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Election-Year Political Activity: A Primer for Financial Services Providers

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Ronald M. Jacobs

Co-Chair, Political Law Practice
Venable LLP
RMJacobs@Venable.com
202.344.8215

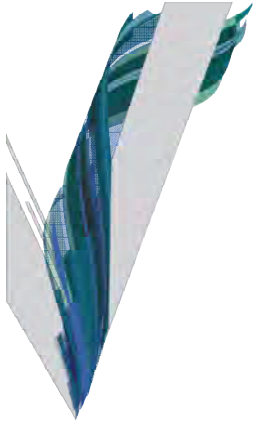
Lawrence H. Norton

Co-Chair, Political Law Practice
Venable LLP
LHNorton@Venable.com
202.344.4541

Jonathan L. Pompan

Partner
Venable LLP
JLPompan@Venable.com
202.344.4383

www.PoliticalLawBriefing.com



Welcome to Today's Webinar

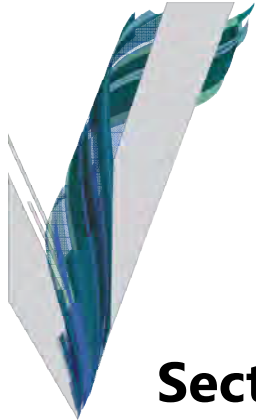
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What We'll Cover

Section I: Campaign Finance

- Federal Rules
- State Rules

Section II: Pay-to-Play

- SEC
- MSRB
- State Rules

Section III: PACS

- Understanding PACs
- Solicitation Rules
- Using a PAC in the States

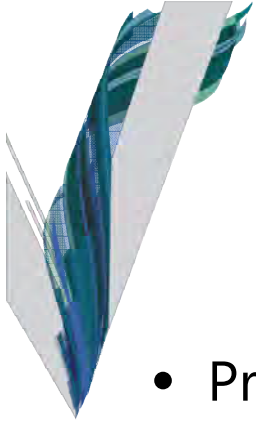
Section IV: Super PACS

- Independent Expenditures
- Funding Super PACs

Section V: In Action

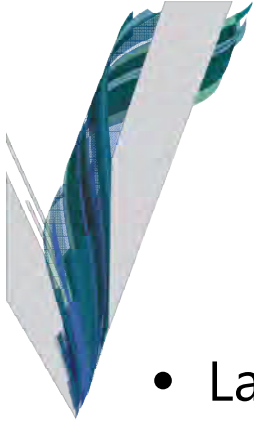
- Convention Events
- Fundraisers
- Compliance Plan

Questions



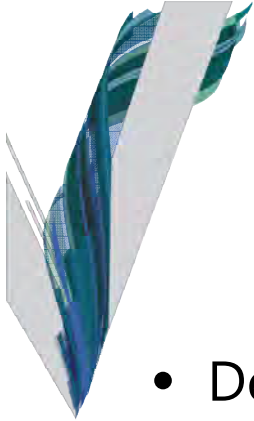
Why be Involved?

- Protect your business
- New opportunities
- Enhance reputation
- Favorable regulatory climate



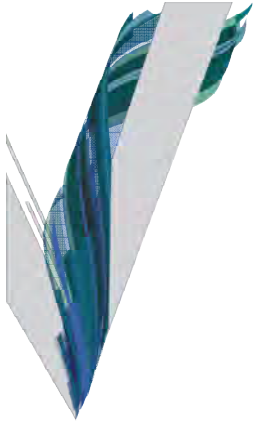
Risks of Political Activity

- Laws vary widely
- Many traps
- Impact on business and personal activity
- Compliance must involve entire company
- Scrutiny from:
 - Regulators
 - Media
 - Competitors
 - Watchdogs
- Public relations impact may be greater than legal liability

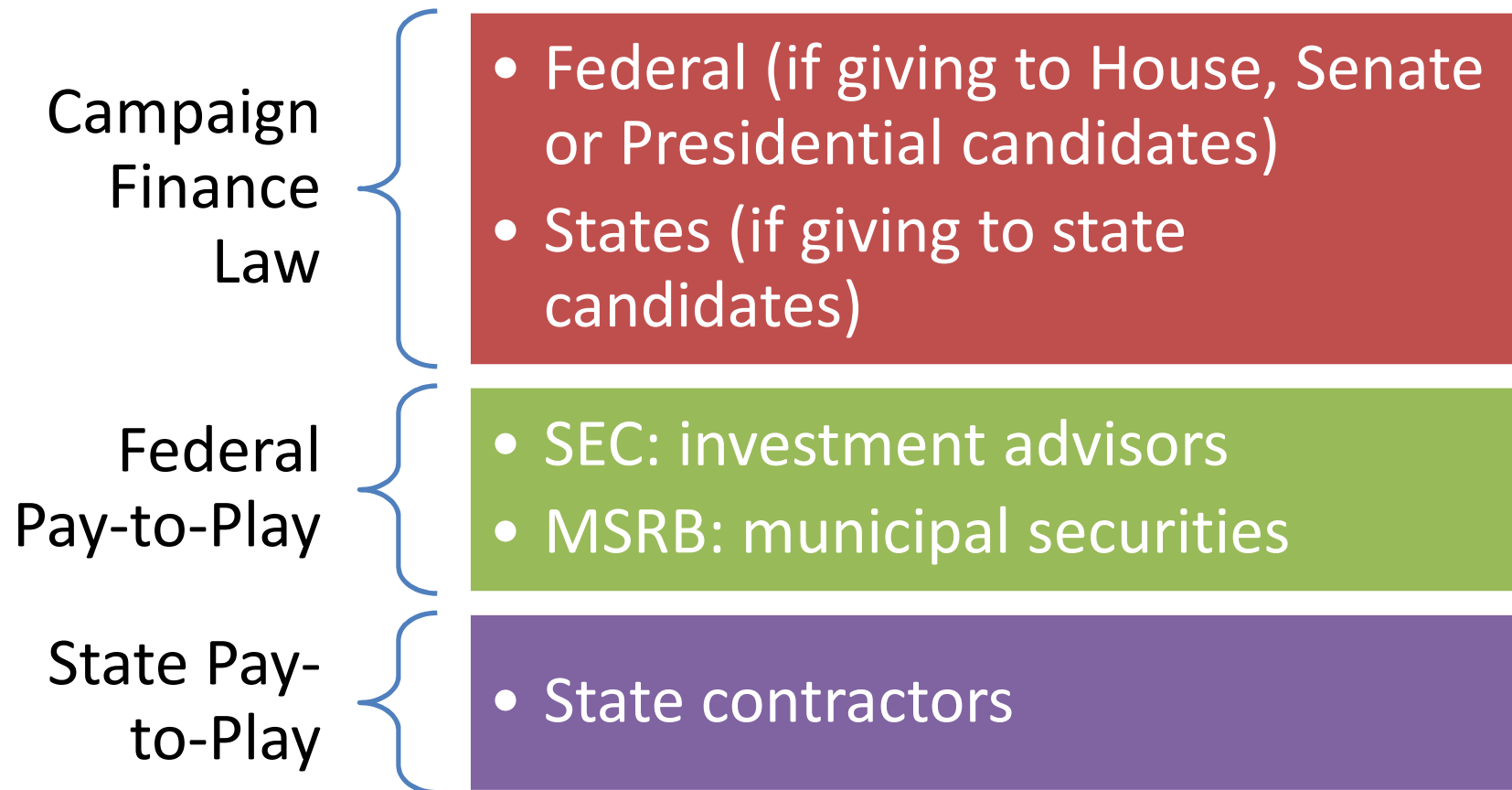


Manage the Risks

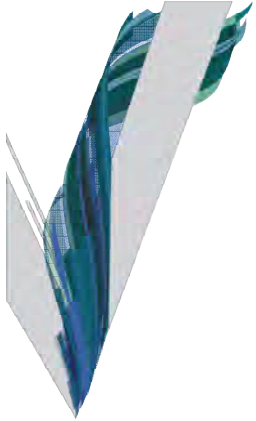
- Develop simple and clear policies and procedures
- Provide regular training
- Let employees know who is responsible for answering questions
- Separate responsibility for government relations and legal compliance



Sources of Regulation

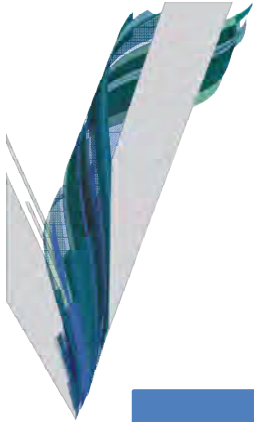






Campaign Finance Law Basics

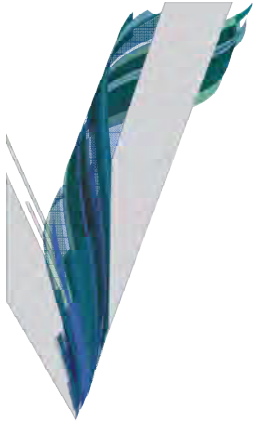
Federal Law



Contributing: the Basics

Federal law:

- Distinguishes between contributions & expenditures
- Limits individual contributions
- Restricts or prohibits contributions from other entities
- Requires contributions to be disclosed
- Prohibits reimbursing contributions or using “straw donors”



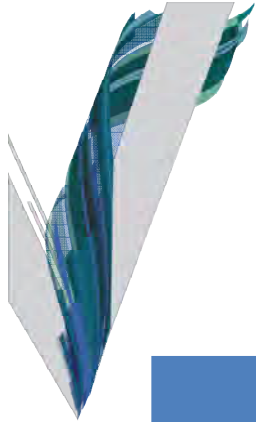
Contributions versus Expenditures

Contributions

- Monetary support given directly to a candidate, PAC, or party
- In-kind support (discounts, etc.) given directly to candidate, PAC, or party
- In-kind activity for the benefit of a candidate, PAC, or party done at the request or suggestion of the candidate, PAC, or party

Expenditures

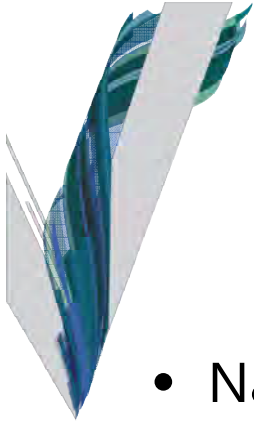
- Activities to support candidates, PAC, or parties done without coordinating



Federal Contribution limits

	To a Candidate	To a National Party Committee	To State and Local Parties
Individual May Give	\$2,700 per election	\$33,400 per year*	\$10,000 per year
Multicandidate PAC May Give	\$5,000 per election	\$15,000 per year*	\$5,000 per year
Non-Multicandidate PAC May Give	\$2,700 per election	\$33,400 per year*	\$10,000 per year

*Additional amounts may be given to convention, building, and legal funds

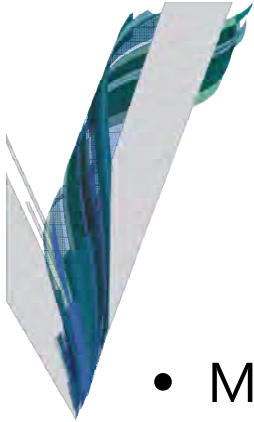


National Bank Contributions

- National banks* are prohibited from making contributions and expenditures for **any** election for political office:
 - Federal
 - State
 - Local
- Does not apply to ballot measures
- Allowed to form PACs
 - Federal PAC
 - State PAC



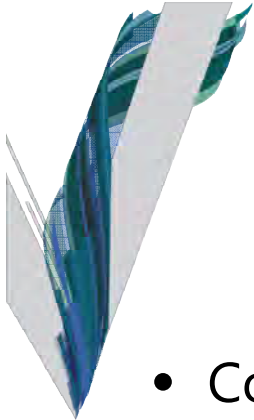
*National Bank: chartered by OCC; contain “N.A.” in name



Foreign National Restrictions

- May not give to:
 - Federal
 - State
 - Local
 - Ballot measureCandidates, committees, parties, or PACs
- May not make giving decisions or control a PAC
- May volunteer for a candidate

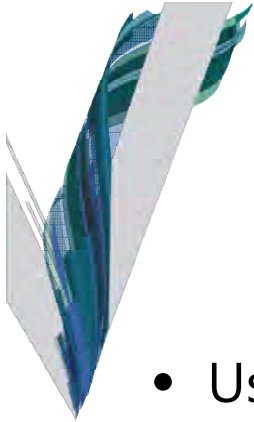




Corporate Contributions

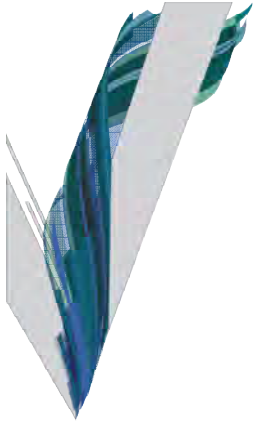
- Corporate contributions prohibited for federal candidates, PACs, parties
- *Citizens United*: no it did not change “everything”
 - Allows corporations to make expenditures
 - Few corporations do so
 - Most independent expenditures funded by individuals
 - But note national bank restriction
- No use of corporate resources for fundraising unless specifically allowed
- May use a political action committee to give
- No reimbursement of employee contributions





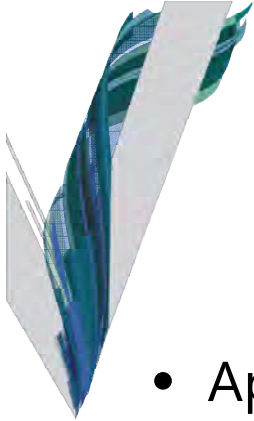
Corporate Facilitation

- Using corporate resources to raise money for candidates
- FEC recently brought an enforcement action
 - Rare for FEC to bring enforcement actions—demonstrates severity
 - But complaints can consume resources, trigger adverse publicity
- Examples of facilitation
 - Using subordinates
 - Paying event costs
 - Collecting contributions
- *But:* corporations may form PACs to support candidates



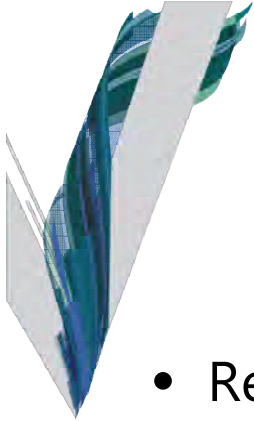
Campaign Finance Law Basics

State Law



State Law Basics

- Applies to contributions to state candidates
- State law may also apply to local elections, though some cities and counties have own rules
- Does not apply to federal candidates
 - Does not apply to state candidates running for federal office
- Laws vary widely

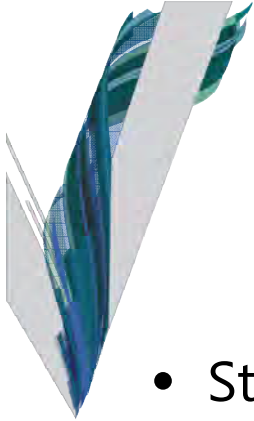


Other State Law Considerations

- Restrictions on contributions during legislative session
- Restrictions on contributions before the election cycle starts
- Restrictions on contributions by lobbyists
- Restrictions on fundraising by lobbyists
- Variety of disclosure rules
- Pay attention to aggregation rules
- Donors may have to file reports in some states

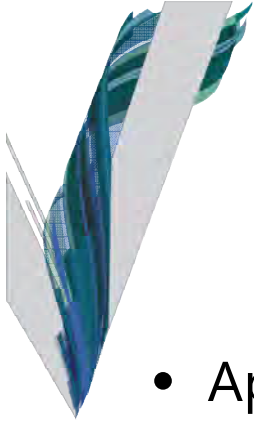


SECTION II: Pay-to-Play



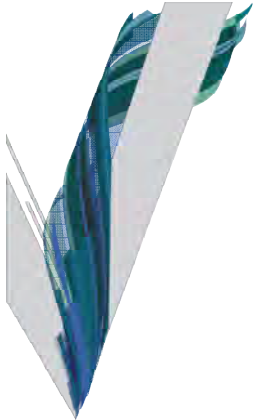
Overview of Pay-to-Play Rules

- State, local laws, and federal rules that ban or restrict political contributions to public officials from government contractors
- Apply not just to the company, but to many of the individuals associated with the company, including owners, officers, directors, senior managers, key employees, and sometimes spouses and children
- Goal is to prevent contractors from “paying” (making political contributions) to “play” (getting a contract with the government)



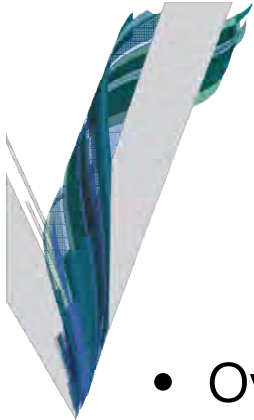
Pay-to-Play Key Points

- Apply primarily with respect to state contracts (even federal rules)
- Apply primarily to state candidates
- Several federal agencies impose restrictions
- Some states and localities have their own rules



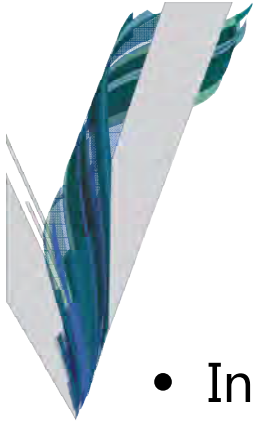
Federal Pay-to-Play Rules

Restrictions on Giving by Certain Businesses



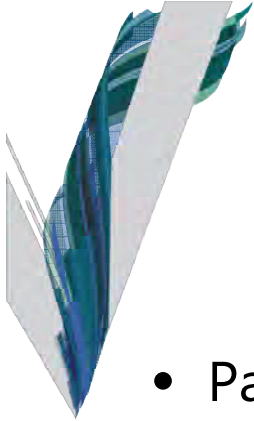
SEC Investment Advisors

- Overview
 - Prohibited from receiving payment from state and local governments for two years after prohibited contribution made
 - Applies to contributions by investment advisors and their “covered associates”
 - Applies to contributions made to officials who control investment decisions or appoint those who do
 - Prohibits investment advisors and covered associates from soliciting contributions to political parties



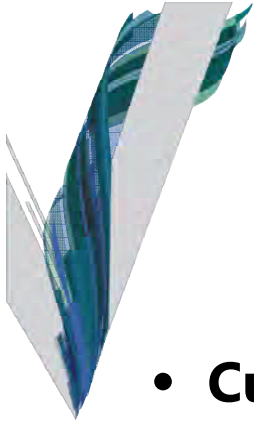
Types of Contracts at Issue

- Investment of government funds in alternative investments
 - Investment Advisor to the fund is treated as the investment advisor to the state entity
 - Common Examples:
 - Retirement funds
 - University endowments
 - Other state funds
- Pooled investment vehicles
 - One or more of the participant-directed options is advised by an investment advisor
 - Common Examples:
 - 529 plans
 - 403(b) plans
 - 457 plans



Covered Associates

- Partner
- Managing member
- Executive officer or individual with a similar status or function
 - President
 - Vice-president in charge of a principal business unit, division or function
 - Other officer or person who performs a policy-making function
- Any employee who solicits a government entity for the adviser
- Any person who directly or indirectly supervises such employee
- Any PAC controlled by the adviser or a covered associate



Time-Out Period

- **Current Covered Associates**

- Applies two years from date of contribution for current employees

- **New Employees**

- Must review contribution history for new covered associates

- Covered associates who do not solicit state business

- Any contribution made in the six months prior to being hired deemed to have been made by the new employer—thus triggering two-year time out from date of contribution

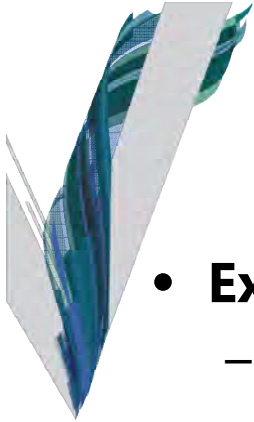
- Covered associates who solicit state business

- Any contribution made in the two years prior to being hired deemed to have been made by the new employer—thus triggering two-year time out from date of contribution

- **De Minimus Contributions**

- \$350/election if entitled to vote for candidate

- \$150/election otherwise



Examples of SEC Rule

- **Example 1:**

- *Facts:*

- Governor appoints members of state pension fund board
- Governor running for U.S. Senate
- Covered associate contributes to Senate campaign
- Investment advisor awarded contract after election to manage money for pension fund

- *Result:*

- Investment advisor may not receive any fees from pension fund for two years from the date of the contribution

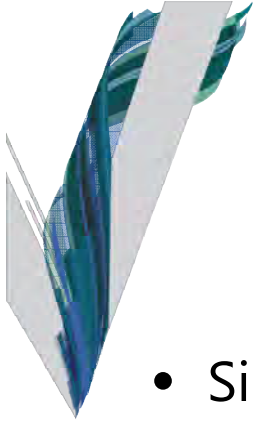
- **Example 2:**

- *Facts:*

- Mayor appoints investment manager for city pension fund
- Individual makes contribution to mayor on May 2
- Individual hired as group vice-president of investment advisor on December 1

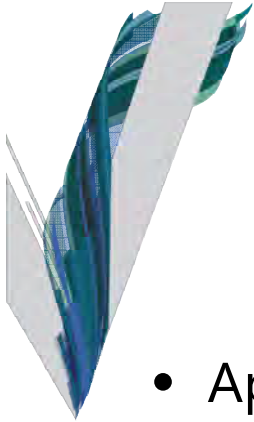
- *Result:*

- No timeout, because more than six months for non-soliciting employee



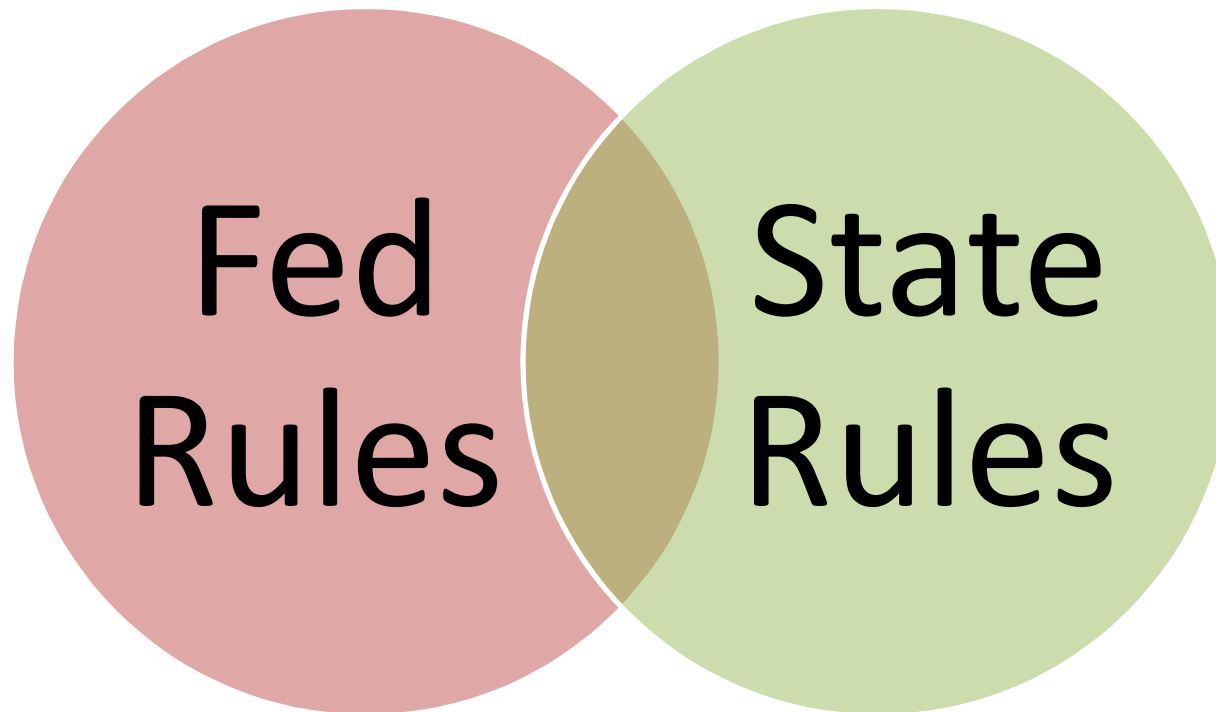
MSRB Rule G-37

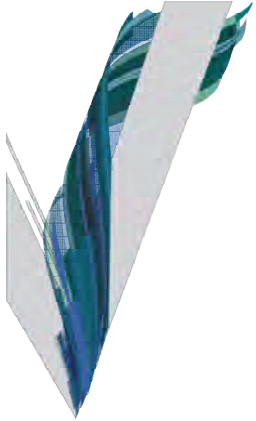
- Similar to SEC rule
- Applies to brokers, dealers, and municipal securities dealers
- Applies to “municipal finance professionals” employed by those entities
- Applies to any PACs controlled by MFPs or the company
- Imposes a two-year prohibition on doing business with an issuer after a contribution is made
- Applies to officials who directly or indirectly are responsible for, or can influence the outcome of, the hiring of brokers or dealers or who appoint any person who makes such decisions



Impact of Federal Rules

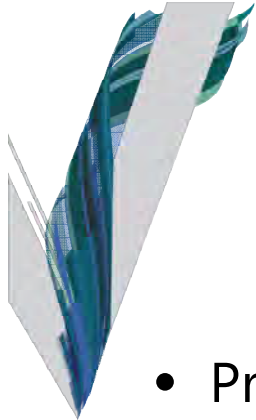
- Apply to specific industries noted
- Apply in addition to any specific state pay-to-play laws





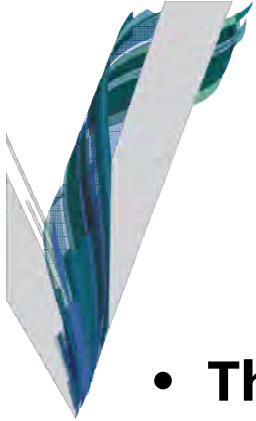
State Pay-to-Play Laws

Apply in Addition to Federal Rules



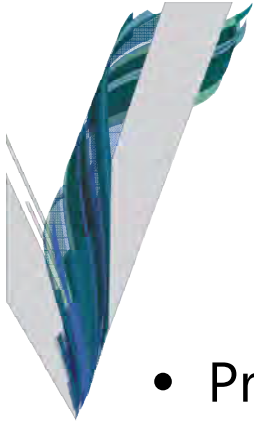
Overview of State Rules

- Prohibit or restrict contributions by state and local contractors and bidders
- May also restrict fundraising
- Contribution restrictions may apply to officers, directors, senior managers, and even spouses
- May begin pre-bid and end months after contract terminated
- Disclosure/registration/reporting



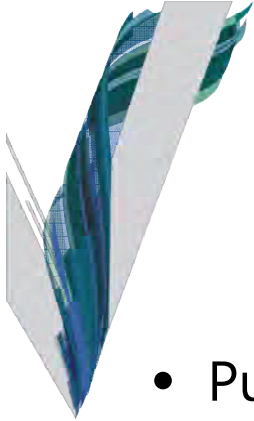
Types of Laws

- **Three types of restrictions**
 - Ban political contributions
 - Restrict or limit political contributions
 - Require disclosure
- Some jurisdictions combine ban/restriction with disclosure



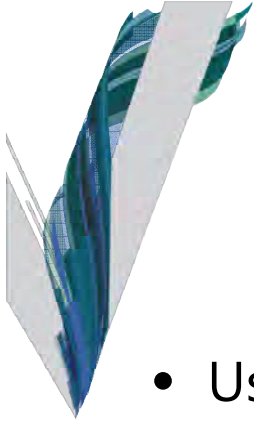
Types of Contracts

- Procurement method (approaches vary):
 - All contracts
 - Sole-source contracts only (*i.e.* not subject to competitive bidding)
- Value of contracts held or sought (thresholds vary):
 - *e.g.* restrictions might apply if public contracts of **any value** are held or sought a company in the jurisdiction
 - *e.g.* restrictions might apply if public contracts held or sought by firm in the jurisdiction **equal or exceed \$50,000** in a calendar year
- Type of contract (approaches vary):
 - All contracts;
 - Goods, supplies, equipment, services
 - Real estate transactions
 - Grants



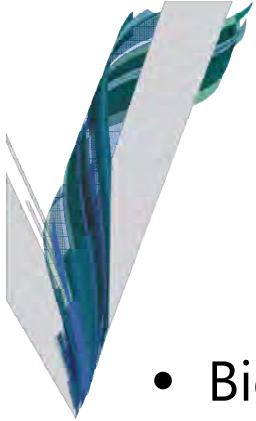
Public Officials Covered

- Public officials/candidates (approaches vary):
 - All public officials/candidates in the jurisdiction
 - Executive branch officials/candidates
 - Legislative branch officials/candidates
 - Officials/candidates directly responsible for awarding the contract
 - Officials/candidates who have influence over the award of the contract
- Political parties (in some jurisdictions)
- Political action committees (in some jurisdictions)



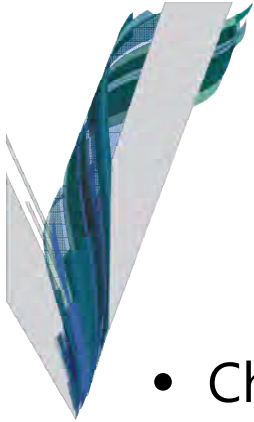
Scope of Covered Employees

- Usually apply to the contracting entity *and* certain entities / individuals affiliated with the contracting entity
- Although each jurisdiction is different, the following entities and individuals are often subject to the contribution restrictions:
 - Contracting entity
 - Subsidiaries, parent entities, affiliates
 - Owners (usually tied to percentage threshold)
 - Officers, directors, and senior managers
 - Employees involved in obtaining a contract, or whose compensation is tied to the contract
 - All employees in some jurisdictions (*e.g.* Kentucky)
 - Spouses and children in some jurisdictions (*e.g.* Connecticut; New Jersey)



Impact of Laws

- Bids disqualified and contracts voided
- Barred from future contracts
- Fines and criminal penalties
- Damage to reputation

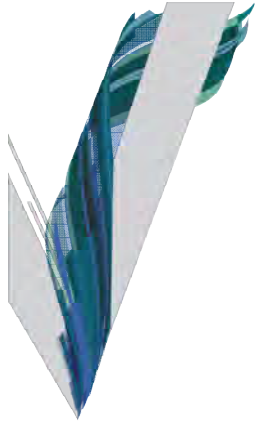


Sample Municipalities – Not a Full List

- Chicago
- Denver
- Houston
- Los Angeles
- New York City
- New Jersey (dozens of municipalities)
- Oakland
- Philadelphia
- San Antonio
- San Francisco



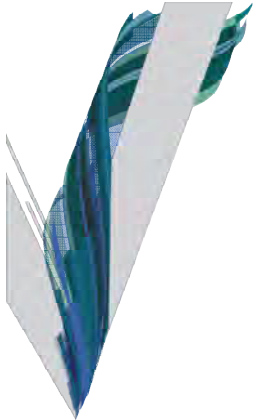
SECTION III: PACS



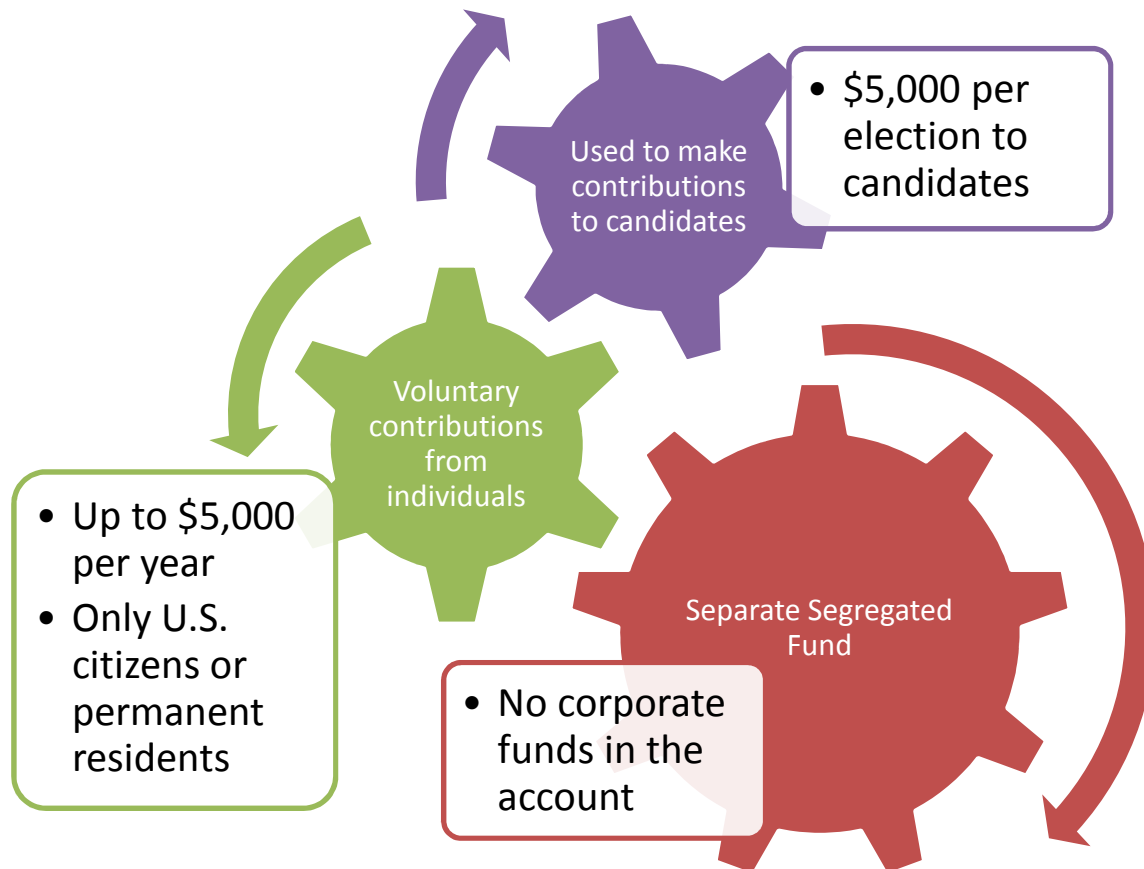
PAC Basics

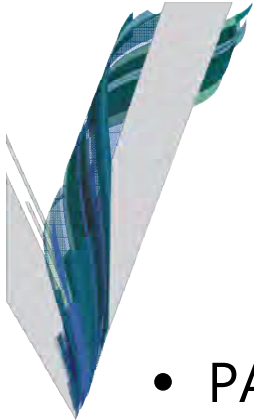
Overview of Key Terms





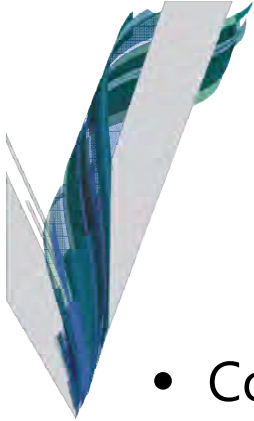
Political Action Committees





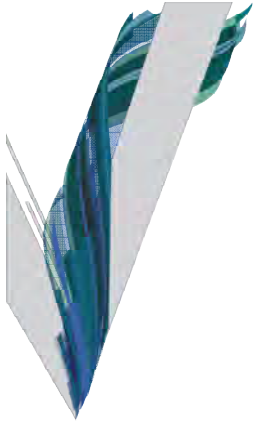
Dispelling Myths

- PACs don't buy influence
- PACs are highly transparent
- PACs do provide opportunities to interact with lawmakers
- PACs help to elect and retain members who understand and support the sponsoring organization (corporation or trade association) or the PAC's position (if no sponsor)
- Connected PACs are typically nonpartisan – not formed to advance anyone's personal political agenda
- PAC contributions ≠ corporate contributions

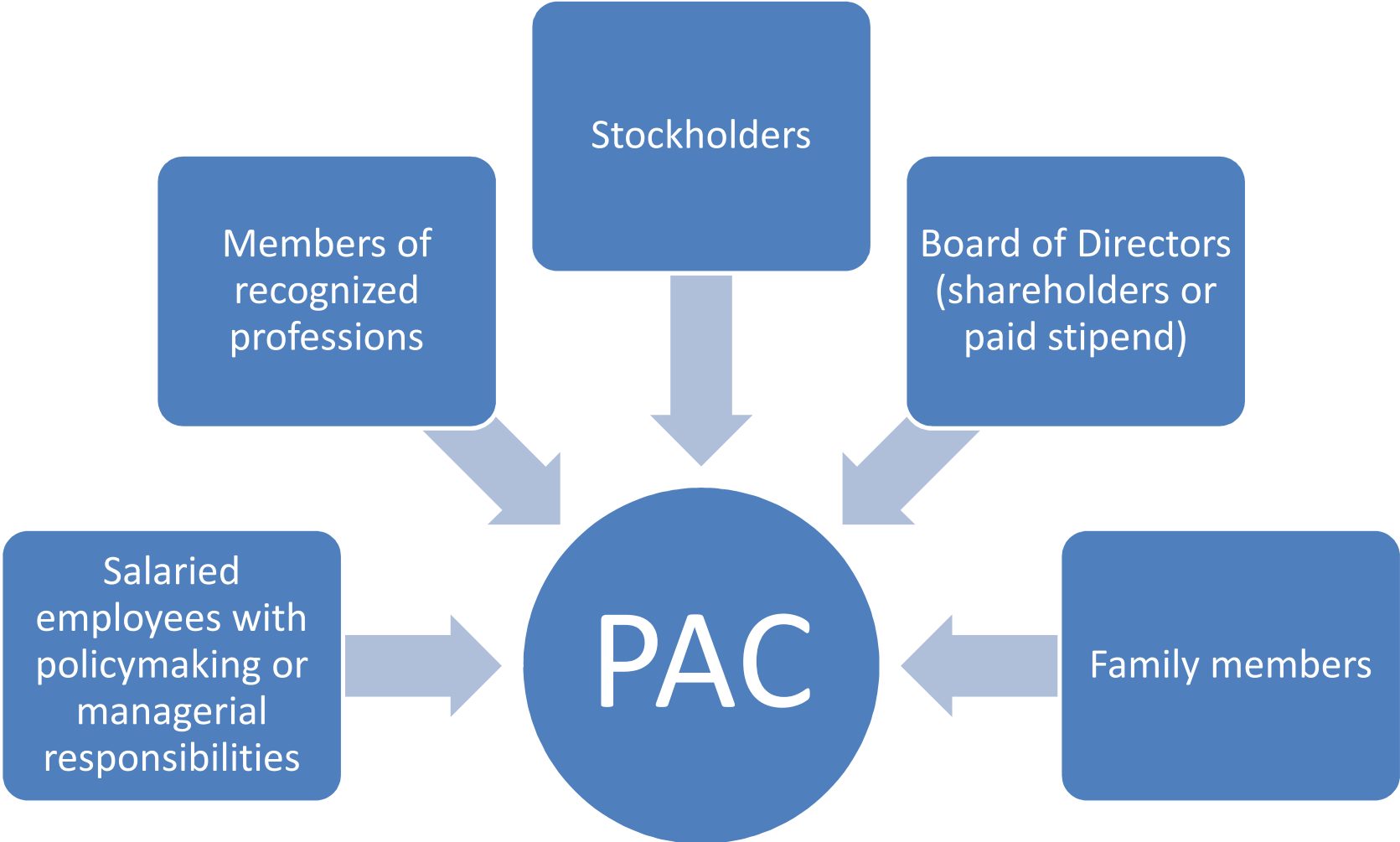


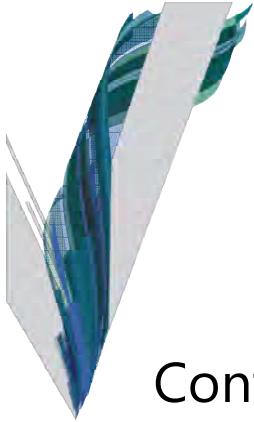
PAC Basic Rules

- Contributions to PACs must be voluntary
 - No coercion
 - No reimbursement
- Contribution limits:
 - \$5,000 per person per year to the PAC
 - \$5,000 per election to candidates (newly formed PACs \$2,700 per election)
- Connected company may pay administrative support costs
- Connected PACs may:
 - Accept contributions from any US citizens or permanent resident
 - Solicit contributions from the “restricted class”



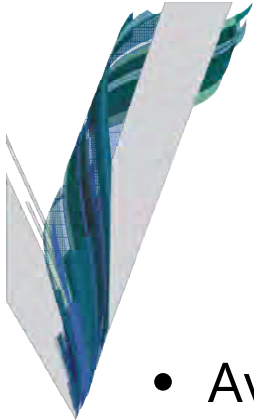
Corporation Restricted Class





Contribution Disclaimer

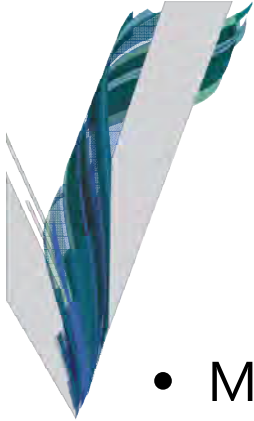
Contributions are not deductible for federal tax purposes. Contributions from foreign nationals who are not lawfully admitted for permanent residence in the U.S. are prohibited. Contributions to the PAC will be used for political purposes and are entirely voluntary. You have the right to refuse to contribute without reprisal. [COMPANY NAME] will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute. All individual contributions must be made from personal funds and may not be reimbursed by any other person. Federal law requires [PAC NAME] to use its best efforts to report the name, mailing address, occupation, and employer of each individual whose contributions exceed \$200 per calendar year.



Avoiding Coercion

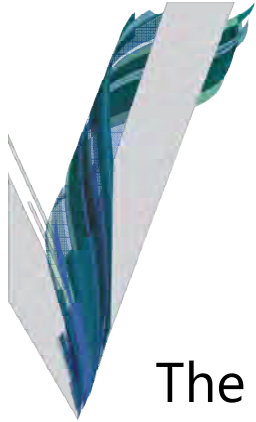
- Avoid one-on-one solicitations with direct reports
- Small group meetings are better
- Don't threaten or harass
- Don't promise benefits
- Follow up, but not too often
- Use brochure, FAQ w/ disclaimer





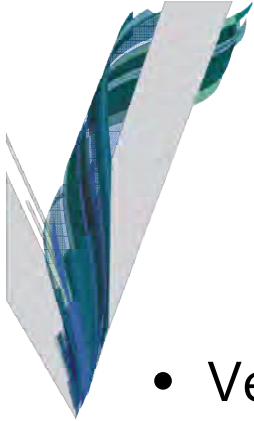
Suggested Amounts

- May provide suggested giving levels
 - Tiers:
 - Gold
 - Silver
 - Bronze
 - Level:
 - CEO
 - EVP
 - VP
 - Director
- Must have additional disclaimer



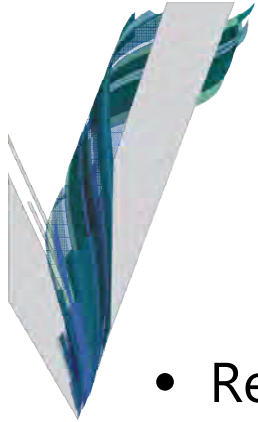
Disclaimer with Suggested Giving Levels

The recommended giving levels are only suggestions. You are free to contribute more or less than suggested and [Company] will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.



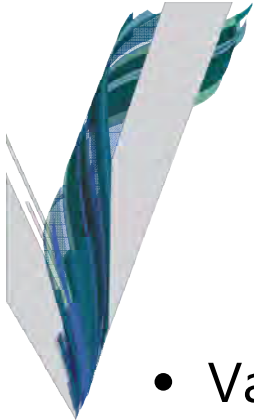
Payroll Deduction

- Very efficient way to collect contributions
- Remains in effect until revoked
 - Some states have different laws for state PACs
 - Michigan requires annual renewal
- Helps provide budget for PAC



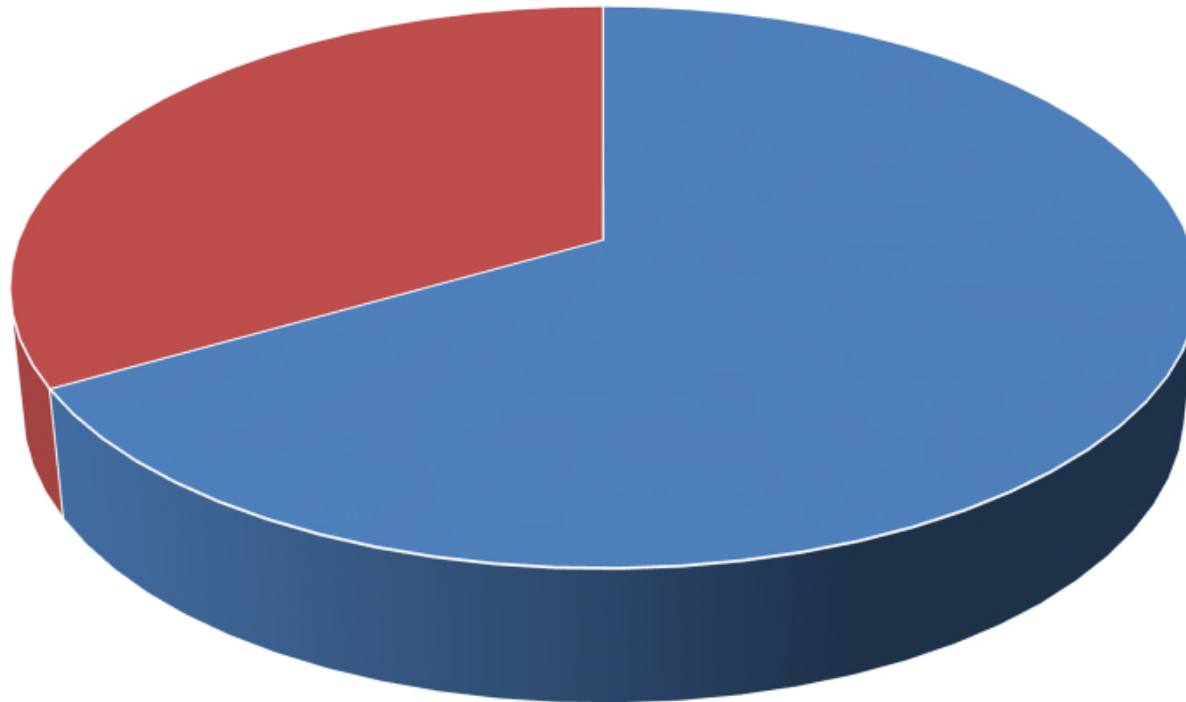
Other PAC Incentives

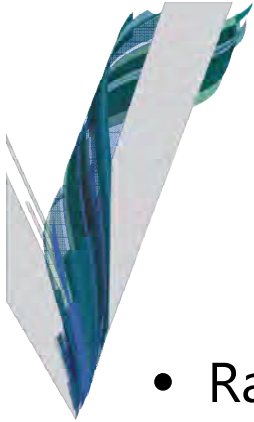
- Receptions/dinners with senior leadership
- Trinkets
- Prizes
- Charitable Match



One-Third Rule

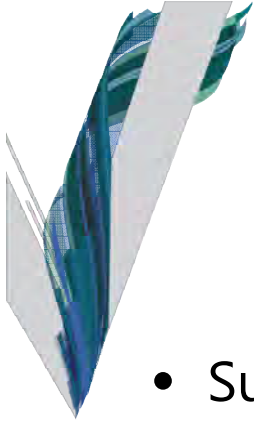
- Value of prize < 1/3 Value of Contribution
- PAC must pay excess
- Universe of contributions is important





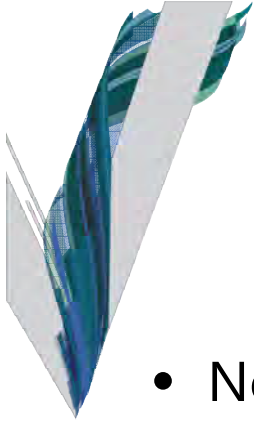
Examples

- Raffle:
 - \$1,200 in contributions
 - Prize worth no more than \$400
- Gifts:
 - \$10 pen
 - Contribution must be more than \$30



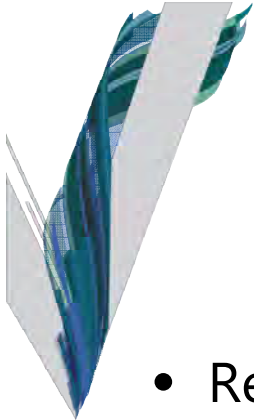
Prizes and Awards

- Subject to 1/3 Rule, paid for by the connected organization
- If trade association, member companies, using corporate funds, may donate prizes
 - 1/3 Rule requires reimbursement to association if value exceeds 1/3 of contribution



Charitable Match

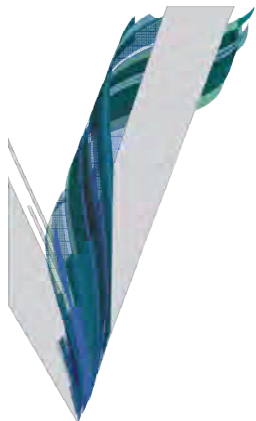
- No benefit to contributor
 - No token gifts from charity
 - No tax deduction to contributor
 - No tax deduction to company
- Charity
 - May be limited by company to specific list
 - Including related foundations
 - May be open to any 501(c)(3)
 - System to verify charities
- Level
 - One-for-one approved by FEC in Advisory Opinions
 - Two-for-one dismissed in enforcement action (4-2 vote)



FEC Reports

- Regular reports filed with FEC
- Donors disclosed who give more than \$200:
 - Name
 - Address (may be company address)
 - Occupation
 - Employer
- All contributions given by the PAC
- Available online





Reporting Schedule

Election Year

- Quarterly
- Plus pre-primary reports where needed

OR

- Monthly

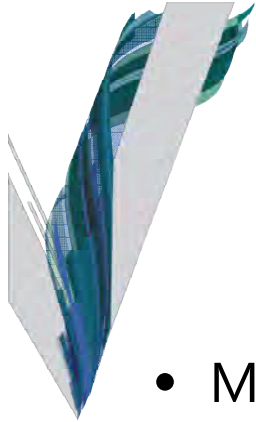
Off-Years

- Semi-annual

OR

- Monthly



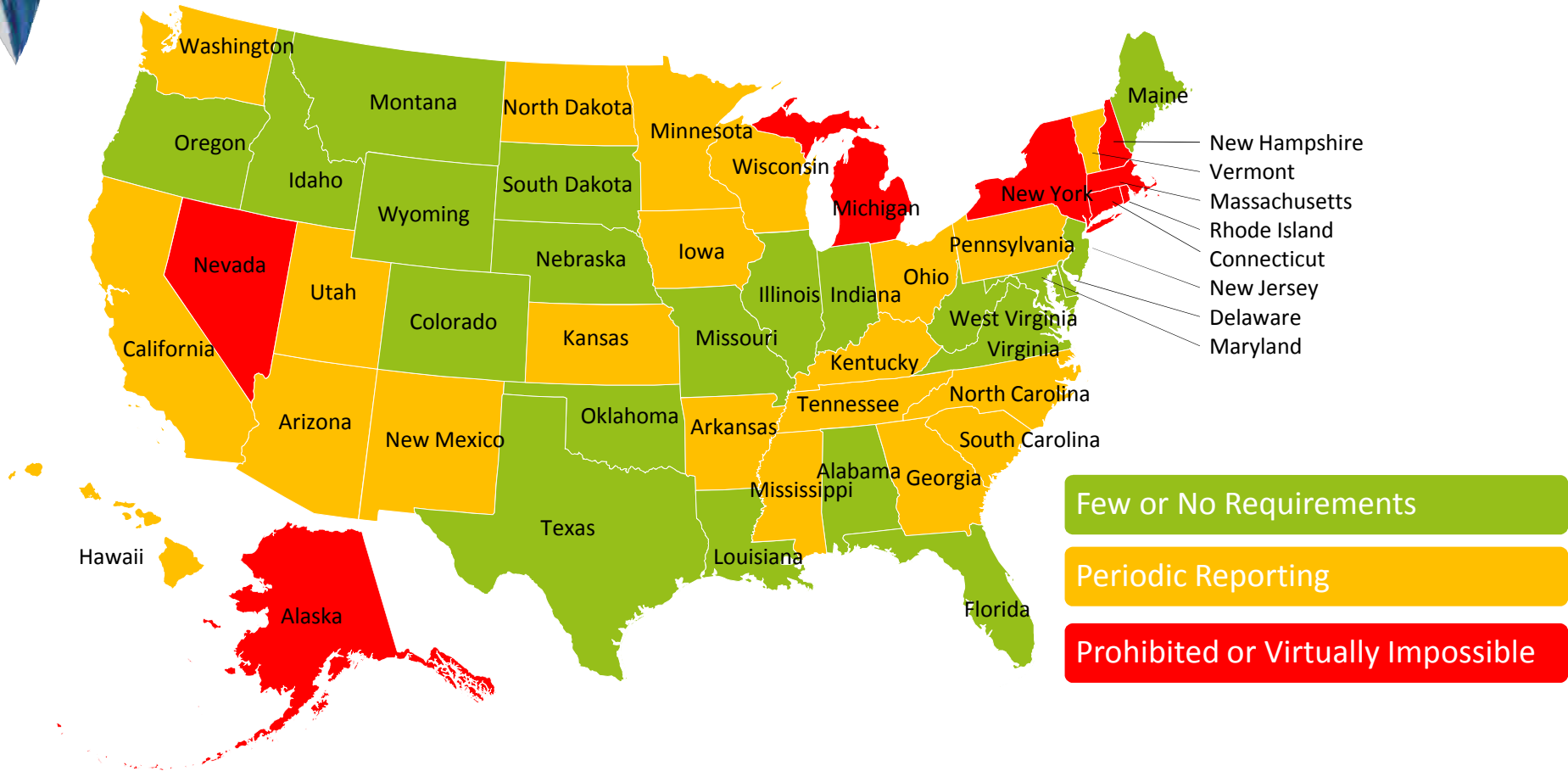


Maintaining Records

- Must retain records for three years
- Record of all receipts
- Record of all disbursements
- Signed prior approvals
- Signed payroll deduction authorization
- Contribution forms
- Bank statements

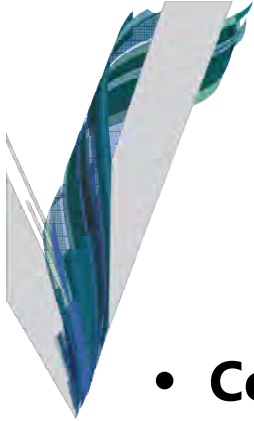


Federal PAC Contributions to State Candidates





SECTION IV: SUPER PACS



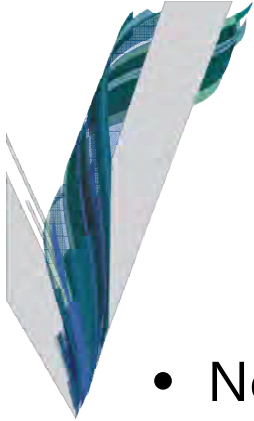
Contributions versus Expenditures

- **Contributions**

- Often limits and prohibitions
- Monetary gift to candidates
- In-kind contributions
 - Print signs for free
 - Develop web site for discount
 - Provide food for a fundraiser

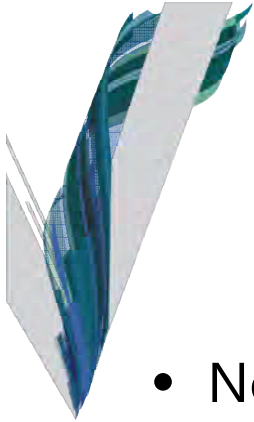
- **Expenditures**

- No limits
- Spending money on to support or oppose a candidate
 - Producing and buying air time for an ad
 - Sending emails to membership lists
- Must be done independently of the candidate
- If coordinated with candidate, becomes a contribution



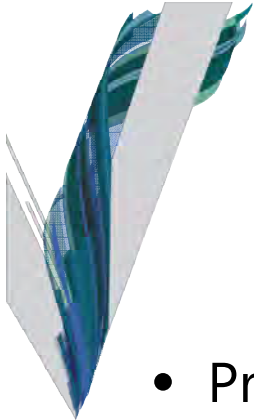
Making Independent Expenditures

- No limits on amount someone may spend on independent expenditures
- Corporations may make independent expenditures
 - *Citizens United*
- Individuals and corporations may contribute unlimited amounts to entities that make independent expenditures
 - The Super PAC is born



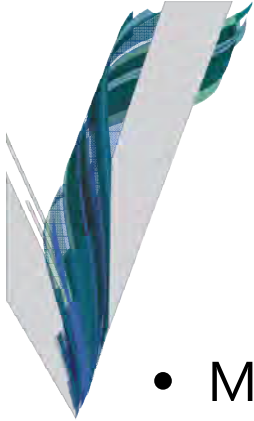
What Kinds of Entities Make IEs?

- Nonprofits
 - 501(c)(4) social welfare organizations
 - 501(c)(5) unions
 - 501(c)(6) trade associations
 - Limited to less than half of organization's activities
- Independent Expenditure Only Committees
 - Super PACs
 - Registered with state or federal officials
 - Disclose donors and expenditures



What do Super PACs do?

- Produce and air commercials
- Send direct mail
- Produce online ads
- Develop get-out-the-vote activities
- Fund voter-registration drives
- Fund opposition research

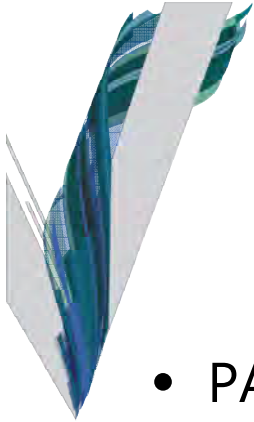


Corporate Involvement

- Many companies have policies against funding super PACs
- Relatively few large companies do so
- CEOs and other executives typically are involved with super PACs
- Limits on the role in lobbying

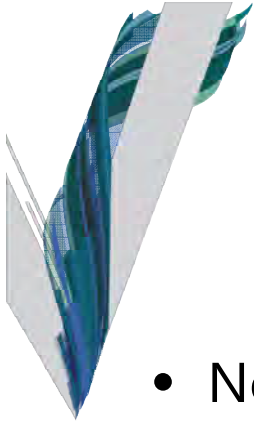


SECTION V: IN ACTION



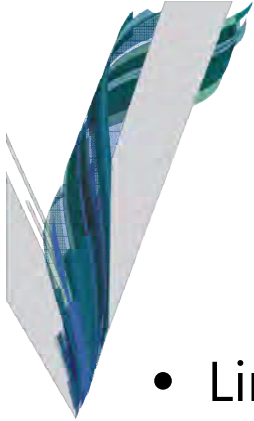
Convention Events: Ways to be Involved

- PACs and individuals may contribute to convention funds
- Corporations may contribute to host committee funds
- Sponsor events—must comply with gift rules
- Host fundraisers at the conventions
- Restrictions on events honoring Members



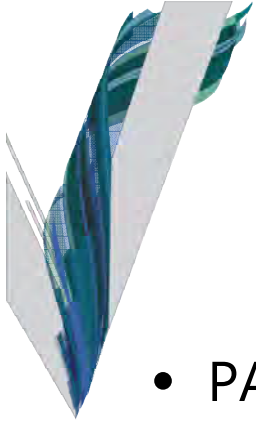
Official Visits to Company

- Not a candidate visit at all
- Appears in official capacity (e.g., Governor who may be running for Senate)
- Scheduled through official office
- No campaigning
- May meet with/speak to all employees



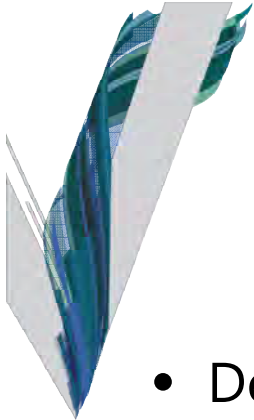
Restricted Class Events

- Limited to restricted class
 - Those employees outside of the restricted class necessary for event
- Special guests (e.g., speakers)
- May urge attendees to vote for candidate
- May solicit contributions for candidate
- May not collect contributions—must be given directly to candidate
- May provide food and beverage
- No charge for room
- May limit to one candidate and not include opponent



PAC Events for Candidates

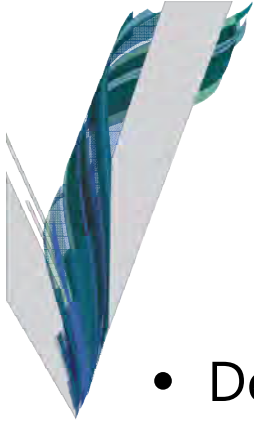
- PAC pays for food and beverage
- PAC pays for room rental
- PAC invites attendees
 - Restricted class
 - Others not with company
- PAC pays for corporate staff time
- All is treated as in-kind contribution to candidate subject to \$5,000 limit per election
 - Or, campaign may pay costs of the event



Contributing to Candidates

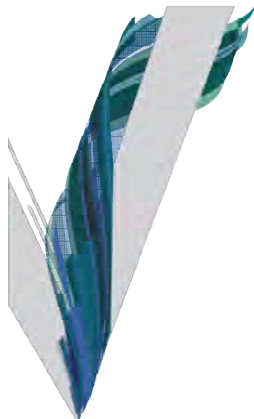
- Determine whether candidate is state or federal
- Determine whether pay-to-play rule applies
- If state, determine whether corporate or PAC contribution
- If PAC to state, determine whether reporting obligations apply





Pay-to-Play Compliance

- Determine scope of contracts
- Determine scope of officials covered
- Determine scope of employees covered
- Develop compliance plan:
 - Preclear contributions?
 - Allow certain contributions?



Questions?

Ronald M. Jacobs

202.344.8215

RMJacobs@Venable.com

Lawrence H. Norton

202.344.4541

LHNorton@Venable.com

Jonathan L. Pompan

202.344.4383

JLPompan@Venable.com

www.PoliticalLawBriefing.com