay for the expenses in connection with establishing and

[92] *See* FEC Advisory Opinion 2000-07 (Alcatel USA), at 5.
[93] FEC Advisory Opinion 1999-03 (Microsoft PAC).
[94] 11 C.F.R. § 104.14(b).
[95] FEC Advisory Opinion 1982-34 (Sonat) (with respect to overseas subsidiaries); FEC Advisory Opinion 1992-7 (H&R Block) (with respect to overseas franchisees).

maintaining the payroll deduction program abroad, as long as no foreign national is involved in decision-making related to the PAC's activities.[96]

When the corporation is involved in facilitating the payroll deduction program, it is acting as the PAC's collecting agent. It must keep records on contributors to provide to the PAC for disclosure purposes and forward the collected contributions along with the required record-keeping to the PAC. The corporation must forward individual contributions of $50 or less within 30 days and contributions exceeding $50 within ten days.[97]

Incentive Programs

The corporation may encourage participation in its PAC with incentive programs, such as holding a raffle for prizes, matching contributions to the PAC with charitable contributions, providing tokens of appreciation, and hosting parties and other events.[98] For example, a corporation can have a raffle for a prize such as a gift basket to benefit the PAC so long as state law permits it and the prize is not disproportionately valuable. As with all other solicitations, contributions through such a raffle or other fundraiser must be voluntary. The expenses related to these incentive programs may be paid by the corporation, but the PAC should reimburse the corporation for costs in excess of one-third of the money contributed.[99]

Voluntary contributions to the PAC from eligible employees may be matched by the corporation with a donation to a charity, as long as an individual contributor to the PAC does not receive a financial, tax, or other tangible benefit from either the corporation or the recipient charity. For example, the individual cannot receive the tax benefit of the charitable contribution made by the corporation as a "match" for the individual's contribution to the PAC.[100] The costs associated with such matching programs are permissible solicitation expenses. Contributions may be matched with charitable donations on a one-to-one basis and even two-to-one "matching" has been deemed to not create an impermissible benefit to the contributor.[101]

[96] *Id.*
[97] 11 C.F.R. § 102.8(b).
[98] 11 C.F.R. § 114.5(b)(2); *see also, e.g.*, FEC Advisory Opinion 2003-33 (Anheuser-Busch Companies, Inc.); FEC Advisory Opinion 2003-4 (Freeport-McMoRan); FEC Advisory Opinion 1994-7 (GEON PAC); FEC Advisory Opinion 1994-6 (Coors PAC).
[99] *Id. See also* FEC Advisory Opinion 1999-31 (Oshkosh Truck Corporation).
[100] *See, e.g.*, FEC Advisory Opinion 1994-7 (GEON PAC).
[101] FEC MUR 6873 (Wal-Mart) (2015).

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Module 4:

FEDERAL CAMPAIGN FINANCE LAW ISSUES FOR U.S. SUBSIDIARIES OF FOREIGN CORPORATES

Corporations with foreign entities in the corporate family are likely subject to heightened restrictions due to the ban on participation by foreign nationals (both individuals and corporations) in U.S. elections. The Federal Election Campaign Act (**FECA**) prohibits contributions, donations, expenditures, and disbursements solicited, directed, received, or made directly or indirectly by or from foreign nationals in connection with any federal, state, or local election.[102] The prohibition includes acting as a conduit or intermediary for foreign national contributions and donations.[103] Permanent residents, such as green card holders living in the U.S., are not considered foreign nationals for the purpose of this prohibition.

These foreign national restrictions and prohibitions apply equally to state and local elections.[104] U.S. corporations, however, may be permitted to contribute directly to candidates in some state and local jurisdictions. Therefore, a U.S. corporate entity that seeks to make contributions in state or local elections where permitted must ensure that the funds are not derived from foreign sources (such as the foreign parent or any foreign affiliates) and must ensure that individual foreign nationals are not involved in any way in the making of a contribution to a non-federal candidate, party, or PAC.

4.1 Key Restrictions on Foreign Parent Involvement in its U.S. Subsidiary's PAC

A U.S. subsidiary of a foreign corporation may establish a PAC, however, the following restrictions apply:

- No financing of the PAC's activities by the foreign parent;
- No foreign national control or influence over the PAC's activities;
- No foreign national may make a contribution to the PAC; and
- No person may solicit contributions from a foreign national.

With respect to financing the PAC's activities, the foreign parent (or any other foreign entity) may not finance the establishment, administration, fundraising, or solicitation costs of the PAC.[105] As a result, all PAC expenses must be derived from funds generated by the U.S. subsidiary. If the corporation can demonstrate through a generally accepted accounting method that it had sufficient funds from domestically-generated revenue to make its election-related expenses, the expenses will not be treated as being derived from a foreign source. This may be further complicated where complex intercompany transactions or the sharing of back-office functions and expenses occurs between a foreign parent and its U.S. subsidiary. For example, if the parent is

[102] 52 U.S.C. § 30121. It is unsettled whether the foreign national prohibition applies to ballot measure committees. *See* FEC MUR 6678 (MindGeek USA, Inc.) (2015); FEC MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City) (2017).

[103] For purposes of the foreign national prohibition, the FEC has interpreted the definition of "donation" as "essentially equivalent" to the definition of "contribution." FEC Advisory Opinion 2014-20 (Make Your Laws PAC).

[104] *United States v. Singh*, 924 F.3d 1030 (9th Cir. 2019).

[105] 52 U.S.C. § 30121; 11 C.F.R. §§ 110.20(f), 300.2(d).

providing a cash infusion to the U.S. subsidiary, it should be clear that the payment is not subsidizing PAC activities.[106]

With respect to foreign national direction or control, it is imperative that the individuals involved in the PAC's administration are all U.S. citizens or permanent residents. In particular, foreign nationals should not be involved in the decision-making process as to the amount or to whom the corporate PAC will make contributions.[107]

The FEC requires that the PAC's approach to prevent a foreign parent's direction or control with respect to supervision must be reasonable.

The PAC may not solicit or accept contributions from a foreign national. PACs may use a number of controls to ensure such contributions are not solicited or accepted. First, a contribution solicitation may include a disclaimer stating that contributions from foreign nationals are prohibited. Second, the donor card or payroll authorization form should require the contributor provide a home mailing address which will help to identify potential foreign contributions. Third, the PAC administrators should work with Human Resources personnel to ensure that PAC solicitations are not sent to individuals who are likely to be foreign nationals. Relevant information should be updated before solicitations are distributed. Such efforts may also be coordinated through departments that handle visa requests and the company's immigration lawyers. Fourth, if the PAC administrators receive a contribution that is potentially suspect, *i.e.*, the contributor's home or office address is abroad, the PAC may make "best efforts" to confirm the legality of the contribution by asking the contributor or refund the contribution within 30 days.[108]

4.2 Foreign National Volunteers and U.S. Citizens Living Abroad

The foreign national ban does not affect the ability of a U.S. citizen living abroad to participate in the PAC or political activities. Those individuals are free to contribute to the PAC and any other U.S. campaign. As a consequence, multinational corporations may implement a payroll deduction program at its foreign affiliate entities to allow U.S. citizens living and working abroad to more easily contribute to the corporate PAC. The foreign entity may pay for the expenses in connection with establishing and maintaining the payroll deduction program abroad, as long as no foreign national is involved in decision-making related to the PAC's activities.[109]

The foreign national ban also does not prevent a foreign national from volunteering on behalf of a candidate or political committee, subject to certain limitations.[110] The candidate or PAC may accept volunteer services, as well as any benefits that result directly and exclusively from those services without violating the foreign national ban or triggering any disclosure obligation.[111] As with U.S. volunteers, the exception only applies if the

106 FEC Advisory Opinion 1992-16 (Nansay Hawaii).
107 FEC MUR 7122 (American Pacific International Capital, Inc.) (2019).
108 11 C.F.R. § 103.3(b)(1).
109 FEC Advisory Opinion 1982-34 (Sonat).
110 52 U.S.C. § 30101(8)(B)(i); 11 C.F.R. § 100.74; *see also, e.g*, FEC Advisory Opinion 2004-26 (Weller); FEC Advisory Opinion 2007-22 (Hurysz).
111 FEC Advisory Opinion 2014-20 (Make Your Laws PAC).

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individual's time or services are not otherwise reimbursed.[112] For example, when an employee volunteers, the individual's time should not be compensated by the company and any expenses incurred in connection with the volunteer activity should not be paid by the company.

4.3 What Oversight Can a Foreign Parent Exercise over the PAC of its U.S. Subsidiary?

As a matter of good corporate governance and reputational risk management, the foreign parent may seek to exercise some oversight over the U.S. subsidiary's political activity and the PAC. There are some limited actions the parent may take without running afoul of the restrictions on foreign nationals.

To insulate the activities of the PAC from the influence of foreign nationals, the U.S. subsidiary may establish a "Special Committee" consisting of non-foreign nationals to oversee and manage the PAC.[113] For example, the FEC has said that a Board of Directors of a foreign-owned U.S. company that includes non-U.S. persons may nonetheless engage in "general corporate policy decisions" such as whether to establish or terminate the PAC and may set a "not-to-exceed" budget for political activities. Finally, the Board may exercise normal corporate procedures to ensure that the PAC does not exceed its "not-to-exceed" budget.[114] Please note that specific circumstances may vary and reputational risk analysis should be conducted prior to engaging in any of these activities.

Key Takeaways for Parent Oversight over U.S. Corporate PAC Activities:

- A foreign parent may not direct, suggest, or otherwise influence PAC decisions about:
  - To whom the PAC should contribute;
  - Contribution amounts; or
  - Endorsement of a candidate.
- A foreign national must not be a PAC board member, administrator, or have direct or indirect oversight over the PAC's activities.
- A foreign national must not supervise PAC administrators and decision-makers in connection with their PAC activities.

[112] 11 C.F.R. § 100.74.
[113] FEC Advisory Opinion 2000-17 (Extendicare PAC).
[114] *Id.*; FEC Advisory Opinion 2006-15 (TransCanada).

Module 5:

SEEKING CLARITY IN AN UNCERTAIN WORLD: ADVISORY OPINIONS

Many campaign finance laws and regulations were drafted decades ago and can be challenging to apply to new technologies and in light of subsequent upheaval in the courts and the FEC. One may request an advisory opinion to obtain further clarity. An advisory opinion must obtain four votes to be adopted. At the time of publication, the Commission does not have a quorum to provide advisory opinions.

If the advisory opinion is sought in advance and relief is obtained, the requestor (and others) may rely on that opinion in any subsequent enforcement for any conduct that is indistinguishable in all material aspects from that described in the original request.[115]

Corporations and their PACs most commonly seek advisory opinions with respect to how and from whom the PAC can raise money, such as who may be treated as members of the solicitable restricted class, which corporate family entities may be solicited, how incentive programs to encourage contributions can be operated, and how payroll deduction programs can be operated. In addition, when corporate restructurings occur, corporations and their PACs may seek an advisory opinion from the FEC to determine whether PACs in the corporate family should be treated as affiliated or could be permitted to "disaffiliate."

5.1 Advisory Opinion Process

When filing an advisory opinion request, the requestor typically will engage with the Office of General Counsel (**OGC**)'s Policy Division staff to ensure the request is complete and includes the facts the staff believe are necessary to resolve the legal question.

The fact pattern included in the request must be sufficiently specific and prospective.

Once the request is considered complete, the staff will draft an advisory opinion for the FEC's consideration. Commissioners may also draft their own advisory opinions, which frequently results in competing drafts. An advisory opinion will be placed on the agenda during a public hearing. Drafts will be made public and the requestor or any member of the public may comment on the drafts. Often, the timeframe between making the drafts public and the FEC hearing is quite short and the parties will have to act quickly to provide comments. The requestor and their counsel may also appear at the hearing to present their view of the issues and respond to questions from Commissioners.

Although the statute requires that the FEC issue an opinion within 60 days of receipt, in practice, receiving a response to an advisory opinion request often requires additional time. Thus, a prospective requestor should consider the potential timeline and plan in scheduling their proposed activities.

115 52 U.S.C. § 30108(c)(1)(B).

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Key Takeaways on Advisory Opinions:

- Requests cannot be based on past conduct.
- Requests must be factually specific.
- Plan ahead: the process can be lengthy so allow enough time for resolution before planning to conduct the proposed activity.
- Future reliance on the opinion is limited to the exact same conduct; how the conduct is framed in the request is important.

Module 6:

INTERACTING WITH AND GETTING TO KNOW THE REPORTS ANALYSIS DIVISION

The most frequent interaction a PAC is likely to have with the FEC is with the FEC's Reports Analysis Division (**RAD**). RAD is responsible for reviewing reports filed with the FEC. Most reports must be filed when due, even if there is no activity to report. RAD may send a "Request for Additional Information" (**RFAI**) to the PAC if RAD identifies a potential error, omission, or potentially prohibited activity in a report or if a report is missing or untimely filed. Sometimes the RFAI only seeks additional information to ensure the accuracy of the information reported to the public.

6.1 Requests for Additional Information

RAD's decision as to whether to send an RFAI is based on the application of threshold criteria on a per report basis, such as a similar apparent error repeated in a certain percentage of contributions or over a certain dollar threshold in a single report. Thus, errors that are repeated across multiple reports are not accrued to reach the threshold. The FEC approves new thresholds every two-year election cycle.

The PAC has 35 days to respond to an RFAI. The PAC should have procedures in place to ensure that RFAIs are timely received, tracked, and addressed. A PAC may respond to an RFAI either by filing an amended report or by filing a narrative response. Amendments can be complicated and take time to complete accurately, so it is important to evaluate the RFAI as soon as it is received. In addition to the PAC's reports publicly available, RFAIs and responses to RFAIs are also all published on the FEC's website.

RAD may refer an inadequate RFAI response to another division of the FEC for further action, including the Office of General Counsel's Enforcement Division, the Audit Division, Alternative Dispute Resolution (**ADR**), or Administrative Fines, discussed further below.

Timely, accurate, and fulsome responses to RAD will benefit the PAC in a subsequent matter.

6.2 RAD as a Compliance Resource

PACs, treasurers, compliance personnel, and attorneys are encouraged to contact RAD with questions and to seek guidance with respect to any report filing issues in advance of making a filing. RAD can be a useful resource to prevent a reporting violation. However, it is important to keep in mind that RAD staff create and maintain records of all calls. Such calls may be relied upon in subsequent enforcement matters or audits. Consider discussing the issue with counsel before calling RAD.

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Practice Tips:

- Call a RAD analyst with reporting questions, but consider that those conversations are documented.
- Always respond in a timely manner to an RFAI. Establish a process for responding to RFAIs will help avoid late responses.

Module 7:

TIPS FOR AN FEC AUDIT – NOT YOUR USUAL AUDIT

Corporations are accustomed to being subject to audits, whether internally, externally, or by government regulators. Like an SEC or FINRA examination, the FEC's audits are intended to determine compliance with applicable laws. FEC audits can be complicated, time-consuming, and are partially conducted in the public eye. The best strategy to minimize the risk of an FEC audit is to file complete and accurate reports. Audits are triggered on the basis of the number of "points" accumulated during a review of a PAC's reports. These "points" are calculated based on the presence of various issues with a PAC's report, such as late filing, omission of required information, or an insufficient response to an RFAI. The FEC dedicates much of its audit resources to candidate and party committees, but corporate PACs may find themselves subject to an audit if their activity exceeds the relevant thresholds. A PAC subject to an FEC audit should consider retaining counsel to negotiate the complicated process, take advantage of early opportunities to present the PAC's viewpoint, and potentially narrow the scope of the audit.

Even if a reporting issue caused the audit, the scope of the audit is likely to be broader and will test the PAC's compliance with many PAC obligations, including its solicitation and record retention practices.

In addition, the PAC filed amended FEC reports, amended its compliance procedures, and communicated with all contributors who may have received the inadequate solicitations to remind them of the voluntary nature of contributions. Even though the audit only related to activity during two years, the enforcement matter ultimately covered five years of activity and was not resolved until three years after the last year of activity covered.

7.1 What is an FEC Audit?

FEC audits are "enforcement-minded" to determine whether a committee substantially complied with FECA.[116] An audit is most likely to be launched on the basis of incorrect reporting that RAD identifies and refers to the auditors. The audit may seek records and internal documents. Auditors may review PAC solicitations to determine whether appropriate disclaimers were included, whether solicitations were targeted to the restricted class, whether contributions were made voluntarily, and whether procedures to prevent excessive and prohibited contributions, such as those from foreign nationals, were implemented and complied with. Thus, questions of law often arise in the course of an FEC audit. Accordingly, the PAC's approach should take into account the broad nature of an FEC audit.

[116] The Commission may audit a committee if its reports do not meet the threshold requirements for substantial compliance with the FECA. 52 U.S.C. § 30111(b).

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7.2 The Audit Process

An audit is launched only once four Commissioners vote to commence an audit. Audits cover a two-year period beginning January 1 of the year before the election and ending December 31 of the election year.[117]

A PAC will receive notification of the audit, a request for materials, and a designation of counsel form shortly after the Commissioners vote to initiate the audit. The PAC may choose to appoint external counsel to represent the PAC in the audit at that time. Although not required, experienced counsel can help to negotiate the process and address the legal questions that inevitably arise in the course of an FEC audit.

Audits include a fieldwork component, which is typically conducted on site at the PAC's office or the PAC's counsel's office. The fieldwork commences with an entrance conference and concludes with an exit conference with the auditors. At the exit conference, the auditors explain their work, the results, and the findings they expect to present to the FEC. At this phase, PACs are encouraged to resolve as many issues as possible directly with the auditors.

7.3 The Importance of Creating and Maintaining Records

Adherence to record retention obligations and the accessibility of those records will be scrutinized in an audit. Auditors will conduct an inventory of the PAC's records and determine whether any records are missing. The PAC may need to explain its view as to why the records are not legally required or do not exist. It is not uncommon for the audit staff to note in its report whether it received information sought (including whether there was significant delay in receiving records or whether the information provided was incomplete), and whether the PAC's failure to maintain or provide documents impeded the audit. Thus, it is important to ensure that the PAC's procedures contain the necessary record-keeping obligations and that those procedures are followed.

The adequacy of record-keeping may also affect the length of the audit. The duration of the fieldwork will depend in part upon the manner in which the records are maintained and whether those records are complete. If the PAC's records are substantially complete, fieldwork is typically completed within two to three weeks.[118]

[117] FEC Audit Division, The FEC Audit Process: What to Expect (2012) ("FEC Audit Process"), at 4.
[118] *Id.*

7.4 Opportunities to Respond to Auditors' Views and Present the PAC's Views

After the exit conference, PACs have ten business days to submit materials to the auditors to demonstrate that a potential finding is not warranted. If the PAC is successful, a potential finding will not appear in the audit report.[119] This is an important opportunity to narrow the scope of findings before the process advances. A PAC will also have the opportunity to respond in writing to the Staff's Interim Audit Report, Draft Final Audit Report, and Proposed Final Audit Report. The PAC may also request a hearing before the FEC adopts the Final Audit Report, which are routinely granted.[120] Unlike enforcement proceedings that are confidential until after they are resolved, audit hearings are public. At the hearing, the PAC (typically through counsel) may make oral arguments and ask questions.[121]

Often the FEC conducts further deliberation of issues raised by the PAC before approving the Final Audit Report in public meetings. In addition, the documents upon which the FEC is voting (such as the audit reports) are made public in advance of the public meeting. Once the FEC approves the Final Audit Report, the report is sent to the PAC and placed on the FEC's website along with the PAC's responses and other documents related to the audit.[122]

After the FEC approves the Final Audit Report, certain matters may be referred to the OGC or the Alternative Dispute Resolution Office for additional enforcement action. The PAC will have additional opportunities to respond to the issues raised in those contexts.[123] By involving counsel and resolving issues during the audit process, PACs may be able to avoid or limit the number of issues referred from the Audit Division to an enforcement matter.

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119 *Id.* at 1, 4.
120 *Procedural Rules for Audit Hearings*, 74 Fed. Reg. 33140, 33142 (July 10, 2009).
121 *Id.*
122 FEC Audit Process, at 2.
123 *Id.* at 4.

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Module 8:

HOW TO HANDLE AN FEC ENFORCEMENT MATTER

The FEC's enforcement process can pose unique risks for corporations; because complaints anyone may file a complaint, the FEC is required to address every properly filed complaint, and all materials related to the complaint are likely to become publicly available for media scrutiny.

Any individual can file a complaint against anyone for alleged violations of federal campaign finance laws, including a disgruntled employee, former employee, whistleblower, reform organization, or political opponent. Complaints may be brought against the PAC, the corporation, corporate executives, the PAC treasurer, or even contributors. The complainant may make the complaint public in an attempt to garner public attention to the alleged conduct. Upon conclusion of a matter, the complaint, responses, and other FEC documents demonstrating the OGC's fact-finding and legal analysis will all be made public, subject to limited redactions designed to protect the Commission's enforcement process.

In addition, in many instances, a corporation and its PAC can seek to obtain cooperation credit from the FEC by conducting an investigation and reporting the activity proactively. The FEC has a policy to provide those who self-report with meaningful reductions in penalties.

The FEC's enforcement process occurs in many stages and can be quite lengthy. The various stages provide a respondent multiple opportunities to make the case against enforcement or the imposition of a penalty. If a corporation, PAC, treasurer, or executive is a party to an FEC enforcement matter, an understanding of the process is essential. The process is addressed in Section 8.4 below.

8.1 Commencement of a Matter

Complaints: OGC's enforcement process is most frequently initiated by a person or entity filing a complaint with the FEC. Given that anyone can file a complaint, complaints could be filed by a current or former employee, a whistleblower, candidate or party associated with an electoral opponent, or a so-called "reform group," which are non-profit organizations whose purpose is to reform campaign finance or highlight concerns regarding government ethics.

Referrals: Matters are also initiated by referral, either externally from another government agency, such as the DOJ, or a state attorney general or state regulator, or internally from the FEC's own Audit Division or RAD.

Self-Report: Some matters are initiated by a voluntary submission submitted by persons or entities that may have violated federal campaign finance laws. The benefit of self-reporting is the potential for leniency in the penalty process and to expedite the investigation process.[124]

8.2 Self-Reporting

The FEC has adopted a policy to encourage complete and timely self-reporting.[125] The FEC may grant a 50% penalty reduction to respondents who report potential violations before discovery by an outside party, immediately cease and promptly report the violation to the FEC upon discovery, take appropriate and prompt corrective actions, amend reports or disclosures, make or waive any appropriate refunds, transfers, and disgorgements, and fully cooperate with the FEC to ensure the *sua sponte* submission is complete and accurate.[126] In addition, the FEC may grant a civil penalty reduction of up to 75% if the respondent meets the criteria for a 50% reduction *and* the violation was uncovered through a comprehensive investigation or audit initiated by the respondent. To receive this heightened reduction, the respondent must provide all documentation of the review to the FEC.[127]

A party may also seek a "fast track" settlement.[128] If the self-reporting party conducts an internal investigation and provides the FEC with sufficient facts and information, it is possible that an investigation will not be necessary. This will minimize the inconvenience of responding to an investigation and shorten the length of time to resolve the matter.

If potential violations of federal campaign finance laws have been identified, consider whether to self-report the violation. Enforcement actions often result in the payment of civil penalties as well as remediation efforts. Conducting these efforts before a government agency is involved and doing so early can help reduce the penalties, may reduce the duration of the enforcement proceeding, and may provide greater ability to define the scope of the issues or remediation efforts. These considerations are discussed in greater length in Module 10.

8.3 Confidentiality and Public Record for Enforcement Matters

The FEC is required by law to keep its actions regarding matters under review (**MURs**) confidential until after the matter is closed.[129] However, the complainant may make the complaint public at any time.[130] Redacted files for closed enforcement matters are made available to the public within 30 days after the matter has been closed (although, in practice, this may take longer).[131] The materials that a respondent provides to the FEC in a

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124 FEC OGC, *OGC Enforcement Manual* (2013) ("OGC Enforcement Manual"); FEC, Guidebook for Complainants and Respondents on the FEC Enforcement Process (May 2012) ("FEC Enforcement Guidebook").

125 *Commission's Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions)*, 72 Fed. Reg. 16695 (Apr. 5, 2007) ("Self-Reporting Policy").

126 Self-Reporting Policy, at 16697.

127 *Id.*

128 FEC Enforcement Guidebook, at 9.

129 52 U.S.C. § 30109.

130 FEC Enforcement Guidebook, at 22.

131 11 C.F.R. §§ 5.4(a)(4), 111.20.

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sua sponte submission or in response to a complaint will become public, as will any conciliation agreement.[132] The FEC will redact materials that are made public, but in the usual course, the redactions are designed to protect the integrity of the enforcement process, not to protect the respondent's internal information or business secrets.[133] Respondents should take care to make robust and complete submissions to the FEC, but also ensure the information is appropriate for the public domain or take care to protect that information.

8.4 Enforcement Process from the Respondent's Perspective

Before any matter is resolved through settlement or the assessment of penalties, there are a number of procedural safeguards for respondents. Throughout the process, four votes of the Commissioners are needed to proceed to a subsequent enforcement stage.

Most cases are resolved in a voluntary settlement, which may include payment of a civil monetary fine and filing amended reports, revising policies, or procedures, attending FEC training sessions. In the event that the respondent does not agree to a voluntary settlement with the FEC, the FEC may decide to sue the respondent in federal court to seek a penalty, although few cases proceed to this stage.

Notice and Response

OGC will send a respondent notice of a complaint within five days of receipt of a properly filed complaint, along with a letter describing the procedures and a designation of counsel form.[134] Respondents should establish a document hold and suspend the usual document destruction policies. Criminal penalties may be pursued for knowingly destroying, altering, or falsifying records in federal investigations.[135]

In addition, respondents should consider whether to retain counsel. This decision should be made expeditiously as a response will be due within 15 days of the date of notification.[136] If multiple individuals or entities are named in the complaint, multiple counsel may be necessary. The response is the respondent's first opportunity to demonstrate why the FEC should not pursue an enforcement matter. Because the response will frame the issues for OGC and the FEC, and may assist in narrowing or eliminating the potential violations subject to an investigation, it is important to dedicate sufficient attention to ascertaining the relevant information and providing a robust response.

The FEC encourages respondents to respond with as much specificity as possible and to ensure that each allegation is addressed.[137] Including sworn affidavits and other documentary evidence in support of the position is usually helpful.

During this phase, OGC may look to publicly available information, such as FEC reports, other disclosures filed with other agencies, a respondent's website, newspaper articles, social media, and even clips on YouTube. In addition, OGC may receive information from other law enforcement agencies. Although there has been

132 *Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70426, 70427 (Dec. 18, 2003).
133 *See id.* at 70428; *see also* OGC Enforcement Manual ¶ 8.2.2.
134 52 U.S.C. § 30109(a).
135 18 U.S.C. § 1519.
136 52 U.S.C. § 30109(a). Extensions of time are routinely granted.
137 FEC Enforcement Guidebook, at 10.

some debate about the extent to which OGC should engage in such fact-finding prior to launching an investigation, respondents should expect that OGC is examining public sources.

Reason to Believe

Upon review of the complaint and response, OGC may recommend that the FEC open an investigation because there is "reason to believe" a violation has occurred.[138] An investigation cannot commence without such a finding by four of the Commissioners. When the FEC approves a recommendation by OGC reason to believe finding, the respondent may submit additional factual or legal materials that the respondent believes are relevant for the FEC's consideration or resolution of the matter.[139] The FEC receives all responses and considers them when determining whether and how to proceed with an investigation or conciliation.

If the facts are largely uncontested and only limited investigation is required, OGC may also recommend that it be authorized to enter into "pre-probable cause conciliation," which will allow OGC to negotiate with the respondent (or respondent's counsel).[140] If the FEC is able to resolve a matter at this early stage, the respondent is typically awarded with a 25% reduction in the penalty because early settlements conserve FEC resources.[141]

The FEC may exercise prosecutorial discretion and dismiss a matter if it does not merit further use of FEC resources.[142] This analysis is based on factors such as the small dollar amount at issue, the insignificance of the alleged violation, the vagueness or weakness of the evidence or the merits of the response, the respondent's financial situation, or whether the facts at issue have been redressed in other legal proceedings, such as in a criminal matter.[143]

Investigation

The FEC may authorize an investigation upon finding reason to believe that a violation has occurred.[144] This investigation is conducted by Enforcement Division staff through informal and formal methods, which may include subpoenas and orders for information, documents, or depositions. Responses to subpoenas are generally due within 30 days of receipt of such subpoenas, but extensions may be granted.[145]

Probable Cause Finding

After the investigation is completed, or a no pre-probable cause conciliation agreement is reached, OGC will notify the respondent if it intends to recommend that the FEC find probable cause to believe a violation has occurred.[146] OGC will include with the notification a Probable Cause Brief stating OGC's position on the factual and legal issues of the matter. The respondent then has 15 days from receipt of the brief to file a reply

138 OGC Enforcement Manual ¶ 3.4.
139 52 U.S.C. § 30109(a)(3).
140 OGC Enforcement Manual ¶ 6.1.1.1.
141 *Id.* ¶ 6.4.3.3.
142 *Id.*¶ 4.4.3; *Heckler v. Chaney*, 470 U.S. 821 (1985).
143 *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12546 (Mar. 16, 2007).
144 52 U.S.C. § 30109(a)(2).
145 *Id.*
146 52 U.S.C. § 30109(a)(3).

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brief explaining their position. Respondents may also request a hearing to present oral arguments directly to the FEC before it votes on probable cause and a hearing request will be granted with the approval of only two Commissioners.[147] Such requests are generally granted.

After the Probable Cause Briefs and Probable Cause Hearing, if any, OGC will provide a written notice to the FEC and respondent advising whether it intends to proceed with or to withdraw its recommendation to find probable cause.[148] If this notice contains new facts or new legal arguments not previously contained in the Probable Cause Brief or raised by OGC at a Probable Cause Hearing, the respondent may request to address the new points raised in a Supplemental Reply Brief. Upon review of all OGC and respondent briefs, the FEC will then determine whether there is "probable cause to believe" that a violation has occurred; the case will be closed if the FEC does not obtain four affirmative votes.[149]

If the FEC determines that there is probable cause to believe that knowing and willful violations occurred, it may refer such violations to the DOJ for possible criminal prosecution.[150]

Post-Probable Cause Conciliation

If the FEC determines that there is "probable cause to believe" a violation has occurred, the FEC must attempt to conciliate with the respondent for 30 to 90 days.[151] A FEC-approved proposed conciliation agreement will serve as the basis for settlement negotiations.[152]

If OGC and the respondent enter into a conciliation agreement, the written agreement will become effective once it is approved by the affirmative vote of four Commissioners and signed by the respondent and the FEC's General Counsel. The FEC will close the matter once the signed conciliation agreement is approved. The conciliation agreement is a complete bar to any further action by the FEC based on the same facts, unless the respondent violates the conciliation agreement.[153] Although rare, the FEC is authorized by statute to sue in federal court if the terms of a conciliation agreement have been violated by a respondent.

Suit Authority

If post-probable cause conciliation does not result in an agreement, OGC may recommend to the FEC that it authorize a civil action in federal court.[154] If the FEC gives such authorization by a vote of at least four members, the FEC will file suit in the U.S. District Court for the district in which the person against whom such action is being brought is found, resides, or transacts business.[155] The FEC may seek a variety of remedies, including an injunction, restraining order, or civil penalty. The federal district court will review the facts of the matter *de novo*, enabling the court to rely on additional fact discovery by the parties.[156] Such cases

147 OGC Enforcement Manual ¶ 7.5.1.
148 11 C.F.R. § 111.16(d).
149 OGC Enforcement Manual ¶¶ 7.7, 7.8.
150 52 U.S.C. § 30109(a)(5)(C).
151 52 U.S.C. § 30109(a)(4)(A)(i).
152 FEC Enforcement Guidebook, at 20
153 52 U.S.C. § 30109(a)(4)(A)(i).
154 52 U.S.C. § 30109(a)(5)(D).
155 52 U.S.C. § 30109(a)(6)(A).
156 *See, e.g.*, *American Fed'n of Labor & Congress of Indus. Orgs. v. FEC*, 177 F. Supp. 2d 48, 63 (D.D.C. 2001).

are relatively rare because respondents are more likely to voluntarily conciliate cases with egregious facts and the FEC is less likely to authorize suit (or allow the matter to proceed at earlier stages of the enforcement process) where the likelihood of success is less certain.

Complainant's Recourse

If a complainant disagrees with the FEC's dismissal of a complaint, or any allegations contained therein, they may file a petition in the U.S. District Court for the District of Columbia within 60 days after the date of the dismissal. In addition, if the FEC does not act on a complaint within 120 days of filing, the complainant may file suit in the U.S. District Court for the District of Columbia.[157] Thus, even if the FEC agrees to dismiss a matter, there is the potential for judicial review and the FEC's dismissal may not conclude the matter.

[157] 52 U.S.C. §§ 30109(a)(8)(A)-(B).

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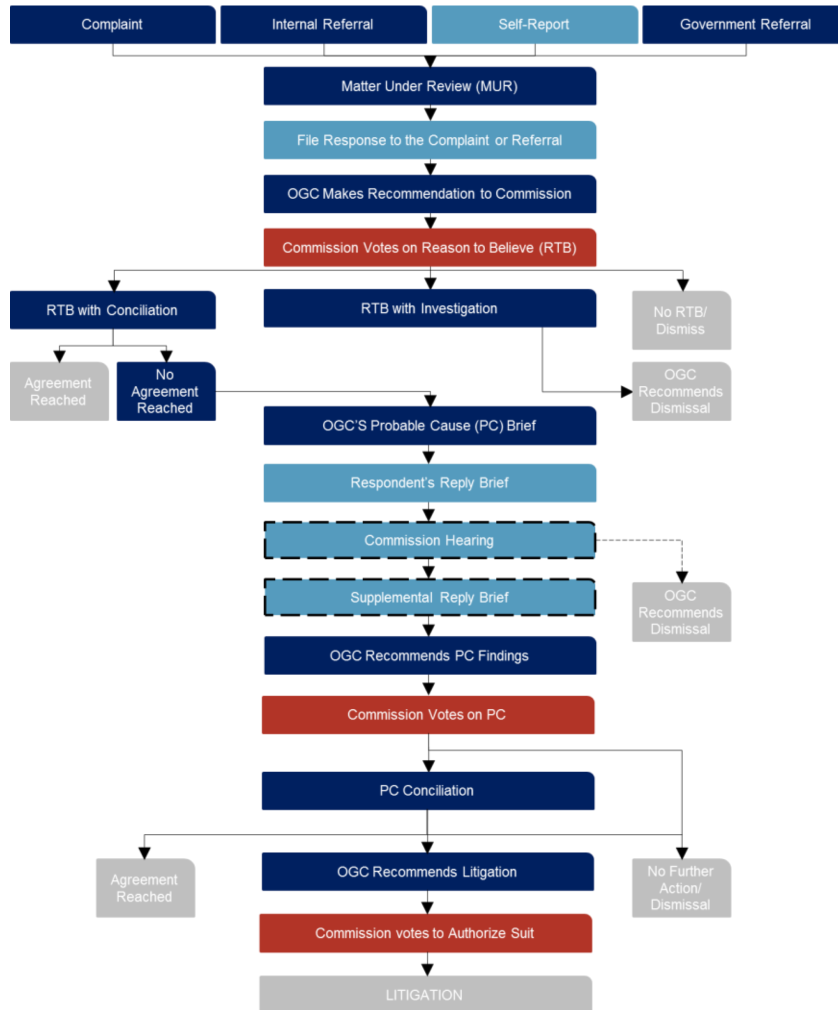
8.5 Overview of the Enforcement Process

As the following chart demonstrates, the FEC enforcement process for a MUR has many stages. Familiarity with the various standards and opportunities to influence the process is key. The portions shaded in light blue demonstrate the multiple opportunities in the process where the respondent may inform the process and present the facts. The red portions indicate the points in the process at which a Commission vote is required.



8.6 Statute of Limitations

The FEC may only seek civil penalties in federal district court within the statute of limitation period, which is five years from the time of the violation.[158]

8.7 Alternative Dispute Resolution/Administrative Fines

Some matters are handled outside the OGC's enforcement process. For minor "traffic ticket" type violations, typically for reporting omissions and errors that are small in dollar amount or proportionally compared to the entity's other activities, such matters may be resolved as an Administrative Fines matter.[159] There is often less room to negotiate the appropriate penalty in such matters and the procedural steps and FEC interaction are markedly different than those matters handled by OGC's Enforcement Division.

The FEC also has an ADR process in which these matters are also presented to the FEC for approval, but with a slightly different voting process. A matter is usually not included for ADR if there are facts in dispute or an investigation is required. The ADR process is designed to facilitate a faster resolution of the matter than a MUR. However, the respondents will be required to toll the statute of limitations while engaging in ADR negotiations.

The goal of ADR is primarily focused on preventing future violations. ADR matters regularly require some remedial actions to be taken by the respondent, such as amending reports, conducting training, or revising relevant policies and procedures. In contrast to a MUR, an ADR matter typically does not include a requirement to admit to violations or the payment of a civil penalty and the Commission will not make a finding that there is "reason to believe" a violation occurred.

8.8 Understanding the FEC's Interactions and Cooperation with Other Regulators and Implications for Corporate PACs

As mentioned above, the DOJ has jurisdiction to bring criminal actions for FECA violations that are alleged to be knowing and willful. The FEC may also pursue those matters to seek civil remedies. The FEC and DOJ may cooperate in an investigation or one may allow the other to conduct their investigation prior to the other. The FEC and DOJ currently operate under a Memorandum of Understanding that was entered into in 1978, although there have been repeated calls for a revision. Details of how the relationship operates aside, it is important to recognize that information can be shared between regulators at the federal, state, and local level.

The FEC may elect to refer a matter or share information with DOJ or any other federal, state, or local agency with jurisdiction over facts uncovered in the course of the FEC's work. Similarly, another agency may refer a matter to the FEC for consideration. When dealing with any regulator, it is important to keep this fact in mind. Cooperation with one regulator may be viewed favorably by another. These practices should be kept in mind whenever responding to a regulator's request for documents, information, or testimony.

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158 28 U.S.C. § 2462 (civil); 52 U.S.C. § 30145 (criminal).
159 FEC Enforcement Guidebook, at 24.

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Key Takeaways for FEC Enforcement:

- Any individual, including a disgruntled or former employee, political opponent, or campaign finance reform organization may file a complaint.
- If a corporation or its PAC uncovers a potential violation, consider whether to conduct an investigation and self-report to the FEC to obtain significant reductions in a potential penalty or to avoid a finding altogether.
- The enforcement process is complex and it is important to take advantage of the opportunities provided to limit the scope or penalties connected to an enforcement matter.
- The complaint, responses, and internal FEC documents describing the case will all be made public and may be subject to media scrutiny.

Module 9:

BEST PRACTICES TO MITIGATE CAMPAIGN FINANCE RISK

In light of each of the legal requirements discussed in this Guide, a corporation that wants to be politically active and maintain a PAC should develop a comprehensive compliance program. This can be done by following a few core compliance principles, which can substantially mitigate regulatory, legal, and reputational risks associated with political activity. By applying these principles and taking a proactive approach to compliance, corporations can attempt to avoid or mitigate the costs and reputational harm of being pulled into the FEC enforcement process.

Best Practices to Prevent FECA Violations:

- Consider the corporations's risk profile based on political and business activity.
- Adopt tailored, risk-based policies and procedures to address political law risks.
- Fully implement the compliance program:
  - Awareness program that includes regular trainings.
  - Regular monitoring and testing.
  - Certifications and representations.
  - Compliance-oriented record-keeping.
  - Regularly review the adequacy of the compliance program.

9.1 Assess the Corporation's Objectives and Risk Profile

To mitigate risk, one must first understand it. To do so, it important to understand the corporation's existing and prospective political activity and business activity.

The first step is to develop a detailed understanding of the objectives for the corporation's political activity. This may include a consideration of:

- goals for the PAC, including the anticipated size of the PAC and number of potential contributors;
- what the corporation is hoping to achieve through engaging with the electoral process;
- the extent to which electoral engagement includes involvement with federal, state, and local elections (particular care should be taken where the company is subject to federal pay-to-play laws);
- the manner in which the PAC intends to fundraise and collect PAC contributions (*e.g.*, payroll deduction, fundraising events, communications to the restricted class or outside the restricted class);
- executive and other personnel's involvement in the PAC's operation, including fundraising efforts (senior executives, government relations, compliance, etc.);

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- the extent to which the corporation seeks to engage in the electoral process through means other than its PAC;
- whether the PAC or principals of the firm are likely to be engaged in fundraising or hosting political events; and
- whether the firm is likely to be involved with high-profile or controversial campaigns or activities that may attract public scrutiny.

The next step is to assess the company's political law risk profile. To a large extent, this will be driven by the corporation's structure, business activity, and objectives, but it is useful to consider a number of factors, such as:

- the corporation's structure;
- the corporation's business activities and geographical footprint;
- the corporation's level of risk tolerance;
- the presence of foreign nationals, a foreign parent company, or affiliated foreign entities;
- the extent to which the corporation does business with government entities;
- the structure of the compliance department;
- how the corporation raises funds for the PAC;
- the corporation's public profile;
- the nature and extent of the corporation's lobbying activities;
- whether the corporation's political engagement is longstanding or relatively new;
- the degree to which the corporation's political engagement is consistent with or different from that of peer firms; and
- the corporation's overall compliance culture.

As noted above, particular characteristics, such as having a foreign parent company, are associated with specific legal and regulatory risks.

9.2 Adopt Tailored, Risk-Based Policies and Procedures to Address Risks

Once the initial assessment of the corporation's objectives and risk profile is complete, the next step is to adopt political law policies that are tailored to address the company's specific needs. While "off the-shelf" or one-size-fits-all political law policies and procedures can be a useful starting point, in application, they may be both under- or over-inclusive. Policies that are tailored to the corporation's objectives and risks can significantly reduce the chance of a compliance breakdown.

There are a number of specific policies and procedures that politically engaged corporations should consider adopting with respect to the establishment and operation of a corporate PAC, such as PAC by-laws, PAC procedures, PAC incorporation documents, and a PAC Manual. Other policies and procedures relate to political activities undertaken by the firm's officers and employees. These can include a political activities policy, a policy on the use of corporate resources on behalf of political actors, a policy on fundraising events and solicitations, and pay-to-play policies. Corporations should also consider the need to deal with political law

issues in the context of generally applicable policies, such as new employee onboarding and human resources policies, lobbying policies, employee benefits and compensation, and social media policies.

When drafting policies, it is important to focus on the corporation's resources and the need to actually implement the policies the company adopts. Such factors as the allocation of compliance resources, the number and duties of compliance personnel, and compliance culture can all play a role in mitigating political law risks.

9.3 Take Steps to Ensure Full Implementation of the Compliance Program

Measures to encourage full compliance with these policies by executives and other employees should be adopted, such as:

An Awareness Program That Includes Regular Trainings

A significant proportion of political law violations are caused by employees who did not know they were violating the law. As a result, a key way to mitigate political law risks is to ensure that employees are aware of their obligations. This can involve trainings and event-specific notifications. It can be particularly helpful to send election season notifications regarding employee political activity to ensure that employees are reminded of policies and procedures at a time when they might be receiving solicitations or themselves engaging in campaign fundraising.

As with other elements of a compliance program, awareness and training initiatives should be tailored to address a firm's risk profile. As a result, those employees with greater responsibility or exposure should receive additional attention, and are likely to be the focus of training efforts. For example, separate trainings might be conducted for executives, government affairs professionals, the PAC Board, restricted class members, and PAC administrators.

Conduct Regular Monitoring and Testing

Monitoring and testing is a key component of a robust compliance program. Monitoring and testing can ensure that existing policies and procedures are functioning appropriately and also detect violations. Monitoring and testing of PAC activities might include checks to ensure that contribution forms are complete and properly maintained, solicitation texts are reviewed and include appropriate disclaimers, and reconciliation of bank accounts and FEC reports. Larger corporations may be able to leverage internal audit functions to assist in monitoring and testing PAC activities.

Establish Compliance-Oriented Record-keeping

While the law imposes very specific record-keeping obligations, a robust compliance program requires that records be created that document how the company has complied with applicable requirements. These can be helpful in the event of enforcement or a potential violation, to show the efforts undertaken to prevent a

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violation, and to uncover the cause of a potential compliance breakdown. This will also improve the efficiency of the compliance department, particularly when personnel changes occur.

9.4 Regularly Review the Adequacy of Your Compliance Program

Corporations regularly undergo dynamic change ranging from major changes such as the acquisition or divestment of a business line to more modest changes such as the hiring of a new executive or a focus on a different regional market. Legal regimes and market practices can also undergo change, making prior approaches outdated. As a result, it is important to periodically review whether there have been any developments that merit changes to the corporation's compliance program. On occasion, retaining experienced political law counsel who did not establish the corporation's program to conduct a compliance review can provide a useful second look to help tailor the program to the corporation's current needs.

Module 10:

RESPONSE STRATEGY IF YOU DISCOVER A POTENTIAL FECA VIOLATION

In the event that a potential violation is discovered, a corporation's strategic, deliberate approach can significantly reduce potential liability and associated expenses. This module provides a strategy for legal and compliance response. Each situation will vary, and our proposed approach can and should vary to reflect the specific context of a potential violation.

A Three-Step Response to the Detection of a Potential Violation:

1. Conduct an internal review to determine the nature and extent of any violation.
2. Develop a remediation plan. Fix the issue itself and prevent it from recurring.
3. Consider whether and how to engage with regulators.

10.1 Conduct an Internal Review to Determine the Nature and Extent of Any Violation

A corporation should conduct an internal review to consider whether a statute, regulation, internal policy, or best practice has been violated. This should include both a review of the relevant facts as well as applicable legal principles and market practice. If the review reveals a potential violation, it is important to consider whether a possible exception or defense may apply, such as the "Best Efforts" defense.

Whether you launch a full-blown investigation or conduct a more targeted review of the circumstances, it is most important to act swiftly to ascertain the scope of the potential violation, including the timeframe, individuals involved, amount at issue, and other relevant facts.

Depending upon the extent of the potential liability, Compliance, Legal, Audit, or Risk Committee should consider whether to retain outside counsel to conduct an independent investigation of the matter or of the PAC's compliance program more broadly. While involving outside parties may require additional resources, it is often beneficial to having an independent third-party involved, and outside counsel may also have special expertise while also being able to invoke attorney-client privilege.

10.2 Develop a Remediation Plan

Armed with information about the potential violation and its scope, develop a plan to remediate the issue.
There are two distinct elements to the creation of a remediation plan:

Address the potential violation itself, and attempt to unwind the conduct that could be considered unlawful. The remediation plan should be tailored to the potential violation, and may involve refunding excessive contributions, amending FEC reports, or reassigning or disciplining employees.

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Address the compliance breakdowns that gave rise to the potential violation, which may involve instituting additional trainings, enhanced monitoring, and a review of effectiveness of the compliance program.

Each aspect of the remediation plan should take into account whether and to what extent to engage with regulators. Each aspect should also be tailored to anticipate how the regulators might view the remediation plan. In certain circumstances, such as where funds have been embezzled from the PAC, the steps that are required for remediation will be quite clear. In other cases it will depend on your assessment of the specific context of the violation.

10.3 Consider Whether and How to Engage with Regulators

The third step is to whether to engage with regulators regarding a potential violation. In some cases, there will be clear advantages to regulator engagement. For example, if the violation appears to be a clear breach of law, it may be advisable to self-report to the FEC. As discussed in Module 8, the FEC has a policy for leniency when violations are self-reported that includes potential benefits of a reduced penalty or credit for cooperation that might be considered in discussions with other interested regulators (such as the DOJ or state regulators). Self-reporting also allows the company to frame the issues for the FEC, rather than allowing another party (such as a former employee, watchdog, or political actor) to frame the issues. It may also be possible to request fast track resolution, which can reduce the time required to resolve the matter and related expenses.

Some issues may be resolved in a more tailored manner. For example, some reporting issues may be resolved by amending FEC reports without the need for a robust internal investigation. Before amending a report, it is important to understand the potential significant impact of those amendments. Amendments might trigger an enforcement matter regarding whether reporting violations occurred or information was reported in an untimely manner. Depending upon the circumstances, it may be advisable to consult with your RAD analyst or counsel before filing amendments to ensure that proposed amendments are necessary and would cure any potential reporting concerns.

Conclusion

In sum, implementing programs around federal campaign finance laws and best practices is detailed, complicated, and time-consuming. For these reasons, it is important to have knowledgeable counsel with experience inside the agency. Whether your corporation operates a PAC or otherwise participates in elections, consider conducting a periodic review to determine compliance with federal law and regulations. Doing so in advance of significant electoral activity (such as in Presidential election years) can help avoid issues that could result in greater expense of an audit or enforcement matter down the road.

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