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Federal Ethics and Lobbying Rules

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JANUARY 20, 2011



Topics for Today

OVERVIEW OF POLITICAL LAW ISSUES FOR THE NEW YEAR

- Lobbying Disclosure
 - Who must be registered
 - Reporting amount spent on lobbying
 - LD-203
 - State issues
- Gift Rules
 - Federal
 - State
- Campaign Finance
 - Independent Expenditures
 - Is your PAC ready for the 2012 cycle?



Lobbying Disclosure

Process for Compliance



Federal Lobbyists

TWO PART TEST

- More than one lobbying contact
AND
- More than 20% of time on lobbying activities in calendar quarter



Lobbying Contact

- Any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—
 - the formulation, modification, or adoption of Federal legislation (including legislative proposals);
 - the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
 - the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license);
or
 - the nomination or confirmation of a person for a position subject to confirmation by the Senate.



Other Definitions

COVERED LEGISLATIVE BRANCH OFFICIALS

- Anyone in Congress – from Members to the receptionist

COVERED EXECUTIVE BRANCH OFFICIALS

- President, Vice President, & Executive Office of the President
- Levels 1 through 5 of the Executive schedule (cabinet & some below)
- Certain military officers
- Schedule C political appointments



Other Definitions

LOBBYING ACTIVITY

- Contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.



Reporting Amount Spent on Lobbying

LOBBYING ACTIVITIES

- Must use reasonable system to report amount spent on all lobbying activities (federal)
- Staff time – all staff, not just lobbyists
- Outside firms
- Does not include grassroots lobbying



Intersection with Lobbying Tax

DIFFERENT DEFINITIONS FOR NONPROFITS

- Associations must disclose percentage of dues that are non-deductible
- 501(c)(3) making 501(h) election report amount spent on lobbying
- IRC definitions are slightly different than LDA definitions
 - Includes state lobbying
 - Includes grassroots lobbying
 - Different executive branch covered officials



Intersection with Lobbying Tax

LOBBYING COSTS NON-DEDUCTIBLE FOR MEMBERS

- Allows for choice to simplify
- BUT note possible consequences



LD-203

OVERVIEW

- Semiannual disclosure of “political” contributions
- Each organization with in-house lobbyist must complete form
- Each registered lobbyist must complete the form
- Includes certification of Gift Rule compliance
- Online system



LD-203

TYPES OF CONTRIBUTIONS

- FECA
- Honoring
- Meetings
- Presidential Library Foundations



LD-203

FECA CONTRIBUTIONS

- All contributions aggregating \$200 or more during the semiannual period given to:
 - Federal candidates
 - Leadership PACs
 - Political parties
- **Leadership PAC:** With respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidates or individual, except such term does not include a political committee of a political party.



LD-203

FECA CONTRIBUTIONS (CONTINUED)

- Must report the date and amount of each contribution
- Aggregation is during semiannual period and does not appear to carry over
 - E.g., \$199 in May does not appear to be aggregated with \$199 in August
- All of this information is already disclosed through the FEC
 - **Must still be disclosed on LD-203**
- Does not include state contributions or contributions to PACs
- Search FEC website and review check register/credit card receipts to find all contributions



LD-203

CONTRIBUTIONS TO ORGANIZATIONS

- Name, date, recipient, covered official, and amount of contribution or disbursement for the following:
 - To pay the cost of an event to honor or recognize a covered executive or legislative branch official
 - To an entity that is named for a covered legislative branch official, or to a person or entity in recognition of such official
 - E.g., honorarium to charity, payment to endow a chair at a school
 - Does not include covered executive officials
 - To an entity established, financed, maintained, or controlled by a covered legislative or executive branch official **or an entity designated by such official**
 - To pay the costs of a meeting, retreat, conference, or other similar event held by, or in the name of, one or more covered legislative or executive branch officials



LD-203

PAYMENTS NOT DISCLOSED

- **Speaking Events:** Payments for events where covered officials are speakers do not have to be reported unless the speaker receives an award or other special recognition.
- **Appearing on Program:** Listing a covered official as an attendee of an event does not have to be reported unless the speaker receives an award or other special recognition.
- **Co-Hosts:** An event that lists a covered official as an “Honorary Co-Host” is not one honoring or recognizing such officials, or one named for the covered official, unless they are given an award or other special recognition at the event.
- **Titles:** Using the recognized honorific “The Honorable” before a person’s name does not make the event one honoring or recognizing the official.
- **Tickets:** Purchasing a ticket, or even a table, to an event where a covered official will be honored or recognized does not have to be reported, even if the host organization would report its costs for the event.
- **Solicitation:** A solicitation by a covered official for a charitable contribution is not one “designated” by that official unless the official has some other role, such as being on the board of the entity to receive the contribution, or the contribution was one made in lieu of an honorarium for speaking.



LD-203

PAYMENTS TO BE DISCLOSED

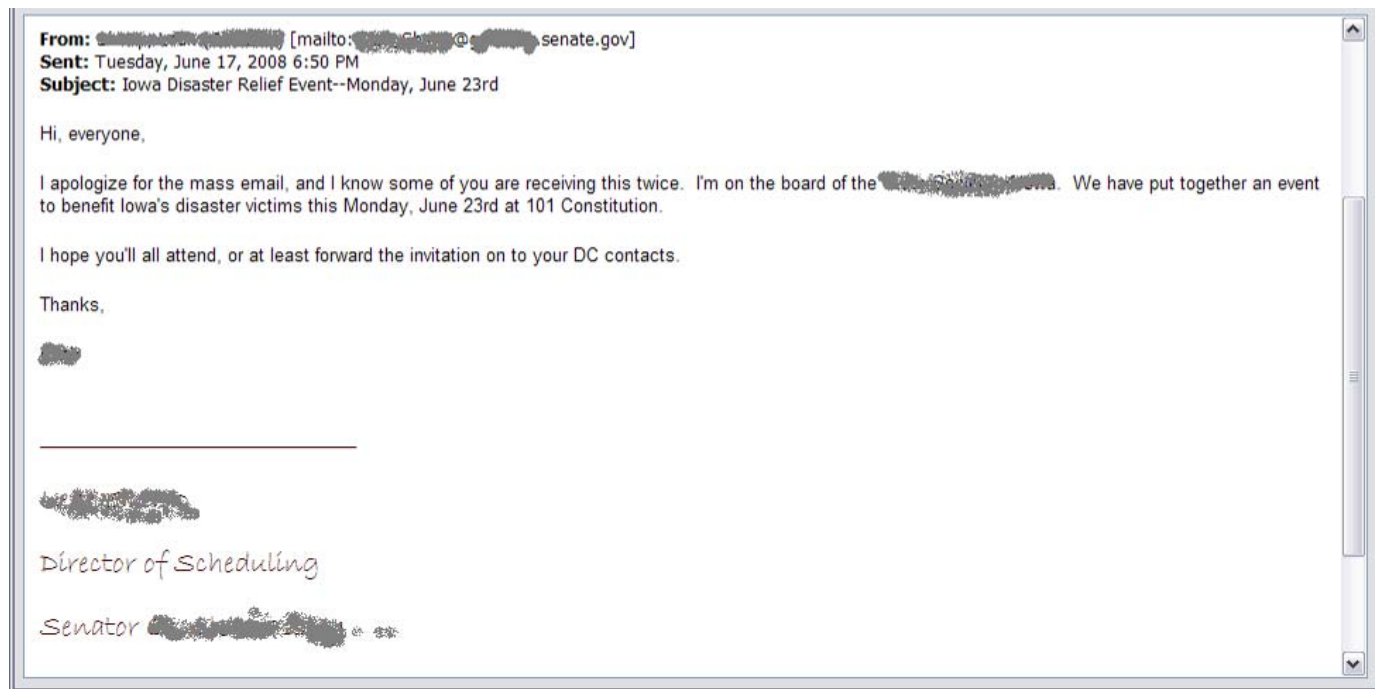
- **Plaques, Awards, Etc.:** If a covered official will be given a “special award, honor, or recognition by the organization” at an event, then it is one honoring or recognizing the official. While not entirely clear from the *Guidance*, this appears to mean more than a simple “thank you for being here today and speaking to us” and more akin to giving that person a specific award or plaque.
- **Payments:** If an individual or organization makes a specific donation to fund an event honoring or recognizing an official, and the donor is aware that the event will be a reportable event at the time of the contribution, then it must be disclosed. This is different than a payment to purchase a ticket or a table at the event.
- **Block Purchases:** If an entity purchases enough tables or tickets to an event that “it would appear that they are paying the costs of the event and/or would not appear to be just ticket or table buyers,” then the payment would have to be disclosed.



LD-203

EXAMPLES

- Request for contribution to Iowa relief from Senate staff person
- Looking only at email, is this made at the designation of a covered official?
 - Not merely because of the request BUT because she is on the board of the organization



LD-203

EXAMPLES


- Guidance would exclude this event because the Covered Officials are only “honorary hosts”

THE STATE SOCIETY OF IOWA
In conjunction with
The Capital Area Iowa Club University of Northern Iowa Alumni Association
Iowa State University Alumni Association Drake University National Alumni Association

Event Sponsors
American Council of Life Insurers
Honeywell
National Beer Wholesalers Association

With Honorary Hosts
Governor Chet Culver
Senator Chuck Grassley
Senator Tom Harkin
Congressman Leonard Boswell
Congressman Tom Latham
Congressman Steve King
Congressman Bruce Braley
Congressman David Loebsack


Invite you to



**A FUNDRAISER TO BENEFIT
THE VICTIMS OF IOWA'S RECENT FLOODS AND
TORNADOES**

**SUGGESTED MINIMUM
CONTRIBUTION \$20**

Date: Monday June 23, 2008
Time: 6:00-8:00
Location: 101 Constitution Avenue, NW,
Rooftop, Washington, DC
Questions: social@iowasociety.org



All proceeds will be given to the relief efforts
The State Society of Iowa is a 501(c)(4) tax-exempt organization
Tax deductible charitable giving options are available



LD-203

CONTRIBUTIONS TO PRESIDENTIAL ENTITIES

- Name of each Presidential Library Foundation to which contributions aggregating \$200 or more in the semiannual period are given, along with date and amount of contribution
- Name of each Presidential Inaugural Committee to which contributions aggregating \$200 or more in the semiannual period are given, along with the date and amount of the contributions
 - Would include tickets purchased from such committees



Certification of Compliance

LIABILITY ON REGISTRANT

- “Has read and is familiar with” the House and Senate Gift Rules
- “Has not provided, requested, or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress with knowledge that receipt of the gift would violate” the House or Senate Gift Rules



State Lobbying Issues

Different Rules in Different States

- Terminology varies considerably
- Frequent changes
- Look to the latest scandal



State Lobbying Registration

Issues to Consider

- Scope of “lobbying”
- Thresholds for registration
- Entity that has to register
- Exemptions
- How to register



State Lobbying Registration

Scope Differs in Each State

- Definition of “lobbying”
 - Legislative
 - Applies to virtually all states
 - Scope may be narrow or broad
 - Executive
 - May be limited to legislation
 - May include most administrative functions



State Lobbying Registration

Scope Differs in Each State

- Examples
 - Sales activities
 - Passage of legislation
 - Regulatory actions
 - Permit approvals



State Lobbying Registration

Thresholds Differ

- Amount of time
 - Percentage
 - Hours worked
- Amounts of money
 - Portion of salary spent on lobbying
 - Amount spent on gifts



State Lobbying Registration

Who Has to Register?

- Outside lobbyists
- In-house lobbyists
- The organization itself
 - For its own employees
 - For its outside employees as a “lobbyist principal” or “lobbyist employer”



State Lobbying Registration

Exemptions Differ

- Take alongs
 - Subject matter experts who accompany lobbyists
 - May have to register
 - May have more limited registration requirements
 - May have no registration requirements



State Lobbying Registration

Registration Issues

- Fees
- Forms from different entities
- Pictures
- Training



State Lobbying Reporting

Issues with State Reporting

- Timing of reports
- Method of reports
- Content of the reports
- Approval of the reports



State Lobbying Reporting

Timing

- Quarterly
- Monthly
- During the legislative session
- Some other frequency



State Lobbying Reporting

Methods of Reporting

- Paper
 - Due date: received or mailed
 - Notarization
- Electronic
 - Special software
 - Passwords from the state



State Lobbying Reporting

Contents of Reports

- Issues lobbied
 - May require some detail
- Contacts made
 - Again, may go into detail
- Amount spent on lobbying
 - Internal costs
 - E.g., salary, travel, etc.
 - Gifts given



State Lobbying Reporting

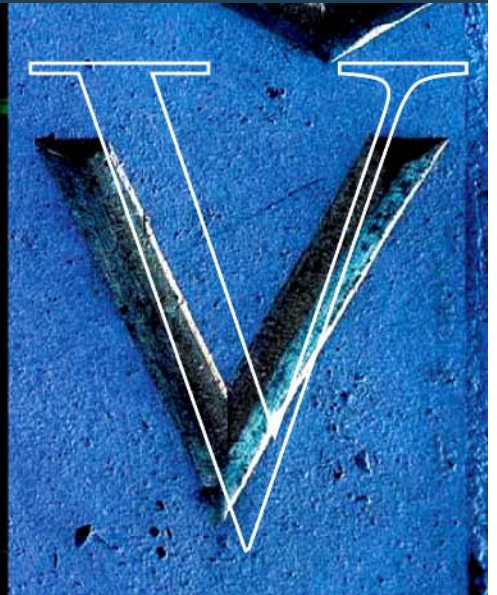
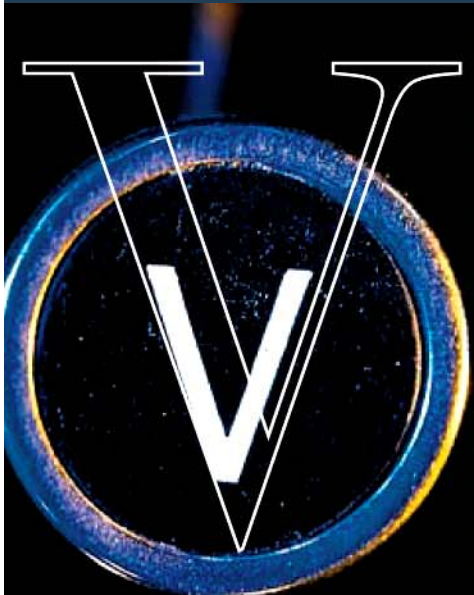
Multiple Levels of Reports

- Who reports?
 - Individual lobbyist
 - Lobbyist employer
 - Outside lobbyist
- May all have to approve the reports of the others



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Gift Rules



Gift Rule

LEGISLATIVE BRANCH: FOR NON-LOBBYISTS

- Basic Rule:
 - Gifts of up to \$49.99
 - Total for year of up to \$99.99
- Unless:
 - There is an applicable exemption
 - Then may give more



Gift Rule

LEGISLATIVE BRANCH: FOR LOBBYISTS & EMPLOYERS OF LOBBYISTS

- Basic Rule:
 - No gifts or travel from lobbyists or entities that retain or employ lobbyists
- Unless:
 - There is an applicable exemption
- Cannot expense “gifts”
 - No reimbursement
 - No deductions
 - May pay using own money if preexisting friendship (discussed below).



Personal Friendship

- Must consider the following factors:
 - History of the relationship
 - Previous exchange of gifts
 - Will it be reimbursed or expensed
 - Similar gifts given to others on Hill
- If exemption applies, limited to \$250
 - Unless waiver obtained
- What this allows:
 - Gifts paid for with your own money
 - Dinner, drinks, etc.



Widely Attended Events

- Invitation must come from sponsor of event
- Event must be:
 - Open to individuals from throughout a given industry or profession or
 - those in attendance represent a wide range of persons interested in a given matter
- Must have 25 people not from Congress expected to attend
- Member or employee must either:
 - be a speaker at the event or
 - determine that attendance is related to official duties



Charity Events

- Invitation must come from sponsor of event
 - Contributors to event may make requests
 - “All communications with Members or staff regarding the event should be made by the event sponsor, because a communication from an event contributor may be deemed an impermissible invitation from the contributor”
- Must be a fundraising event (not merely a congratulatory event)



Receptions

DOES NOT INCLUDE ONE-ON-ONE SITUATIONS

- Food or refreshments of a nominal value offered other than as a part of a meal
- The kinds of food and refreshments usually offered at receptions—such as hors d'oeuvres, appetizers, and beverages
- Morning meetings—coffee, juice, pasty, or bagels—may be accepted
- The exception does not allow Members or staff to accept a “meal,” or “food or refreshments offered as part of a meal,” no matter how nominal the cost



Gift Rules

EXECUTIVE BRANCH

- Career Employees
 - \$20 limit with additional exceptions
 - \$50 annual limit
- Political Appointees
 - Bans gifts from registered lobbyists and organizations registered under the LDA



Gift Rules

EXECUTIVE BRANCH EXCEPTIONS

- Based on personal relationship
- Discounts and similar benefits
- Resulting from spouse's employment
- Widely attended events
- Gifts to President or Vice President
- Authorized by agency regulation or accepted under specific statutory authority



Gift Rules

STATE RULES

- Scope
 - Typically applies to “anything of value”
 - Meals
 - Tickets
 - Travel
 - Lodging
 - Events and Conferences
- Coverage
 - May apply to a wide variety of officials
 - Elected officials
 - Appointed/career officials
- Exemptions
 - Receptions
 - Widely attended events
 - Gifts of *de minimus* value



Gift Rules

COMPLIANCE SUGGESTIONS

- Include on receipts/reimbursement forms statement:
 - “Reimbursement for employee’s portion of meal only; guest paid for own meal”
- Review lobbying firm bills for meals/gifts
 - Include provisions in contracts



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Campaign Finance



Campaign Finance

FEDERAL ELECTION CAMPAIGN ACT

- Prohibits corporate contributions
 - But allows for PACs
- Limits individual contributions
- Independent Expenditures
 - Individual and corporate
- Requires regular reporting of contributions and independent expenditures to the Federal Election Commission



Campaign Finance

CORPORATE ACTIVITY

- No direct corporate contributions
- May create a “separate segregated fund” (“SSF” or PAC)
- SSF may solicit
 - “Executive and administrative personnel”
 - Shareholders
 - Families of each
- Contributions of up to \$5,000 per year
- Payroll deduction permitted



Campaign Finance

CORPORATE ACTIVITY (CONTINUED)

- SSF may make contributions to:
 - Federal Candidates (\$5,000 per election)
 - State & Local Parties (\$5,000 per year)
 - National Party (\$15,000 per year)
 - Other PACs (\$5,000 per year)
 - Leadership PACs (\$5,000 per year)
- State Candidates:
 - Depends on state law
 - May require registration and/or reporting
 - Some states prohibit federal PAC contributions



Campaign Finance

2011 FEC REPORTING DEADLINES

Quarterly Filers → Semiannual

Report	Covered Time Period	Filing Due Date
Mid-Year	Jan. through June	July 31, 2011
Year-End	July through Dec.	Jan. 31, 2012

Monthly Filers

Report	Covered Time Period	Filing Due Date
February	January	Feb. 20, 2011
March	February	March 2011
April	March	April 20, 2011
May	April	May 20, 2011
June	May	June 20, 2011
July	June	July 20, 2011
August	July	Aug. 20, 2011
September	August	Sept. 20, 2011
October	September	Oct. 20, 2011
November	October	Nov. 20, 2011
December	November	Dec. 20, 2011
Year-End	December	Jan. 31, 2012



Campaign Finance

CORPORATE FACILITATION

- In addition to contributions, FECA prohibits “facilitation”
 - Collecting contributions
 - Using corporate resources to forward contributions
 - Inviting those beyond the restricted class to events
 - Paying for meals for fundraisers



Campaign Finance

CORPORATE COMMUNICATIONS

- Allows fundraisers with restricted class
- May pay for meals
- May ask for contributions
- BUT may not collect the contributions
 - Must have someone from campaign there to collect



Campaign Finance

INDEPENDENT EXPENDITURES

- Communications that expressly advocate the election or defeat of a clearly identified candidate for federal office.
- IEs made in consultation or cooperation with a candidate or candidate's committee become in-kind contributions, and thus prohibited (unless made through SSF).
- *Citizens United* found a First Amendment right for corporations to fund IEs.
- Few companies directly funding large IEs.
- Many new organizations are accepting contributions to air/broadcast IEs.



Campaign Finance

INDEPENDENT EXPENDITURES (CONTINUED)

- Organizational Options
 - 527: IRS disclosure
 - 501(c)(4): virtually no public disclosure
 - But may not be primary purpose
 - 501(c)(6): no disclosure, but potential tax consequences
 - IE PACs (form of 527 committee registered with FEC): disclosure



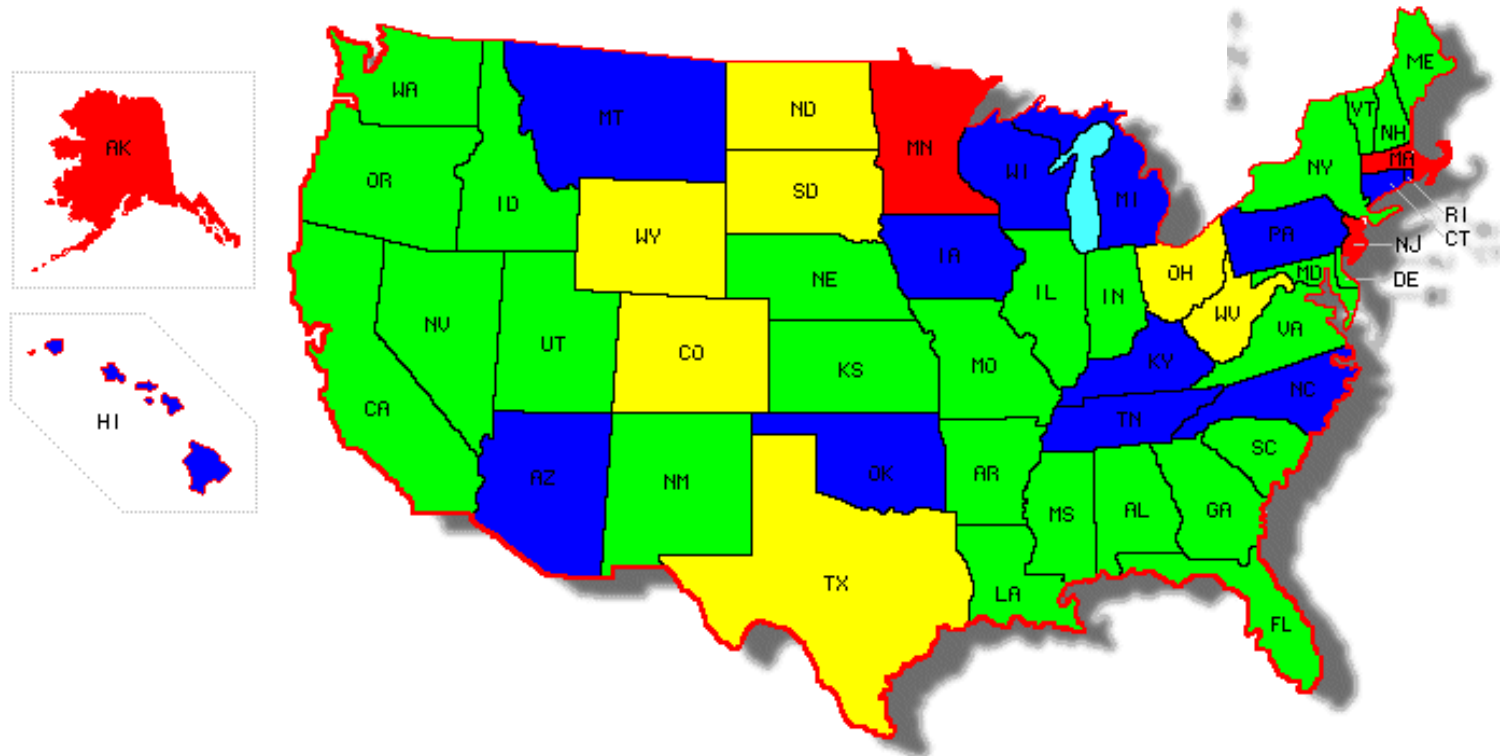
Campaign Finance

STATE LAWS

- Corporate Contributions
- Contribution Limits
- Use of Federal PAC in States
- State PACs



Sources of Contributions



- Corporate contributions permitted
- No corporate contributions, but federal PAC Contributions permitted with minimal reporting (FEC report accepted)
- No corporate contributions, but federal PAC contributions permitted, must register and report with state
- No corporate or federal PAC contributions



Gearing Up For 2012 Election Cycle

- Do your articles or bylaws restrict political activity?
- Have you sent and/or received all necessary prior approval forms?
- Is there proper separation from 501(c)(3) affiliate?
- Does the creation of a payroll deduction system make sense for your organization?
- Is there a process for documenting all incoming and outgoing contributions in place?
- Does your organization plan to make state contributions?

